

155 FERC ¶ 61,100
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

April 27, 2016

In Reply Refer To:
ETC Tiger Pipeline, LLC
Docket No. RP16-788-000

ETC Tiger Pipeline, LLC
1300 Main Street
Houston, TX 77002

Attention: Deborah A. Bradbury, Senior Director
Regulatory Tariffs & Reporting

Ladies and Gentlemen:

1. On March 31, 2016, ETC Tiger Pipeline, LLC (ETC Tiger) filed revised tariff records¹ to implement an amended and restated transportation agreement with Chesapeake Energy Marketing, L.L.C. (Chesapeake) (Contract No. 300000) that includes non-conforming provisions. ETC Tiger also includes an updated tariff record containing a list of non-conforming agreements. ETC Tiger requests waiver of the Commission's 30-day notice period to permit the proposed tariff records to become effective April 1, 2016. For good cause shown the Commission accepts the tariff records and grants the requested waiver to permit those tariff records to become effective April 1, 2016, as proposed

2. ETC Tiger states that the Amended and Restated Contract No. 300000 completely replaces the original Contract No. 300000 negotiated rate transportation service agreement between ETC Tiger and Chesapeake. ETC Tiger further states that while the renegotiated agreement does not contain any new non-conforming provisions, certain non-conforming provisions have been eliminated, simplified and/or restated from the non-conforming provisions that the Commission previously approved in its earlier

¹ See Appendix.

acceptance of Contract No. 300000.² ETC Tiger further states that in return for Chesapeake extending the subject agreement, ETC Tiger renegotiated Contract No. 300000 with Chesapeake to reduce the maximum daily quantity (MDQ) from 1 Bcf/day to 700,000 Dth/day and to further specify that the MDQ shall be 700,000 Dth/day effective 04/01/2016 through 12/31/2016, 600,000 Dth/day effective 01/01/2017 through 12/31/2017 and 500,000 Dth/day effective 01/01/2018 through 12/31/2030. ETC Tiger states that the amended contract contemplates a fixed negotiated monthly reservation rate of \$9.5813/Dth of Contract MDQ (equivalent to \$0.3150 on a daily basis from 04/01/2016 through 12/31/2025) and \$3.0417/Dth of Contract MDQ (equivalent to \$0.10 on a daily basis from 01/01/2026 through 12/31/2030).

3. Public notice of the filing was issued on April 4, 2016. Interventions and protests were due on April 12, 2016, as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214, all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted.⁴ Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Petrohawk Energy Corporation (Petrohawk) filed comments.

4. Petrohawk states that it generally supports ETC Tiger's efforts to renegotiate with its pipeline expansion shippers. However, Petrohawk requests that the Commission acknowledge that ETC Tiger is required to treat similarly situated shippers the same.⁵ Petrohawk asserts that, to the extent Chesapeake and Petrohawk are viewed as similarly situated shippers, it should be afforded the same rights and opportunities by ETC Tiger as

² ETC Tiger asserts that the Commission accepted the non-conforming provisions in original Contract No. 300000 in *ETC Tiger Pipeline, LLC*, 138 FERC ¶ 61,035 (2012) and *ETC Tiger Pipeline, LLC*, Docket No. RP12-470-000 (May 4, 2012) (delegated letter order). See ETC Tiger Transmittal Letter at 1.

³ 18 C.F.R. § 154.210 (2016).

⁴ 18 C.F.R. § 385.214 (2016).

⁵ Petrohawk Comments at 3 (citing *Dominion Cove Point, LNG, LP*, 148 FERC ¶ 61,244, at P 47 (2014) (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1009 (D.C. Cir. 1987), *cert denied sub nom. Interstate Natural Gas Ass'n v. FERC*, 485 U.S. 1006 (1988) and *Cities of Bethany v. FERC*, 727 F.2d 1131, 1139 (D.C. Cir. 1984), *cert denied*, 469 U.S. 917 (1984)).

ETC Tiger is granting Chesapeake.⁶ Second, Petrohawk requests that the Commission clarify that Tiger is permanently at risk for recovery of the costs associated with the renegotiation of Chesapeake's rate and non-conforming service agreement.

5. Section 154.1(d) of the Commission's regulations requires pipelines to file with the Commission contracts that materially deviate from the pipeline's form of service agreements.⁷ In *Columbia Gas Transmission Corp.*,⁸ the Commission explained 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. 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.⁹ However, not all material deviations are impermissible. As the Commission explained in *Columbia Gas*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (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.¹⁰ Moreover, if the Commission determines the contract contains a material deviation that is permissible, the Commission's regulations require the pipeline to file, as tariff records (1) the service agreements that materially deviate from the form of service agreement,¹¹ and (2) a list of those non-conforming service agreements.¹²

⁶ Petrohawk Comments at 4 (citing *Dominion Cove Point LNG, LP*, 129 FERC ¶ 61,073, at PP 14 (2009) ("In the Commission's view any shipper that believes it is similarly situated to Statoil may approach Cove Point to negotiate any of the subject terms. If the party believes that it is improperly denied treatment as a similarly situated party, the party may request that the Commission make a determination on the issue")).

⁷ 18 C.F.R. § 154.1(d) (2016).

⁸ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001). (*Columbia Gas*). See also *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,022 (2001) (*ANR*).

⁹ *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

¹⁰ *Columbia Gas*, 97 FERC ¶ 61,221 at 62,003; *ANR*, 97 FERC ¶ 61,224 at 62,024.

¹¹ 18 C.F.R. § 154.4(a) and (c) (2016).

¹² 18 C.F.R. § 154.112(b) (2016).

6. The Commission has reviewed ETC Tiger's revised tariff records filed to implement the amended and restated negotiated rate transportation agreement previously accepted by the Commission. The Commission finds, to the extent the restated contract contains terms that do not conform to ETC Tiger's *pro forma* service agreement, such terms do not present a substantial risk of undue discrimination. As ETC Tiger states, in return for Chesapeake agreeing to extend the agreement at the negotiated rate, ETC Tiger renegotiated several non-conforming provisions that it had granted Chesapeake as a foundation shipper, which the Commission accepted. As ETC Tiger points out, the restated agreement does not introduce any new non-conforming provisions but eliminates, simplifies or restates the existing ones.

7. Further, as Petrohawk argues, Commission policy requires that ETC Tiger treat all similarly situated shippers the same. Any shipper that believes it is similarly situated to a party receiving certain service from a pipeline and that it has been improperly denied like treatment may request that the Commission make a determination on the issue.¹³ Additionally, we deny Petrohawk's request for clarification that ETC Tiger is permanently at risk for recovery of the costs associated with the renegotiation of Chesapeake's rate and non-conforming service agreement. This issue is premature and can be addressed if and when ETC Tiger attempts to recover such costs.¹⁴

8. Accordingly, for good cause shown, the Commission accepts the tariff records set forth in the Appendix and grants the requested waiver to permit the tariff records to become effective April 1, 2016, as proposed.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³ *Dominion Cove Point, LNG, LP*, 148 FERC ¶ 61,244 at P 47 (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1009, *cert denied sub nom. Interstate Natural Gas Ass'n v. FERC*, 485 U.S. 1006 and *Cities of Bethany v. FERC*, 727 F.2d 1131, 1139, *cert denied*, 469 U.S. 917).

¹⁴ *See Texas Gas Transmission, LLC*, 138 FERC 61,175, at PP 65-66 (2012); *see also, Tennessee Gas Pipeline Co.*, 135 FERC 61,208 (2011).

Appendix

ETC Tiger Pipeline, LLC
FERC NGA Gas Tariff, TIGER Tariff Database

Tariff Records Accepted, effective April 1, 2016

[Tariff, First Revised Volume No. 1, 1.0.0](#)

[37., Non-Conforming Agreements, 3.0.0](#)

[Tariff, Filed Agreements, 1.0.0](#)

[Agreement, K 300000 \(Chesapeake Energy Marketing, L.L.C.\), 1.0.0](#)

[1., K 300000 - Exh A \(Chesapeake Energy Marketing, L.L.C.\), 1.0.0](#)

[2., K 300000 - Exh B \(Chesapeake Energy Marketing, L.L.C.\), 1.0.0](#)

[3., K 300000 - Exh C \(Chesapeake Energy Marketing, L.L.C.\), 1.0.0](#)

[4., Reserved, 2.0.0](#)

[5., Reserved, 1.0.0](#)