

154 FERC ¶ 61,089  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Sabine Pipe Line LLC

Docket No. RP15-1322-001

ORDER ON COMPLIANCE FILING

(Issued February 5, 2016)

1. On November 30, 2015, Sabine Pipe Line LLC (Sabine) filed a tariff record<sup>1</sup> to comply with the Commission's October 30, 2015 order accepting and suspending tariff records and establishing hearing,<sup>2</sup> in Docket No. RP15-1322-000, which required Sabine to either file tariff records to make its *force majeure* definition consistent with Commission policy or explain why it should not be required to do so. For the reasons discussed below, the Commission accepts the referenced tariff record, subject to condition.

**I. Background**

2. On September 30, 2015, Sabine filed revised tariff records comprising a general rate case pursuant to section 4 of the Natural Gas Act (NGA), as well as changes in Sabine's General Terms and Conditions (GT&C). In the October 30 Order, the Commission accepted and suspended Sabine's proposed rates, subject to refund and the outcome of a hearing, and accepted Sabine's proposed revisions to the GT&C of its tariff.

3. Pursuant to section 5 of the NGA, the October 30 Order also reviewed Sabine's existing definition of *force majeure*, and found that certain aspects of that definition were inconsistent with Commission policy. In particular, the October 30 Order found that Section 7.19.5(b) of its GT&C "appear[ed] to define all outages resulting from government action as *force majeure* events, including outages required to comply with

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<sup>1</sup> Sabine Pipe Line LLC, FERC NGA Gas Tariff, First Revised Volume No. 1, Section 7.19, Force Majeure, 3.0.0.

<sup>2</sup> *Sabine Pipe Line LLC*, 153 FERC ¶ 61,123 (2015) (October 30 Order).

government requirements concerning routine maintenance.”<sup>3</sup> The October 30 Order noted that, in a recent set of orders, the Commission had clarified the narrow set of circumstances under which the actions of an administrative or regulatory agency may support declaration of a *force majeure* event.<sup>4</sup> The October 30 Order explained:

Outages necessitated by compliance with government standards concerning the regular, periodic maintenance activities a pipeline must perform in the ordinary course of business to ensure the safe operation of the pipeline, including The Pipeline and Hazardous Materials Safety Administration’s (PHMSA’s) integrity management regulations, are non-*force majeure* events requiring full reservation credits. However, outages resulting from one-time, non-recurring government requirements, including special, one-time testing requirements after a pipeline failure, are *force majeure* events requiring only partial crediting.<sup>5</sup>

4. In addition, the Commission found that GT&C Section 7.19.5(e) appeared inconsistent with Commission policy that *force majeure* outages are events that are both unexpected and uncontrollable and that outages due to the pipeline’s own fault or negligence cannot be considered “uncontrollable.”<sup>6</sup> That section includes in the definition of *force majeure*:

Failure of facilities ... regardless of whether such failure of facilities may have resulted from fault, negligence, omission, or inadvertence, directly or indirectly, of either party hereto, or by any person acting on its behalf or under its direction.

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<sup>3</sup> *Id.* P 17.

<sup>4</sup> *Id.* P 17 & n.18 (citing *Algonquin Gas Transmission, LLC*, 153 FERC ¶ 61,038, at PP 103-144 (2015) (*Algonquin*), *TransColorado Gas Transmission Co. LLC*, 144 FERC ¶ 61,175, at PP 35-43 (2013), and *Gulf South Pipeline Co., LP*, 144 FERC ¶ 61,215, at PP 31-34 (2013)).

<sup>5</sup> *Id.* P 17.

<sup>6</sup> *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216, at P 41 (2012) (citing *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,088 (1996)), *order on reh’g*, 149 FERC ¶ 61,143 (2014).

5. For these reasons, the Commission found that Sections 7.19.5(b) and 7.19.5(e) of Sabine's GT&C were inconsistent with the Commission's policies concerning what service outages may be treated as *force majeure* events for which only partial reservation charge credits are required. The October 30 Order directed Sabine to either file revised tariff records to conform with the Commission's policies consistent with the discussion in that order or explain why it should not be required to do so.

## **II. Compliance Filing**

6. Sabine proposes to modify Section 7.19.5(b) of its GT&C to state that the term *force majeure* shall cover and include the following (modified text in bold):

**One-time, non-recurring** Acts of Government including, without limitation, laws, orders, rules, decrees, judgments, judicial actions, regulations, acts of arrest or restraint, and any threats of any of the foregoing, by any government (de jure or de facto), or any agency, subdivision, or instrumentality thereof, having, claiming or asserting authority or jurisdiction over the severance, productions, gathering, transportation, handling, sale, receipt or delivery of the subject matter of any Service Agreement, or any part thereof, or over materials, equipment, supplies or personnel, or any part thereof, necessary to the severance, production, gathering, transportation, handling, sale, receipt or delivery of the subject matter of any Service Agreement when any such Act of Government directly or indirectly contributes to or results in either party's inability to perform its obligations.

7. Sabine also proposed a revision to Section 7.19.5(e) of its GT&C, to make explicit that a failure of facilities must be "both unexpected and outside the control of [either party]" to qualify as a *force majeure* event.

8. Public notice of the filing was issued on December 1, 2015, allowing for protests to be filed on or by December 14, 2015. No protests or adverse comments were filed.

## **III. Discussion**

9. Sabine's revision to the language in Section 7.19.5(b) – which simply inserted the qualifier "One-time, non-recurring" before "Acts of Government" – is insufficient to make this portion of its tariff consistent with Commission policy. We clarify that the October 30 Order's reference to "outages resulting from one-time, non-recurring

government requirements,”<sup>7</sup> refers not to whether the *government’s* action is non-recurring, but whether the *pipeline’s* actions required by the government action are non-recurring. For example, PHMSA’s adoption of pipeline integrity management regulations could fairly be described as a one-time, non-recurring government action, but the obligations imposed on pipelines by those regulations concerning the maintenance of their systems are generally ongoing by nature, and do not qualify as *force majeure*. By contrast, if a government agency issues an order imposing “special, one-time testing requirements after a pipeline failure,” the Commission has called such one-time tests “*force majeure* events requiring only partial crediting.”<sup>8</sup> In *Algonquin*, the Commission summarized its reasoning for making such a distinction:

In *Gulf South*, the Commission explained that this distinction is reasonable for two reasons. First, the pipeline is likely to have greater discretion as to when it performs regular, periodic maintenance on particular pipeline segments than when the government orders special one-time testing, for example after a pipeline failure. Thus, regular, periodic maintenance required by government regulation may be considered reasonably within the control of the pipeline and expected, in contrast to one-time, non-recurring government requirements, which the pipeline may have to implement within a short timeframe. Second, the recurring costs of regular, periodic maintenance performed in the ordinary course of business may be included in a pipeline’s rates in a general NGA section 4 rate case, whereas one-time, non-recurring costs are generally not eligible for inclusion in a pipeline’s rates in a section 4 rate case.

10. Accordingly, we direct Sabine to revise Section 7.19.5(b) of its GT&C to capture this distinction.

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<sup>7</sup> October 30 Order, 153 FERC ¶ 61,123 at P 17.

<sup>8</sup> *Algonquin*, 153 FERC ¶ 61,038 at P 103.

11. Sabine's proposed revision to Section 7.19.5(e) of its GT&C is in line with the Commission's guidance in the October 30 Order, and we accept it accordingly.<sup>9</sup>

The Commission orders:

(A) The tariff record listed in footnote No. 1 is accepted effective on the date of this order, subject to condition.

(B) Sabine is directed, within 15 days of the date of this order to revise Section 7.19.5(b) of its GT&C consistent with the discussion in this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>9</sup> See October 30 Order, 153 FERC ¶ 61,123 at P 19.