

117 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

October 6, 2006

In Reply Refer To:
Stingray Pipeline Company, L.L.C.
Docket No. RP06-303-002
and RP06-303-003

Stingray Pipeline Company, L.L.C.
1100 Louisiana, Suite 3300
Houston, Texas 77002

Attention: Neal A. Gerstandt, Vice President
Regulatory Affairs and Contract Administration

Reference: Pro Forma Reserve Dedication Agreement for Rate Schedule ITS

Ladies and Gentlemen:

1. On May 30, 2006, Stingray Pipeline Company, L.L.C. (Stingray) filed a request for clarification and/or rehearing of the Commission's May 10, 2006, Order in this proceeding.¹ Stingray also filed revised tariff sheets² to comply with the May 10, 2006 Order. For the reasons discussed below, the Commission will grant clarification and accept the proposed revised tariff sheets, effective June 30, 2006, as requested.

2. On April 10, 2006, as amended on April 26, 2006, Stingray filed revised tariff sheets to include a form of reserve dedication agreement in its FERC Gas Tariff, Third Revised Volume No. 1 (tariff), for Rate Schedule ITS as a *pro forma* agreement along

¹ *Stingray Pipeline Co., L.L.C.*, 115 FERC ¶ 61,161 (2006) (May 10, 2006 Order).

² Sub Original Sheet No. 319, Second Sub Original Sheet No. 321, Sub Original Sheet No. 322 and Sub Original Sheet No. 323 to its FERC Gas Tariff, Third Revised Volume No. 1.

with several other conforming changes to its tariff to reflect the addition of the new *pro forma* agreement.³

3. On April 24, 2006, Chevron U.S.A. Inc. (Chevron) filed a protest in response to the filing, and on April 28, 2006, Stingray filed an answer to the protest. Chevron argued, among other things, that if Stingray is permitted to condition the assignment or transfer of a shipper's right, title, and/or interest in dedicated reserves, Stingray should be required to allow the shipper to also assign any and all discounted rates applicable to a specific dedicated reserve. In response, Stingray stated that it proposed section 4.3, regarding succession and assignment, to comply with the Commission's policy for selective discounting, but if the Commission determines that Stingray's understanding of the dictates of the Commission policy's is incorrect, it has no objection to modifying the assignment provisions, as Chevron suggests, to allow direct shipper assignments of discounts to parties that acquire dedicated reserves.

4. In the May 10, 2006 Order, the Commission found proposed section 1.3(a), which provided for certain penalties in the event dedicated reserves are transported on another pipeline, to be unjust and unreasonable. The May 10, 2006 Order also held that if a shipper has lost its discount because of a violation of a dedication as provided under section 1.3, then no basis exists to continue to require a dedication of the remaining reserves. In addition, the Commission found, as modified to reflect Stingray's agreed-to changes, section 4.3 of Stingray's proposed reserve dedication agreement is reasonable. Acceptance of the filing was conditioned on Stingray filing to revise the *pro forma* reserve dedication agreement to reflect the modifications within 20 days of the issuance of the May 10, 2006 Order.

5. Stingray filed a timely request for clarification or rehearing asking that the Commission clarify that the May 10, 2006 Order's holding on direct assignment of ITS agreements refers to the direct assignment of ITS agreements and discounts granted in exchange for reserve dedications, but not to the direct assignment of ITS agreements with related discounts that do not involve dedicated reserves. Stingray states that it understands the Commission's holding on assignments to apply only to circumstances in which Stingray has granted a discounted transportation rate in consideration for the dedication of reserves to an ITS agreement, and the shipper subsequently seeks to assign the dedicated reserves and the associated discounted rate. Stingray argues that the

³ On April 26, 2006, in Docket No. RP06-303-001, Stingray filed revised tariff sheets to correct certain typographical errors in Exhibit B to its FTS-2 *pro forma* service agreement and to include a new term provision in Article 2 of the proposed *pro forma* Reserve Dedication Agreement for Rate Schedule ITS. The revised tariff sheets were accepted by the Commission on May 25, 2006. See *Stingray Pipeline Co., L.L.C.*, 115 FERC ¶ 61,239 (2006).

Commission's statement in the May 10, 2006 Order is not expressly limited to discounts granted in exchange for reserve dedications, but that it does not interpret the statement on direct assignment of discounted rates as intended to require Stingray to permit, without its consent, the direct assignment of ITS agreements and related discounts that do not involve dedicated reserves.

6. In addition, Stingray seeks clarification that the May 10, 2006 Order does not prohibit Stingray from requiring its consent to an assignment, conditioned as modified in its compliance filing, or from requiring an assignee to execute a new ITS and reserve dedication agreement.

7. Stingray states that it has proposed certain changes to the assignment provisions of the *pro forma* reserve dedication agreement to facilitate assignments of dedicated reserves and their associated discounts and that it is requesting confirmation from the Commission that those procedures comply with the May 10, 2006 Order.⁴ Stingray argues that its proposed procedures are necessary to assure compliance with the credit and other provisions of its tariff and to avoid issues about whether the assignment must be approved as a non-conforming service agreement. In addition Stingray argues that its proposed procedures are necessary to permit the assignee to take service under the current form of service agreement and current form of reserve dedication agreement (avoiding potential concerns about non-conforming ITS or reserve dedication agreements if the forms of such agreements have changed as of the time of the assignment) and to address the possibility that one ITS agreement may have multiple reserve dedication agreements and discounted rates associated with it.

8. For these reasons, Stingray requests clarification that the May 10, 2006 Order requires the direct assignment of any discounted rate granted in exchange for a reserve dedication when those dedicated reserves are transferred, but does not otherwise prohibit Stingray from requiring its consent to an assignment, conditioned as modified in its compliance filing (discussed below), or from Stingray requiring that an assignee execute a new ITS and reserve dedication agreement.

9. With regard to the scope of the May 10, 2006 Order's holding on assignments, we clarify that our holding refers to the assignment of ITS agreements and discounts granted in exchange for reserve dedications, but not to the assignment of ITS agreements that do not involve dedicated reserves. In the May 10, 2006 Order the Commission stated that, consistent with Commission policy with respect to firm capacity release, "Commission policy does not preclude the direct assignment of interruptible transportation contracts or

⁴ Stingray states that it revised sections 4.3(b)(ii) and 4.3(b)(iv) to clarify that an existing discount granted in exchange for the dedication of reserves is transferred to the assignee of the reserves, if accepted by the assignee. These are the provisions relevant to Stingray's request for clarification.

the discounted rate agreements reflected therein.”⁵ The Commission reached this conclusion based on the specific circumstances before the Commission in this proceeding, *i.e.*, in the context of the assignment of dedicated reserves. The question of whether ITS agreements in general are assignable was not before the Commission, accordingly, we clarify that our holding regarding assignments in the May 10, 2006 Order is limited to the assignment of dedicated reserves.

10. Regarding Stingray’s prior consent for assignments, as indicated in the May 10, 2006 Order, concern was raised regarding section 4.3 because it permitted Stingray to condition the assignment of a shipper’s right, title, and/or interest in dedicated reserves (*i.e.*, required Stingray’s consent) without requiring Stingray to allow the shipper to assign its discounted rates applicable to a specific dedicated reserve.⁶ However, Stingray agreed to address this concern by modifying the assignment provisions to allow direct shipper assignments of discounts to parties that acquire dedicated reserves.⁷ We stated that, as modified to reflect Stingray’s agreed-to changes, section 4.3 is reasonable.⁸ That is, Stingray could maintain the consent requirement under section 4.3, but it was required to amend section 4.3 to allow shippers to assign discounts to parties that acquired dedicated reserves. Accordingly, the Commission clarifies that the May 10, 2006 Order requires the direct assignment of discounted rates applicable to dedicated reserves that are transferred but it does not otherwise prohibit Stingray from requiring its consent to an assignment, conditioned as modified in the compliance filing.

11. Further, we clarify that Stingray is not prohibited from requiring an assignee to execute a new ITS and reserve dedication agreement. Revisions to section 4.3(b)(iv), which requires the assignee to execute a new transportation service agreement and section 4.3(b)(v), which requires the execution of a new reserve dedication agreement were not part of the agreed-to changes to section 4.3 contemplated in the May 10, 2006 Order. Nevertheless, we grant clarification to make it clear that, as discussed above, Stingray is required to allow shippers to assign discounts to parties that acquired dedicated reserves, thus the assignees’ new reserve dedication agreements should reflect those discounts.

⁵ May 10, 2006 Order at P 14 (citing *Columbia Gas Transmission Corp.*, 101 FERC ¶ 61,179 (2002)).

⁶ May 10, 2006 Order at P 12.

⁷ *Id.* at P 13.

⁸ *Id.* at P 14.

12. On May 30, 2006, Stingray filed revised tariff sheets to comply with the Commission's May 10, 2006 Order. Included in the sheets are certain new proposals. The compliance revisions and new proposals are discussed below.

13. Public notice of Stingray's May 30, 2006 compliance filing was issued on June 6, 2006,⁹ with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2006). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2006), all timely filed motions to intervene and any motions to intervene out-of-time filed before the date of issuance 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 protests or adverse comments were filed.

14. In its compliance filing, Stingray has complied with the May 10, 2006 Order's requirement to remove from section 1.3 language allowing Stingray to revoke the discount for volumes shipped on Stingray prior to a violation of the dedication provision. Stingray states that it has revised section 1.3 to eliminate language resulting in retroactive charges and modified the penalty so that a violation of a dedication results only in revocation of the discounted rate on a prospective basis. In addition, Stingray states that the May 10, 2006 Order also held that if a shipper has lost its discount because of a violation of a dedication as provided under section 1.3, then no basis exists to continue to require a dedication of the remaining reserves. Stingray is proposing to revise section 1.3 to provide for the termination of the reserve dedication agreement in the event a shipper violates the agreement under section 1.3. In addition, Stingray states that, consistent with this revision, it has added a new section 2.5 to provide for termination of the agreement in the event that dedicated reserves are transported on another pipeline in violation of the dedication agreement (other than in a force majeure situation). The proposed sections 1.3 and 2.5 are as follows:

- 1.3 The transportation of Dedicated Reserves on another pipeline (other than when Stingray has invoked Force Majeure on its pipeline system) is a breach and violation of the dedication hereunder. In such event, the discounted transportation rate granted by Stingray to Shipper for the transportation of Dedicated Reserves shall be revoked on a prospective basis, and this Agreement shall terminate and be of no further force and effect, as set forth in section 2.5 below.

- 2.5 Notwithstanding the provisions of Section 2.1 above, in the event that Dedicated Reserves are transported on another pipeline in breach and violation of the dedication hereunder (other than when Stingray has

⁹ 71 Fed. Reg. 33,738 (2006).

invoked Force Majeure on its pipeline system), this Agreement shall terminate and be of no further force and effect.

15. In the May 10, 2006 Order the Commission found proposed section 1.3(a) to be unjust and unreasonable. We found that under section 1.3(a), if the shipper ships gas on Stingray for several years under its ITS contract, it would owe Stingray several years' worth of discounts for even a single minor violation of the dedication provision. The effect of the provision would be to lock an interruptible shipper into a contract for long-term service on Stingray akin to a firm commitment through the dedication condition even though the pipeline has dedicated, i.e., committed, no capacity to the service (because it is interruptible) and it loses nothing if the service terminates.¹⁰ In addition, if a shipper has lost its discount because of a violation of a dedication as provide under section 1.3, then no basis exists to continue to require a dedication of the remaining reserves. Accordingly, we conditioned acceptance of the filing on Stingray filing a revision to section 1.3, and to make such other conforming changes as necessary, to reflect the elimination of section 1.3(a) and the elimination of the dedication commitment in the event of a loss of the discount under section 1.3.¹¹

16. We find that Stingray has complied with the directive to provide for the prospective elimination of a dedication-related discount. Further, we find that the unprotested proposed revision to section 1.3 and the addition of section 2.5, to provide for the termination of the agreement upon violation of the dedication requirements of the agreement, are just and reasonable in light of our directive regarding loss of the discount and, therefore, are accepted, effective as proposed

17. In its May 30, 2006 compliance filing, Stingray included redlined revised tariff sheets that show changes it proposes to section 4.3 of the *pro forma* reserve dedication agreement to comply with May 10, 2006 Order and to add language clarifying that the assignee shipper will maintain the same place in the IT queue based on the effective date of the predecessor's service agreement.

(ii) Assignee ~~requesting~~ notifying Stingray of its intent to accept a discounted transportation rate from Stingray for the Dedicated Reserves to be transported on Stingray consistent with the discounted transportation rate that Shipper received from Stingray for the transportation of the Dedicated Reserves;

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¹⁰ May 10, 2006 Order at P 7.

¹¹ *Id.*

(iv) Stingray and Assignee executing a transportation service agreement (which shall include ~~any~~ the discounted transportation rate ~~granted by Stingray for the Dedicated Reserves~~), consistent with the applicable Form of Service Agreement set forth in Stingray's Tariff, for the transportation of the Dedicated Reserves; provided that, for purposes of Section 3 of the General Terms and Conditions of Stingray's FERC Gas Tariff, the effective date for this transportation service agreement between Stingray and Assignee shall be deemed to be the effective date of the ITS Agreement between Stingray and Shipper;

18. Stingray states that its revisions to section 4.3 preserves its right to consent to the assignment of the dedicated reserves, but eliminates the condition that the assignee must request a discounted transportation rate from Stingray. Specifically, under section 4.3(b)(ii) the assignee must notify Stingray of its intent to accept the discounted transportation rate for the dedicated reserves consistent with the discounted rate that the assignor received from Stingray. In addition, Stingray states that it revised section 4.3(b)(iv), which requires Stingray and the assignee to execute a new transportation agreement, by adding language to clarify that the effective date of the new agreement, for purposes of the curtailment priority provisions of Stingray's tariff, would be the same as the effective date of the agreement between Stingray and the assignor so that the assignee receives the same queue date as the assignor.

19. We find section 4.3(b)(ii) and (iv), as amended, is in compliance with the May 10, 2006 Order's directive to revise the language to provide for the assignment of discounts to parties that acquire dedicated reserves and, therefore, Stingray's proposed revisions to that section are accepted. Further, although we find that the new language Stingray proposes to add to section 4.3(b)(iv) regarding the effective date of the new agreement for curtailment priority purposes was not specifically directed by the May 10, 2006 Order, we find this language to be a reasonable conforming change to coincide with the revision specifically directed in the assignment provision of section 4.3. Accordingly, we find Stingray's proposed revision to clarify the effective date of the assignee's agreement is just and reasonable and accept the revised tariff sheets, effective June 30, 2006, as requested.

By Direction of the Commission.

Magalie R. Salas,
Secretary.