

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 4, 2005

In Reply Refer To:
Garden Banks Gas Pipeline, LLC
Docket Nos. RP06-15-000 and RP06-15-001

Garden Banks Gas Pipeline, LLC
1100 Louisiana Suite 3300
Houston, TX 77002-5217

Attention: Cynthia A. Corcoran
Chief Compliance Officer and Senior Counsel
Enbridge Energy Company Inc.

Reference: Non-Conforming Discount Agreements

Dear Ms. Corcoran:

1. On October 7, 2005, Garden Banks Gas Pipeline, LLC (Garden Banks) tendered for filing, in Docket No. RP06-15-000, seventeen non-conforming discount agreements, associated discount letter agreements, and tariff sheets¹ necessary to reflect the discount agreements in its tariff. Garden Banks requests that these tariff sheets be made effective on November 7, 2005. In addition, Garden Banks requests that the Commission accept the agreements filed herein as non-conforming agreements, and grant any waivers necessary to allow the agreements to be effective as of their respective effective dates and to remain in effect in accordance with their respective terms. On October 14, 2005, Garden Banks filed, in Docket No. RP06-15-001, tariff sheets² to correct the pagination contained on certain of the tariff sheets submitted in the October 7, 2005 filing. The Commission grants waiver of the notice requirements contained in section 154.207 of its

¹ Eighth Revised Sheet No. 2, Third Revised Sheet No. 3, Eighth Revised Sheet No. 57, Second Revised Sheet No. 138, Original Sheet No. 139 and Sheet Nos. 140-209 (sheets reserved for future use) to its FERC Gas Tariff, Original Volume No. 1.

² Ninth Revised Sheet No. 2, Ninth Revised Sheet No. 57, Third Revised Sheet No. 138 and First Revised Sheet No. 139 to its FERC Gas Tariff, Original Volume No. 1.

regulations,³ and accepts the tendered agreements listed in Appendix C of this order effective as of their respective dates, subject to the conditions discussed herein and accepts the tariff sheets listed in Appendix A of this order effective November 7, 2005. The tariff sheets listed in Appendix B of this order were superceded by the tariff sheets tendered in the October 14, 2005 filing and are rejected as moot.

2. Notice of the October 7, 2005 filing was issued on October 12, 2005. Interventions and protests were due on or before October 19, 2005. Notice of the October 14, 2005 filing was issued on October 20, 2005. Interventions and protests were due on or before October 26, 2005. No protests or comments were filed.

3. Garden Banks states that it was acquired by Enbridge on December 31, 2004, and that all of the agreements were executed prior to the time Garden Banks was owned and operated by Enbridge. Garden Banks further states that this filing is being made as soon as practicable following Garden Banks' completion of its review of the agreements.

4. Pursuant to Garden Banks' Rate Schedule FT-2, shippers must transport all of the natural gas produced by or for their accounts on Garden Banks' pipeline. Also, Exhibit A to the pro-forma FT-2 Transportation Service Agreement (Form of Service Agreement) requires that the delivery periods be at least three months and that the maximum daily quantity (MDQ) for each delivery period be not less than the lesser of 5,000 mcf per day, or the shipper's share of production from the committed blocks.

Service Agreements

5. Section 1 of several service agreements⁴ contains language stating that the shipper may not reduce the MDQ by more than 20 percent of the initial MDQ. This language was in the Form of Service Agreement at the time that these service agreements were executed. On November 27, 2002, Garden Banks filed to delete that language from the Form of Service Agreement, and the Commission accepted that filing on December 23, 2002.⁵ Since this language was in the Form of Service Agreement at the time the agreement was executed, this language is considered to be grandfathered and presents no risk of undue discrimination.

³ 18 C.F.R. § 154.207 (2005).

⁴ Amerada Hess (3/20/97), Apache (8/1/99), Conoco (5/17/02), Devon Energy Production (5/15/98), Devon Louisiana corp. (5/17/02), ENI (8/18/99), Exxon (5/1/04), Kerr-McGee (3/20/97), Merit (8/11/99), Merit (11/1/02), Murphy (12/1/03) and Shell Offshore Inc. (3/20/97).

⁵ *Garden Banks Gas Pipeline. LLC*, 101 FERC ¶ 61,349 (2002).

6. Section 6.1 in all of the service agreements omits language indicating an ability to discount the maximum rate that is included in the current Form of Service Agreement. This language was added to Garden Banks' current Form of Service Agreement in a filing that Garden Banks made on May 9, 2005, and which the Commission accepted on May 26, 2005.⁶ Since this language was not in the Form of Service Agreement when these agreements were executed and since Garden Banks could discount before this addition to the Form of Service Agreement, the omission of this language presents no risk of undue discrimination.

7. Footnotes 1 and 2 of Exhibit A to the Form of Service Agreement are deleted in the Exhibit A to three⁷ of the filed service agreements. Footnote 1 of the Form of Service Agreement provides that "[n]o delivery period shall be less than 3 consecutive months." None of the delivery periods contained in Exhibit A of the filed agreements are less than three consecutive months. Footnote 2 of the Form of Service Agreement provides that the MDQ for each period must be at least 5,000 Mcf per day (or the shipper's share of production from the dedicated blocks, if less than 5,000 Mcf per day). The MDQ for each delivery period in the filed agreements exceeds 5,000 Mcf per day. Therefore, these deletions conform to the Form of Service Agreement, are not material deviations and do not present a risk of undue discrimination.

8. The caption contained in Exhibit B of the Amerada Hess 3/20/97 agreement reads "Committed Production" instead of "Committed Block(s)." Although the exhibit lists the "blocks", the deviation does not present a risk of undue discrimination.

9. None of the service agreements include an exhibit contained in the current Form of Service Agreement, which has blanks for information such as the discounts, committed reserves and receipt and delivery points. Garden Banks states that this exhibit was only added to the current Form of Service Agreement in a filing that Garden Banks made on May 9, 2005 and which the Commission accepted on May 26, 2005.⁸ Since this exhibit was not in the Form of Service Agreement when the agreement was executed, and since this information is contained elsewhere in the subject agreements and amendments, the omission of the exhibit in these service agreements is a material deviation. However, it presents no risk of undue discrimination.

⁶ *Garden Banks Gas Pipeline, LLC*, Docket No. RP05-336, Unpublished Letter Order dated May 26, 2005. (May 26, 2005 Letter Order)

⁷ Amerada Hess (3/20/97), Kerr-McGee (3/20/97) and Shell Offshore Inc. (3/20/97).

⁸ May 26, 2005 Letter Order.

Discount Letter Agreements

10. Several of the agreements⁹ contain provisions which identify the parties and the consideration for the transaction. These provisions do not present a risk of undue discrimination. The agreements also provide that the discount is effective for the life of the reserves dedicated to Garden Banks, which is contemplated by section 30 of the GT&C and is thus conforming. Several other agreements¹⁰ additionally provide that the shipper, subject to the availability of capacity, could increase the MDQ (which is contemplated by section 2.1 of Rate Schedule FT-2 and, thus, is conforming) or extend the service agreement by submitting a service request form, in accordance with the procedures in the tariff. The extension of the term of the service agreement is possible only if capacity is available in the system and if the shipper submits a service request form in accordance with the tariff. Therefore, this provision simply restates the right that any shipper or prospective shipper has to subscribe firm capacity on an open-access pipeline like Garden Banks. None of these provisions constitute material deviations which pose a risk of undue discrimination.

11. Several of the agreements¹¹ contain a paragraph which provides that the shipper will not exercise its rights under the FT-2 Transportation Service Agreement to reduce its MDQ in the service agreement below particular thresholds. Garden Banks explains that this language is no longer effective since the Commission approved, in Docket No. RP03-138-000, Garden Banks' filing to remove from its tariff language restricting a shipper's rights to reduce its MDQ.¹² However, in that filing Garden Banks simply filed to remove the restriction which prohibited shippers from reducing their cumulative MDQ over the term of the applicable transportation service agreement by more than twenty percent of the shipper's production. The language contained in the discount agreement paragraphs still prohibits these shippers from reducing their MDQs in accordance with the tariff and, therefore, is a term and condition of service which is materially different from those contained in its tariff and Form of Service Agreement. For these reasons, it

⁹ Conoco (5/17/02), Devon Louisiana Corp. (5/17/02), Offshore Energy (12/1/98) and Spinnaker (10/9/01).

¹⁰ Amerada Hess (4/22/97), Apache (7/21/99), Devon energy Production (5/15/98), ENI (8/13/99), Kerr-McGee (4/22/97), both Merit 11/1/02 agreements and Shell Offshore Inc. (4/22/97).

¹¹ Amerada Hess (4/22/97), Apache (7/21/99), Devon Energy Production (5/5/98), ENI (8/13/99), Kerr-McGee (4/22/97), one Merit (11/1/02) agreement and Shell Offshore Inc. (4/22/97).

¹² *Garden Banks Gas Pipeline. LLC*, 101 FFRC ¶ 61,349 (2002).

poses a risk of undue discrimination. Therefore, Garden Banks must file revised rate discount letter agreements omitting this language or revised tariff language making these provisions generally available, within 30 days of the date of issuance of this order.

12. Several of the agreements¹³ contain a provision which provides that, if Garden Banks achieves a certain total throughput, additional discounts will apply. Garden Banks states that it has not yet achieved the level of throughput. Section 30(a) of Garden Banks' GT&C provides that this type of discount is generally available to all customers.¹⁴ The Commission finds that this provision is consistent with Garden Banks' tariff, is not a material deviation and, therefore, is accepted. Additionally, several of Garden Banks' agreements contain a provision providing for a certain cumulative revenue figure that is a material deviation. Nonetheless, this material deviation does not create an undue risk of undue discrimination, and is consistent with our ruling in *CenterPoint Energy Gas Transmission Co.*, 108 FERC ¶ 61,016 (2004). Therefore, we accept this provision in this instance.

13. Several of the agreements¹⁵ contain a paragraph which provides that the discount is effective for the economic life of the reserves committed by the shipper. This provision is in accordance with section 30 of the GT&C and is therefore accepted.

14. Several of the agreements¹⁶ contain paragraphs which provide that, if Garden Banks constructs an interconnect, the discounted rate will increase in proportion with the cost of constructing the interconnect. Garden Banks states that this provision does not constitute a reservation of any capacity for future service, but rather establishes a modified rate for service if and when Garden Banks installs new interconnects on its system. Garden Banks further states that these interconnects have been constructed and that the shippers are paying the higher discounted rates. Section 30 of the GT&C does not include this type of discount rate ratchet tied to interconnect costs. Therefore, the proposed discount rate adjustment is a non-conforming provision. Further, section 4.2 of

¹³ Amerada Hess (4/22/97), Apache (7/21/99), Devon energy Production (5/5/98), ENI (8/13/99), Kerr-McGee (4/22/97), both 11/1/02 Merit agreements, Offshore Energy (12/1/98), Shell Offshore Inc. (4/22/97) and Spinnaker (10/9/01).

¹⁴ See First Revised Sheet No. 134 to Garden Banks gas tariff.

¹⁵ Amerada Hess (4/1/04), Callon (11/1/03), Exxon (5/19/04), Murphy (12/1/03) and Shell Gulf of Mexico (4/1/04).

¹⁶ Amerada Hess (4/22/97), Apache (7/21/99), Devon Energy Production (5/5/98), ENI (8/13/99), Kerr-McGee (4/22/97), Offshore Energy (12/1/98) and Shell Offshore Inc. (4/22/97).

Garden Banks' FT Rate Schedule provides that charges to recoup the cost of new facilities shall be pursuant to a "New Facilities Charge" and shall be stated in the FT-1 Transportation Service Agreement. Since we find that not setting the cost of new facilities out as a separate New Facilities Charge does not create a risk of undue discrimination in this circumstance, the provision is accepted.

15. All of the agreements contain paragraphs which set forth the discounted rate itself. Garden Banks states that its Statement of Rates (Fifth Revised Sheet No. 6) and section 30 of its GT&C permits it to agree to a rate between the maximum and minimum recourse rates. Garden Banks therefore asserts that these provisions are conforming. These paragraphs also set forth the retrograde condensate rates received from the shipper, which are rates for nonjurisdictional service. These provisions are provided for in section 29 of the GT&C and are therefore accepted.

16. Three of the agreements¹⁷ contain provisions which state that the shipper will receive any lower rate granted any other producer in the same blocks. Garden State asserts that this most favored nations provision applies only to the discount rate. The Commission has approved most favored nations type provisions in other proceedings,¹⁸ and accepts these provisions, as submitted herein.

17. Since all of the tendered agreements were executed prior to the time Garden Banks was acquired by Enbridge in December 2004, the Commission will grant waiver of its notice requirements in order to permit the tendered agreements, as listed in Appendix C, to be effective as of their respective effective dates, subject to the conditions discussed herein.¹⁹

By direction of the Commission.

Magalie R. Salas,
Secretary.

¹⁷ Amerada Hess (4/1/04), Exxon (5/19/04) and Shell Gulf of Mexico Inc. (4/22/97).

¹⁸ See, e.g., *Columbia Gas Transmission Corporation*, 101 FERC ¶ 61,337, at P 38 (2002); *Gulfstream Natural Gas System, L.L.C.*, 100 FERC ¶ 61,036, at P 16 (2002); *Southern Natural Gas Co.*, 64 FERC ¶ 61,274, at p. 62,915 (1993).

¹⁹ Pursuant to section 284.13b(1)(iii) of the Commission's regulations, Garden Banks is required to post the rate charged under each contract discussed within the body of this order.

Garden Banks Gas Pipeline, LLC
FERC Gas Tariff
Original Volume No. 1

Tariff Sheets Accepted Effective November 7, 2005

Ninth Revised Sheet No. 2
Third Revised Sheet No. 3
Ninth Revised Sheet No. 57
Third Revised Sheet No. 138
First Revised Sheet No. 139
Sheet Nos. 140-209

Garden Banks Gas Pipeline, LLC
FERC Gas Tariff
Original Volume No. 1

Tariff Sheets Rejected as Moot

Eighth Revised Sheet No. 2
Eighth Revised Sheet No. 57
Second Revised Sheet No. 138
Original Sheet No. 139

NON-CONFORMING AGREEMENTS

(Accepted Effective as of Their Respective Effective Dates)

Service Agreements

Amerada Hess (3/20/97)
Amerada Hess (4/1/04)
Apache (8/1/99)
Callon (11/1/03)
Conoco (5/17/02)
Devon Energy Production (5/15/98)
Devon Louisiana Corp. (5/17/02)
ENI (8/18/99)
Exxon (5/1/04)
Kerr-McGee (3/20/97)
Merit (8/11/99)
Merit (11/1/02)
Murphy (12/1/03)
Offshore Energy (12/1/98)
Shell Gulf of Mexico Inc. (4/1/04)
Shell Offshore Inc. (3/20/97)
Spinnaker (10/30/01)

Discount Letter Agreements

Amerada Hess (4/22/97)
Amerada Hess (4/1/04)
Apache (7/21/99)
Callon (11/1/03)
Conoco (5/17/02)
Devon Energy Production (5/5/98)
Devon Louisiana Corp. (5/17/02)
ENI (8/13/99)
Exxon (5/19/04)
Kerr-McGee (4/22/97)
Merit (11/1/02)
Merit (11/1/02)
Murphy (12/1/03)
Offshore Energy (12/1/98)
Shell Gulf of Mexico Inc. (4/1/04)
Shell Offshore Inc. (4/22/97)
Spinnaker (10/9/01)