

154 FERC ¶ 61,145
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Kinder Morgan Louisiana Pipeline LLC

Docket No. RP16-310-000

ORDER ACCEPTING TARIFF RECORDS SUBJECT TO CONDITIONS

(Issued February 29, 2016)

1. On December 17, 2015, Kinder Morgan Louisiana Pipeline LLC (KMLP) filed revised tariff records¹ to: (1) remove outdated provisions that relate to its original purpose as a transporter of regasified LNG imports for Anchor Shippers; (2) incorporate new tariff provisions consistent with a traditional header system (including a new park and loan service); and (3) include certain minor miscellaneous changes. For the reasons discussed below, the Commission accepts the revised tariff records subject to conditions, to become effective March 1, 2016. In addition, pursuant to section 5 of the Natural Gas Act (NGA), the Commission requires KMLP either to file revisions to its tariff concerning *force majeure* to conform to Commission policy, as discussed in this order, or explain why it should not be required to do so.

Background

2. The Commission granted a certificate of public convenience and necessity to KMLP in Docket No. CP06-449-000 in 2007 to construct a pipeline consisting of three Legs.² The first segment contains 132 miles of 42-inch pipeline for the purpose of receiving regasified LNG from the Sabine LNG terminal in Cameron Parish, Louisiana, and transporting it to an interconnect with Columbia Gulf Transmission Company, in Evangeline Parish, Louisiana. The second segment is 1 mile of 36-inch pipeline from the Sabine LNG import terminal to an interconnection with Natural Gas Pipeline Company of America, LLC. The third segment consists of 2.3 miles of 24-inch pipeline extending

¹ See Appendix.

² *Kinder Morgan Louisiana Pipeline LLC*, 119 FERC ¶ 61,309 (2007).

from the first segment to an interconnect with Florida Gas Transmission Company in Acadia Parish, Louisiana. The system was designed for a peak capacity of 3.3 Bcf per day with the capacity reserved for two Anchor Shippers, Chevron U.S.A., Inc. and Total Gas & Power North American Inc. The Anchor Shippers planned to receive regasified LNG from the tailgate of the Sabine LNG import terminal for transportation on a firm basis to other interstate and intrastate natural gas pipelines. The Anchor Shippers' contracts began when the system went into service in June 2009, and were scheduled to end in June 2029. However, KMLP states that, due to changed market conditions, there has been no substantial flow on the system and the Anchor Shippers have exercised their buyout rights under their firm transportation contracts leaving the system with no firm shippers.

Details of the Filing

3. In the instant filing, KMLP states that it is revising its tariff to be the same as a traditional header pipeline to transport gas between various points on its system in order to generate new business opportunities in light of market conditions. KMLP states this will also enable it and new shippers to maximize utilization of the existing system for the developing market for LNG exports in the future. The proposed tariff revisions include removing references to Anchor Shippers and revising sections that were based either on the operating characteristics of the Sabine LNG Terminal or the requirements of the Anchor Shippers. KMLP also proposes to remove any references to provisions specifically negotiated with Anchor Shippers, including provisions containing non-conforming provisions in their FTS Agreements, and incorporate new provisions consistent with other pipeline tariffs.

4. With respect to its reservation charge crediting provisions, KMLP proposes to remove specific references to the Sabine LNG Terminal and adding provisions consistent with Commission policy, including a safe harbor that applies to *force majeure* events. Specifically, KMLP is adding language that limits reservation charge crediting if: (1) the Shipper uses secondary point service; (2) a service restriction is due to the conduct of the Shipper; (3) a service restriction is due to the inability or unwillingness of upstream and downstream operators to deliver or receive gas; and (4) if the service restriction occurs within the first ten (10) days of a *force majeure* event. Finally, KMLP is clarifying that it will provide reservation charge credits "in the proportion that Shipper's nominations of firm service up to Shipper's MDQ are not complied with by KMLP."³

³ Section 2.2(d)(1) of KMLP's General Terms and Conditions (GT&C).

5. KMLP also proposes to revise its scheduling of services to reduce the number of scheduling priorities to four categories, with firm service having priority over interruptible service. Specifically, the proposed scheduling categories from highest to lowest are: (1) firm service at primary points and primary path (scheduled pro rata based on maximum daily quantity (MDQ)); (2) firm service at secondary points within the primary path (scheduled pro rata based on nominations); (3) firm service at secondary points outside the primary path (scheduled pro rata based on nominations); and (4) interruptible services, including ITS, PALS, and overrun service for both firm and interruptible rate schedules scheduled based on highest rate paid.

6. KMLP proposes to simplify its imbalance resolution provisions in its GT&C section 10 by removing provisions related to the maximum aggregate imbalance method and annual meeting, and incorporating imbalance resolution provisions similar to those approved for other pipelines. Specifically, KMLP is including imbalance resolution provisions that allow for netting and trading of imbalances prior to cashout, and cashout provisions utilizing a tiered approach based on high/low average weekly index prices in the Gulf Coast Region. KMLP also proposes to implement Balancing Service Charges when volumes allocated to a transport agreement are not consistent with confirmed nominations, with no additional charge for variances between 0 percent and 5 percent and higher charges applicable when an operational flow order is in effect or during critical time periods. The revenues collected from such cashout tiering and Balancing Service Charges will be included in the penalty refund calculations for the benefit of KMLP's Shippers.

7. KMLP also proposes to: (1) revise the definition of Daily Index Price to include points that meet the Commission's current liquidity criteria as shown in Appendix C to the filing; (2) add provisions to section 6(b) of its FTS and ITS Rate Schedules and GT&C section 6.1, Operational Balancing, to allow it to enter into Operational Balancing Agreements (OBA) at Receipt Points, as well as Delivery Points, and to allow for OBAs with entities other than intrastate and interstate pipelines if KMLP determines such is operationally feasible and the operator meets credit requirements; and (3) revise GT&C section 9.3 to reflect the charges included in the penalty revenue calculation.

8. KMLP proposes to revise its creditworthiness provisions to eliminate provisions reflecting Anchor Shippers. KMLP proposes two additional provisions to allow for security from non-creditworthy shippers based on the value of imbalance gas and loaned gas related to the new park and loan service, and, in the event of contract termination due to failure to perform, to allow for netting of positions under all applicable rate schedules and the right to assert any liens, consistent with applicable laws, against any gas remaining on its system.

9. KMLP proposes to revise its receipt point pressure provisions in GT&C section 18.1 to remove provisions that require shippers to deliver gas to KMLP at the higher pressures that were required of the Anchor Shippers and allow for a reduction in

shipper's capacity, replacing them with typical receipt pressure provisions referencing the pipeline's prevailing pressures. With respect to gas quality, KMLP proposes to remove Btu and Wobbe requirements related to the Anchor Shippers and add a provision that allows it to accept non-conforming gas as long as it has the ability operationally to blend such gas.

10. KMLP proposes to revise its fuel charges and periodic rate adjustment to remove references to compression service and other fuel gas service and revise its periodic rate adjustment provisions in GT&C section 36 and fuel-related definitions to reflect those typically provided by a conventional pipeline, with a separate fuel gas component and an unaccounted for gas component. KMLP also proposes to add provisions in section 2.1(d) addressing the applicable rate for point changes that result in a shortened path and revise section 5.2(a) of the GT&C to incorporate standard tariff provisions that it may pay all or a portion of the costs of modification of new facilities.

11. Finally, KMLP is proposing a new interruptible park and loan service under proposed Rate Schedule PALS as a flexible service option to manage imbalances and mitigate penalties by affording shippers the ability to either leave gas on KMLP's system (park) or to take gas off the system (loan). KMLP states that this service will be provided through existing operational flexibility and linepack and will allow KMLP to maximize the utilization of its system. KMLP further states that the PALS service will be provided on an interruptible basis when KMLP has the operational flexibility to provide such service on its existing facilities and will not be scheduled if doing so would have an adverse effect on any firm or secondary point firm service. KMLP states that PALS service shall be interrupted and curtailed if continuation of such service would be detrimental to KMLP's ability to provide any firm service or secondary point firm service.

12. KMLP is proposing a three-part rate structure for PALS service, with an Initial Rate, a Park/Loan Balance Rate, and a Completion Rate, as described in section 5 of the PALS Rate Schedule. A shipper contracting for PALS Service would pay the applicable combination of these rates each month. KMLP states that its PALS rates are derived from its existing Rate Schedule ITS maximum rate of \$0.1509 per Dth. As such, the maximum Initial and Completion Rates are stated at \$0.1509 per Dth and the maximum park/loan balance rate is set at 50 percent of those rates, \$0.0755 per Dth. KMLP proposes an unauthorized overrun charge to be assessed on a daily basis for any nominated and confirmed quantities that exceed the maximum quantity stated on the PALS Request Order and at the maximum rate for service rendered, unless KMLP and Shipper agree to a different rate.

Notice of Filings and Interventions

13. Public notice of the instant filing was issued on December 18, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ 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. Magnolia LNG LLC (Magnolia LNG) intervened and filed comments to KMLP's proposed tariff revisions, and KMLP filed an answer to the comments (Answer)⁶ which will be discussed below.

Discussion

14. The Commission accepts the revised tariff records listed in the Appendix to this order subject to conditions to become effective March 1, 2016. As discussed below, the Commission requires KMLP to file revised tariff sheets consistent with the revisions to which it has agreed in its Answer. In addition, the Commission initiates a section 5 investigation as to whether KMLP's existing definition of *force majeure* in GT&C section 20.2 is unjust and unreasonable and must be modified. Accordingly, the Commission directs KMLP either to file tariff language concerning this matter consistent with current Commission policy, or explain why it should not be directed to do so.

Reservation Charge Crediting Provisions

15. KMLP proposes in section 2.2(d) of its GTC to revise its reservation charge crediting provisions to provide that:

⁴ 18 C.F.R. § 154.210 (2015).

⁵ 18 C.F.R. § 385.214 (2015).

⁶ The Commission's Rules of Practice and Procedure do not permit answers to protests or answers unless otherwise ordered by the decisional authority. 18 C.F.R. § 385.213(a)(2) (2015). However, the Commission finds good cause to accept the Answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record.

(d) (1) Except as provided in subsection (d)(2), in the event of any failure or inability of KMLP to deliver on any Day under any firm contract all of Shipper's MDQ, Shipper shall be relieved of its payment obligations hereunder in the proportion that Shipper's nominations of firm service up to Shipper's MDQ are not complied with by KMLP, for so long as such service is unavailable; provided, however, that these charges shall not be eliminated to the extent that the Shipper uses secondary point service.

(2) KMLP shall not be obligated to adjust the Reservation Charge under any contract pursuant to Section 2.2(d)(1) when KMLP's failure to deliver on any Day is:

- (i) the result of the conduct of the Shipper;
- (ii) the result of the inability or unwillingness of any upstream or downstream operator of the facilities at the Receipt Point or Delivery Point to deliver or receive Gas; or
- (iii) occurs either (a) within ten (10) days following a force majeure event as contemplated by Section 20 of the General Terms and Conditions, or (b) prior to the date KMLP has or should have, in the exercise of due diligence, overcome the [F]orce Majeure event, whichever occur[s] first.

16. KMLP proposes in GT&C section 2.2(d) to incorporate additional provisions, including a safe harbor that applies to *force majeure* events to be consistent with Commission policy. Magnolia LNG requests that Kinder Morgan clarify GT&C section 2.2(d) with respect to: (1) nominated volumes; (2) use of secondary point service; and (3) the exemptions for the conduct of third-parties.

17. Magnolia LNG requests that KMLP add language to GT&C section 2.2(d)(1) to clarify that a firm shipper will be relieved of its payment obligation in proportion to the shipper's nominations up to its MDQ in the event of any failure or inability of KMLP to deliver on a gas day all of a shippers MDQ. KMLP states that, as proposed, GT&C section 2.2(d)(1) provides that KMLP's obligation to relieve shipper of its payment obligations is based on shipper's nominations up to its MDQ that KMLP is not able to comply with, i.e., volumes not scheduled. However, KMLP further states that it is not opposed to further clarifying this provision, as suggested by Magnolia LNG, such that KMLP's failure to or inability to deliver relates to Shipper's nominated volumes up to its MDQ. Accordingly, KMLP states that it is willing to revise GT&C section 2.2(d)(1) as follows to incorporate the additional language italicized below:

Except as provided in subsection (d)(2), in the event of any failure or inability of KMLP to deliver on any Day under any firm contract all of *a Shipper's nomination of firm service up to* Shipper's MDQ, Shipper shall be relieved of its payment obligations hereunder in the proportion that Shipper's nominations

of firm service up to Shipper's MDQ are not complied with by KMLP, for so long as such service is unavailable; provided, however, that these charges shall not be eliminated to the extent that the Shipper uses secondary point service.

18. KMLP proposes to incorporate language in GT&C section 2.2(d)(1), which provides that Shipper's obligation to pay reservation charges "shall not be eliminated to the extent the Shipper uses secondary point service." Magnolia LNG is concerned that such provision may imply an obligation that Shipper must utilize secondary points in the event of KMLP's inability or failure to deliver. KMLP states that it confirmed in discussions with Magnolia LNG that the intent of that provision is not to imply that a shipper would be under such an obligation, and KMLP's proposed language does not contain one, consistent with Commission policy. KMLP further states that, in subsequent discussions with Magnolia LNG, KMLP has confirmed that its proposed language regarding secondary point service needs no further clarification and Magnolia LNG now agrees.

19. KMLP also proposes revisions to GT&C section 2.2(d)(2) to incorporate standard provisions exempting the pipeline from providing reservation charge credits under certain circumstances due to the conduct of third parties. Specifically, KMLP proposes to revise subsection (i) to incorporate an exemption if KMLP's failure to deliver on any Day is the result of the conduct of the Shipper, and subsection (ii) to extend the existing exemption applicable to the inability or unwillingness of downstream operators to also include upstream operators, i.e., upstream operators of the facilities at the Receipt Point to deliver gas. Magnolia LNG contends that further modifications to these two subsections are required to explicitly state that such an exemption only applies when the pipeline's failure to deliver is due "solely" to the conduct of the shipper or due to the actions of any upstream or downstream operator, respectively, "which the Transporter neither operates or controls."

20. KMLP agrees to amend subsections (i) and (ii) with the language proposed by Magnolia LNG, except for the clause in subsection (i) which states "not controlled by KMLP." KMLP contends that this language does not apply to a shipper because KMLP does not control its shippers and may only potentially apply to an upstream or downstream operator. KMLP further contends that the proposed insert incorporating the concept of control should only be included in the exemption applicable to upstream and downstream operators. KMLP states that it has discussed this modification with Magnolia LNG and Magnolia LNG agrees to this modification. Accordingly, KMLP agrees to amend GT&C section 2.2(d)(2)(i) and (ii) as follows:

- (i) solely the result of the conduct of the Shipper;
- (ii) solely the result of the inability or unwillingness of any upstream or downstream operator of the facilities at the Receipt Point or Delivery Point

to receive or deliver Gas that is not operated or controlled by KMLP (i.e., where KMLP is otherwise ready and able to perform); or

21. We find KMLP's proposed reservation charge crediting provisions, as clarified and with the revisions to which it has agreed discussed above, to be consistent with the Commission's reservation charge crediting policy. Therefore, KMLP is directed to file revised tariff records consistent with the revisions to which it has agreed within thirty days of the date of this order.

Point Changes

22. KMLP proposes modifications to GT&C section 2.1(d), Point Changes, to include language that "if the Point change results in a shortened path which would reduce the applicable rate, the reservation rate applicable to the longer path shall apply for the remaining term of the Agreement." Magnolia LNG is concerned that, since KMLP has a postage stamp rate and this provision is applicable to a mileage or zone-based system, this revision adds ambiguity and confusion to the tariff. KMLP agrees to remove this provision in this proceeding and reserves the right to file it in a future filing. The Commission accepts the removal of this language from the proposed revisions subject to KMLP filing revised tariff records reflecting its agreement within thirty days of the date of this order.

Daily Index Price

23. KMLP proposes to revise GT&C section 10, Imbalances, by including imbalance resolution provisions that allow for netting and trading of imbalances prior to cashout, and cashout provisions utilizing a tiered approach based on high/low average weekly index prices in the Gulf Coast Region defined in GT&C section 1.3 as the simple arithmetic average of the Daily Index Prices for such week. KMLP also proposes revisions to GT&C section 1.7 to update the applicable daily index prices published by the Intelligence Press included in the determination of its Daily Index Price. KMLP proposed to add the Columbia Gulf Onshore price index and eliminate three other price indices. KMLP includes Appendix C in its filing to show that the points used in determination of the Daily Index Price meet the Commission's current liquidity criteria.

24. Magnolia LNG is concerned that the Tennessee Line 800 price index included in the definition of the Daily Price Index is currently inactive and not directly connected to KMLP's system. KMLP states that the Tennessee Line 800 is part of KMLP's existing tariff provision. KMLP states that it did not propose to remove this index price as the subject interconnect may again be viable in the future. However, KMLP states that, as a result of further discussions with Magnolia LNG, it agrees to remove Tennessee Line 800 from the definition of the Daily Index Price.

25. The Commission requires that, when a pipeline makes a tariff filing proposing to use a new price index in its tariff, the pipeline bears the burden of showing that the index satisfies the criteria set forth in the Commission's 2004 Price Index Order.⁷ These criteria are as follows: (1) the index must be published or provided by an index developer that has met all or substantially all of the standards in five areas addressing: code of conduct and confidentiality; completeness; data verification, error correction, and monitoring; verifiability; and accessibility;⁸ and (2) for a particular price index location to be used in a jurisdictional tariff, the index location must meet or exceed one or more of the minimum criteria for liquidity, i.e., within a 90 day review period average daily volume traded of at least 25,000 MMBtus for gas or 2,000 MWh for power.⁹

26. The 2004 Price Index Order stated that, if a pipeline proposes to use an index location published by one of the price index developers approved in the 2004 Price Index Order and demonstrates that the index location meets one or more of the applicable liquidity criteria for the appropriate review period, the Commission will apply a presumption that the proposed index location will result in just and reasonable charges.¹⁰

27. In this case, KMLP proposes to use price indices published in Intelligence Press, Inc.'s *NGI's Daily Price Index*. In the 2004 Price Index Order, the Commission found that Intelligence Press, Inc. satisfied the five standards applicable to Price Index publishers.¹¹ Therefore, KMLP's proposal to use *NGI's Daily Price Index* indices under the East Texas and South Louisiana price categories satisfies the first set of criteria listed above concerning the publisher of the proposed price index.

28. In Appendix C to its application, KMLP shows that the proposed price indices published in *NGI's Daily Price Index* satisfy the Commission's liquidity criteria. In particular, Appendix C demonstrates that, over the 90 days from September 16, 2015 to December 14, 2015, the physical trades at the subject locations were in excess of the 25,000 MMBtu/d standard set in the 2004 Price Index Order. Accordingly, we accept the

⁷ *Price Discovery in Natural Gas and Electric Markets; Policy Statement on Natural Gas and Electric Price Indices*, 109 FERC ¶ 61,184, at P 68 (2004 Price Index Order).

⁸ *Id.* P 39 and Ordering para. (C) (citing *Price Discovery in Natural Gas and Electric Markets*, 104 FERC ¶ 61,121, at P 33 (2003)).

⁹ *Id.* P 66 and Ordering para. (D).

¹⁰ *Id.*

¹¹ 2004 Price Index Order, 109 FERC ¶ 61,184 at P 39.

revised provisions subject to KMLP filing the revised tariff records containing the revision to which it has agreed within thirty days of the date of this order.

Definition of Force Majeure

29. In our review of the reservation charge crediting mechanism, we also reviewed KMLP's existing definition of *force majeure*, and we find that certain aspects of that definition are inconsistent with Commission policy. The Commission has defined *force majeure* outages as events that are both "unexpected and uncontrollable."¹²

30. KMLP's existing definition of *force majeure* events in GT&C section 20.2(a) includes "interruptions by government or court orders, present or future orders of any regulatory body having proper jurisdiction." KMLP's existing tariff language conflicts with Commission policy because it can be interpreted to include regular, periodic maintenance activities required to comply with government actions as *force majeure* events. The Commission has clarified the basic distinction as to whether outages resulting from governmental actions are *force majeure* or non-*force majeure* events.¹³ The Commission found that 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) integrity management regulations, are non-*force majeure* events requiring full reservation charge credits. 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.¹⁴

31. KMLP's definition of *force majeure* which includes "interruptions by government or court orders, present or future orders of any regulatory body having proper jurisdiction" is unjust and unreasonable, because it appears to define all outages resulting from such governmental action as *force majeure* events, contrary to the Commission policy described above. Accordingly, the Commission requires KMLP, pursuant to NGA

¹² *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819, 823 (D.C. Cir. 2007), *aff'g*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005). *See also, e.g., Algonquin Gas Transmission, LLC*, 153 FERC ¶ 61,038, at P 103 (2015) (*Algonquin*).

¹³ *TransColorado Gas Transmission Co., LLC*, 144 FERC ¶ 61,175, at PP 35-43 (2013), and *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224, at PP 28-47 (2012), *order on reh'g*, 144 FERC ¶ 61,215, at PP 31-34 (2013).

¹⁴ *See Algonquin*, 153 FERC ¶ 61,038 at P 104.

section 5, either to modify the definition of *force majeure* so that it will not include such outages necessitated by the regular, periodic maintenance activities a pipeline must perform in the ordinary course of business to ensure the safe operation of the pipeline, or explain why it should not be required to do so.

Conclusion

32. Therefore, the Commission directs KMLP, within thirty days of the date of this order, to file revised proposed tariff records containing the revisions to which it has agreed. In addition, for the foregoing reasons, the Commission finds that KMLP's existing tariff provisions are inconsistent with the Commission's policy regarding *force majeure*. Accordingly, pursuant to NGA section 5, KMLP is directed to either to file tariff records revising its existing tariff provisions to conform to Commission policy concerning *force majeure*, or explain why it should not be required to do so, as discussed above.

The Commission orders:

(A) The tariff records listed in the Appendix to this order are accepted to become effective March 1, 2016, subject to conditions, as discussed in this order.

(B) KMLP is directed to file revised tariff records, within thirty (30) days of the date of this order, consistent with its Answer and the discussion above.

(C) KMLP is directed, pursuant to NGA section 5, to revise its *force majeure* definition in GT&C section 20.2(a), consistent with the discussion in this order, or explain why it should not be required to do so.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix
Kinder Morgan Louisiana Pipeline LLC
FERC NGA Gas Tariff
First Revised Volume No. 1

Tariff Records Conditionally Accepted Effective March 1, 2016

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[Sheet No. 7, Reserved for Future Use, 4.0.0](#)
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[Sheet No. 24, Rate Schedule FTS - Section 3.2, 1.0.0](#)
[Sheet No. 25, Rate Schedule FTS - Sections 4, 5, 5.1 and 5.2, 1.0.0](#)
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[Sheet No. 27, Rate Schedule FTS - Sections 5.6 and 5.7, 1.0.0](#)
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[Sheet No. 31, Rate Schedule ITS - Sections 2.4 and 2.5, 1.0.0](#)
[Sheet No. 33, Rate Schedule ITS - Section 3.2, 1.0.0](#)
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[Sheet No. 104, General Terms and Conditions - Sections 1.14 through 1.17, 1.0.0](#)
[Sheet No. 105, General Terms and Conditions - Sections 1.18 through 1.22, 1.0.0](#)
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