155 FERC ¶ 61,251
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

June 10, 2016

In Reply Refer To:
Vector Pipeline L.P.
Docket No. RP16-943-000

Vector Pipeline L.P.
Robert F. Smith
Manager, Regulatory & Administration
38705 Seven Mile Rd #490
Livonia, MI 48152

Dear Mr. Smith:

1. On May 12, 2016, Vector Pipeline L.P. (Vector) filed tariff records[1] that summarize three negotiated rate agreements, two with Enbridge Gas Distribution Inc. (Enbridge) and one with The Peoples Gas Light and Coke Company (Peoples). Vector states that these three "agreements do not deviate in any material respect from the applicable *pro forma* agreements in Vector's tariff."[2] Vector also updates its list of non-conforming agreements to remove two expired agreements. Vector requests waiver of the Commission's 30-day notice requirement and that the tariff records be made effective June 1, 2016. For good cause shown we grant waiver of the notice requirement and accept the Peoples agreement and the revisions to the list of non-conforming service agreements as filed, effective June 1, 2016. We find, however, that the Enbridge agreements are non-conforming agreements, and accordingly, we condition our acceptance of the Enbridge agreements upon Vector making a compliance filing, within 30 days of this order, as discussed below.

2. Section 154.1(d) of the Commission's regulations requires a pipeline to file a contract which materially deviates from the pipeline's form of service agreement.[3]

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[1] *See* Appendix.

[2] Vector transmittal at 1.

[3] 18 C.F.R. § 154.1(d) (2015).

Pipelines' failure to file non-conforming agreements imperils the Commission's responsibility under the Natural Gas Act to ensure provisions are just and reasonable and are not unduly discriminatory or preferential.[4] 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.[5] However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination the Commission may permit the deviation.[6] 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.

3. One type of material deviation that is generally not permitted is a negotiated term and condition of service. Negotiated terms and conditions of service include any provisions that result in a customer receiving "a term and condition of service different than that authorized" under the applicable rate schedule.[7] Where a material deviation in a non-conforming contract constitutes a negotiated term and condition of service, the Commission generally requires that the pipeline modify its tariff to offer the negotiated service to all of its customers.[8]

4. Vector submits for approval two pending agreements with Enbridge. Vector states that the pending agreements replace expiring agreements that were non-conforming but claims that the pending agreements nevertheless do conform to the applicable *pro forma* agreement.[9] In other words, Vector claims that contracts FT1-EGD-5581 and FT1-EGD-5582 both conform to the *pro forma* FT1 contract in Vector's tariff. Because Vector claims that the two contracts conform to the applicable *pro forma* agreements, it has filed summaries of the agreements, rather than the actual agreements.

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[4] *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082, at P 7 (2008) (*Southern Star*).

[5] *Columbia Gas Transmission Corp*., 97 FERC ¶ 61,221, at 62,002 (2001).

[6] *Id.* at 62,004.

[7] *Dominion Transmission, Inc*., 93 FERC ¶ 61,177, at 61,572 (2000).

[8] *Northern Natural Gas Co*., 110 FERC ¶ 61,321, at P 10 (2005) (citing *ANR Pipeline Co*., 97 FERC ¶ 61,224, at 62,024 (2001)) (*Northern Natural*).

[9] Vector transmittal at 2, 1.

5. In its summary of contracts FT1-EGD-5581 and FT1-EGD-5582, Vector states that it has offered Enbridge the unilateral right to increase contracted capacity in FT1-EGD-5581 and decrease contracted capacity in FT1-EGD-5582.[10] A review of the *pro forma* FT1 contract in Vector's tariff indicates that the *pro forma* agreement only provides a single blank line in Exhibit A for contracted capacity ("Contracted Capacity: ________________Dth/Day"); it does not provide for any variances in contracted capacity, such as granting a shipper the unilateral right to increase or decrease contracted capacity.[11] Thus any provision in the Enbridge contract that provides the shipper with the right to increase or reduce its maximum daily quantity would appear to materially deviate from Vector's *pro forma* FT-1 tariff agreement.

6. The Commission has held on several occasions that a "shipper's right to reduce its contract demand before the expiration of its agreement is a valuable right since it can enable the shipper to avoid significant liability for future reservation charges and must be granted in a not unduly discriminatory manner."[12] Similarly, in *Northern Natural* the Commission found that a "growth option" that grants a shipper the right to increase its contract demand before the expiration of its agreement is likewise impermissible.[13] Accordingly, to the extent that the subject Enbridge contracts grant Enbridge the right to adjust its contract demand, something the Vector FT-1 *pro forma* agreement does not provide for all other Rate Schedule FT-1 shippers, the rights granted Enbridge seem to constitute impermissible terms and conditions of service.

7. Vector's summary states that any increase in FT1-EGD-5581 must match any decrease in FT1-EGD-5582. When there are multiple non-conforming terms that "act in

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[10] *See* Vector proposed tariff, Original Sheet No. 198H and Original Sheet No. 198K. According to the Statement of Negotiated Rate provided by Vector, Contract FT1-EGD-5581 provided for 110,000 Dth/Day of Contracted Capacity, with the option to increase its capacity as high as 150,000 Dth/Day if Enbridge takes service on a new, interconnecting project offered by NEXUS Gas Transmission, LLC. Likewise, the summary of Contract No. FT1-EGD-5582 provides for 65,000 Dth/Day of Contracted Capacity, which would be automatically deemed to be reduced on a one-to-one basis for any increase Enbridge takes under FT1-EGD-5581.

[11] Sheet No. 207, Forms: FT-1 Transportation Service, 0.0.0

[12] *Portland Natural Gas Transmission System*, 133 FERC ¶ 61,050, at P 6 (2010) (citing *Questar Pipeline Co.*, 132 FERC ¶ 61,152, at PP 2, 7-8 (2010); *TransColorado Gas Transmission Co.*, 121 FERC ¶ 61,217, at P 10 (2007); *Colorado Interstate Gas Co.*, 105 FERC ¶ 61,124, at P 26 (2003)).

[13] *Northern Natural*, 110 FERC ¶ 61,321 at PP 13, 18.

conjunction with each other," then "the Commission must examine these provisions together to determine their effect."[14] It might be possible that these non-conforming terms interact in a way that renders them unable to cause undue discrimination to other current or potential Vector customers. Thus, rather than reject contracts FT1-EGD-5581 and FT1-EGD-5582 outright, we shall accept the filing subject to further review, and permit Vector to belatedly meet its section 154.1(d) obligation to file the agreements for approval. Vector should file the contracts as drafted, and also in a redline-strikeout version, and should file a separate transmittal explaining not only the contract capacity terms but also any other non-conforming terms in these two contracts.

8. Accordingly, we condition our acceptance of the Enbridge agreements upon Vector making a compliance filing, within 30 days, in which it does at least one of the following: (1) replaces the Enbridge agreements with ones that conform to the *pro forma* agreements in Vector's tariff, (2) explains why the material deviations are not unduly discriminatory or preferential, or (3) amends its tariff to offer the deviating terms to all similarly situated shippers. If Vector intends for the Commission to approve the Enbridge agreements as permissible non-conforming contracts, Vector must file the actual agreements, instead of summaries, and it also must update its tariff's list of non-conforming agreements to include them.[15]

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[14] *Id.* P 19.

[15] We urge Vector to review its other Commission-jurisdictional agreements. To the extent that it finds any other improperly characterized agreements, Vector should file those agreements in a separate docket as soon as possible. *See Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 32 (2003); *Southern Star*, 125 FERC ¶ 61,082 at P 2.

Appendix

Vector Pipeline L.P.
FERC NGA Gas Tariff
Baseline Tariff

Tariff Records Accepted to be Effective June 1, 2016, Subject to Further Review

Sheet No. 198H, Summaries of Negotiated Rate Contracts, 0.0.0
Sheet No. 198I, Summaries of Negotiated Rate Contracts, 0.0.0
Sheet No. 198J, Summaries of Negotiated Rate Contracts, 0.0.0
Sheet No. 198K, Summaries of Negotiated Rate Contracts, 0.0.0
Sheet No. 198L, Summaries of Negotiated Rate Contracts, 0.0.0
Sheet No. 198M, Summaries of Negotiated Rate Contracts, 0.0.0

Tariff Records Accepted to be Effective June 1, 2016

Sheet No. 198N, Summaries of Negotiated Rate Contracts, 0.0.0
Sheet No. 198O, Summaries of Negotiated Rate Contracts, 0.0.0
Sheet No. 199, List of Non-Conforming Service Agreements, 2.0.0