

157 FERC ¶ 61,073  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

October 31, 2016

In Reply Refer To:  
Natural Gas Pipeline Company of  
America LLC  
Docket No. RP16-1305-000

Natural Gas Pipeline Company of America LLC  
3250 Lacey Road  
Suite 700  
Downers Grove, IL 60515-7918

Attention: Bruce H. Newsome, Vice President

Dear Mr. Newsome:

1. On Sept. 30, 2016, Natural Gas Pipeline Company of America LLC (Natural) filed a new Transportation Rate Schedule FTS Agreement (FTS Agreement) with a negotiated rate and non-conforming provisions between Natural and Rice Energy Marketing LLC (Shipper) and related tariff revisions,<sup>1</sup> pursuant to section 4 of the Natural Gas Act (NGA) and section 154 of the Commission's regulations. Natural requests the Commission accept the FTS Agreement as non-conforming and allow the tariff records to become effective November 1, 2016.
2. Natural states that it entered into the FTS Agreement with the Shipper pursuant to a precedent agreement that was filed in Docket No. CP16-488-000 to demonstrate market support for the Gulf Coast Expansion Project (Project).<sup>2</sup> Natural states that the FTS

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<sup>1</sup> Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff, FERC Gas Tariff, [Part 4.30, Statement of Negotiated Rate Transactions - Rice Energy, 7.0.0](#); [Part 6.50, General Terms and Conditions - Sections 50, 50.1 thru 50.10, 15.0.0](#); and [Part 4.8, Contract No. 146594-FTSNGPL, 2.0.0](#).

<sup>2</sup> Natural references its filing for a certificate of public convenience and necessity pursuant to NGA section 7(c) to construct and operate a new compressor station and a new pipeline lateral in Cass County, Texas, which will provide capacity in the Texas Gulf Coast area and Mexico. Natural Transmittal at 2.

Agreement terminates the precedent agreement, which was dated September 30, 2014 (as amended on February 2, 2016). Natural states that the Project involves a combination of expansion capacity and existing capacity that has been reserved for the Project, and that the FTS Agreement utilizes in part the Project's reserved capacity.<sup>3</sup>

3. Natural states that the FTS Agreement contains non-conforming provisions in section 8(l), Entire Agreement, and Exhibit D, Article 3, Creditworthiness. Natural describes these provisions as permissible material deviations from the pro forma service agreement.

4. More specifically, Natural indicates that section 8(l), Entire Agreement, includes a sentence providing that the FTS Agreement terminates the precedent agreement entered into between the parties in support of the Project application in Docket No. CP16-488-000. Natural states that this provision does not present a risk of undue discrimination, or affect operations or quality of service.

5. With respect to creditworthiness, Natural indicates that Exhibit D, Article 3, Creditworthiness, requires the Shipper to provide three months of security in accordance with Natural's tariff, if the Shipper fails to demonstrate creditworthiness until ninety days following the date Natural receives a certificate of public convenience and necessity authorizing the Project (pending in Docket No. CP16-488-000). The FTS Agreement provides that after ninety days following issuance of the certificate order the Shipper will provide twelve months of security, if the Shipper fails to demonstrate creditworthiness in accordance with Natural's tariff. According to Natural, the credit provisions are necessary to provide assurance to justify Natural's undertaking the financial risk of developing the Project and to reflect the unique circumstances involved with new projects, consistent with Commission precedent.

6. Natural states that the Commission has previously found that non-conforming credit provisions in conjunction with a pipeline project are permissible, because they do not present a risk of undue discrimination, affect the operational conditions of providing service or result in any customer receiving a different quality of service.<sup>4</sup>

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<sup>3</sup> In the Project application, Natural states that the Project's capacity is developed through the integration of existing capacity (or reserved capacity) and expansion capacity of 240,000 Dth per day which will enable Natural to transport 460,000 Dth per day of natural gas supplies to an existing delivery point and a new delivery point in the South Texas Gulf Coast area. Application, Docket No. CP16-488-000 (August 1, 2016).

<sup>4</sup> Natural Transmittal at 3 (citing *Natural Gas Pipeline Co. of America LLC*, 154 FERC ¶ 61,220, at P 31 (2016)).

7. Public notice of the filing was issued on October 3, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2016)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2016)), 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. No adverse comments or protests were filed.

8. The Commission has stated that 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>5</sup> In *Columbia Gas Transmission Corp.*, 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>6</sup> The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered to other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.<sup>7</sup> However, not all material deviations are impermissible. As the Commission explained in *Columbia Gas*,<sup>8</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.

9. The Commission finds that the non-conforming provisions in the FTS Agreement do not pose a substantial risk of undue discrimination. However, because the FTS Agreement "utilizes in part the Project's reserved capacity," the Commission will accept

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<sup>5</sup> 18 C.F.R. §§ 154.1(d) and 154.112(b) (2016).

<sup>6</sup> *Columbia Gas Trans. Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia Gas*).

<sup>7</sup> *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

<sup>8</sup> *E.g.*, *Columbia Gas*, 97 FERC at 62,003-62,004; *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

Natural's tariff records and FTS Agreement subject to the outcome of the Project's certificate proceeding in Docket No. CP16-488-000.<sup>9</sup>

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>9</sup> For the avoidance of doubt, other than the reserved capacity, the Shipper cannot utilize the facilities that are subject to the certificate proceeding unless and until such facilities have been certificated and placed into service.