

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 19, 2007

In Reply Refer To:
Stingray Pipeline Company, L.L.C.
Docket Nos. RP07-120-000 and RP07-120-001

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

Attention: Cynthia A. Corcoran
Chief Compliance Officer and Senior Counsel

Reference: New Tariff Sheets Listing Non-conforming Agreements

Ladies and Gentlemen:

1. On December 22, 2006, Stingray Pipeline Company, L.L.C. (Stingray) submitted for filing original and revised tariff sheets reflecting 174 currently effective non-conforming and potentially non-conforming agreements for inclusion in its FERC Gas tariff, Third Revised Volume No. 1.¹ Stingray requests that the Commission accept and make these tariff sheets effective January 21, 2007. Stingray has also filed the 174 non-conforming and potentially non-conforming agreements. Stingray requests that the Commission, to the extent it finds any of the agreements non-conforming, accept and make them effective as of their respective effective dates, and permit them to remain in effect in accordance with their respective terms. Stingray filed an amendment on January 8, 2007 submitting a single tariff sheet to correct only an inadvertent pagination error.² Therefore, the Commission will reject Tenth Revised Sheet No. 2 as moot and accept the remaining tariff sheets, to become effective January 21, 2007, as proposed, subject to further review and order of the Commission. The Commission will also accept all of the accompanying agreements, effective on their respective effective dates, subject to further review and order of the Commission.

¹ The tariff sheets Stingray filed are: Tenth Revised Sheet No. 2, Original Sheet Nos. 205-208 and Sheet Nos. 209-299 (reserved for future use).

² Eleventh Revised Sheet No. 2.

2. Stingray states that the instant filing is a continuation of the overall effort by Enbridge, Inc. and Enbridge Energy Partners, L.P. (collectively referred to herein as Enbridge) to standardize and clarify their tariff provisions and procedures for implementing discounted rate transactions. Stingray is owned 100% by Starfish Pipeline Company, L.L.C. (Starfish), a limited liability company owned 50% by Enbridge Offshore (Gas Transmission) L.L.C. and 50% by MarkWest Energy Partners, L.P. Enbridge acquired its interest in Starfish on December 31, 2004. Stingray asserts it has completed a review of all of its service agreements and discount and reserve dedication agreements, which were in effect as of the date of this filing, that nearly all of these agreements have been in effect for a number of years and that most of the agreements have been in effect since before Enbridge operated the Stingray system. It is filing the agreements as non-conforming agreements “out of an abundance of caution.”³ Stingray further asserts that Stingray and the shippers under these agreements have relied on the existence of these agreements to make important market and investment decisions and, therefore, modifying these agreements at this late date could cause significant economic harm to the parties. Stingray requests, to the extent that any of the agreements is found to be non-conforming, the granting of any and all waivers necessary to allow those agreements to be effective and remain in effect.

3. These 174 agreements include: (1) 54 ITS service agreements plus any applicable amendments; (2) one FTS service agreement plus applicable amendments; (3) 69 discount rate agreements plus applicable amendments; (4) 40 reserve dedication or discount commodity rate agreements plus applicable amendments; and, (5) 10 letter agreements or assignment agreements. Stingray provided the Commission with a 6-volume set of binders containing the 174 agreements, in which each binder includes a master index, an individual volume index, an individual shipper index and various appendices described more fully below, to aid the Commission in its review.

4. Stingray explains that it has also provided a red-line of each executed service agreement that compares each such executed service agreement against the form of service agreement in effect at the time the service agreement was executed, with the exception of the following: (1) the ITS service agreement between Stingray and Texaco Natural Gas Inc., dated March 23, 1989, was red-lined against the form of service agreement dated April 1, 1989 because the form in effect on March 23, 1989 was not available; (2) the ITS service agreement between Stingray and Texon L.P., dated May 1, 2004, was red-lined against the current ITS form of service agreement in Stingray's tariff; (3) the FTS service agreement between Stingray and Ashland Exploration, Inc., dated February 15, 1996, was red-lined against the current FTS form of service agreement in Stingray's tariff; and (4) all ITS agreements dated after July 25, 2003, the date of the

³ Stingray Filing at 1.

Commission's order modifying its negotiated rate policy (2003 Policy Statement),⁴ were redlined against the current form of service agreement in Stingray's tariff. Stingray states that the 2003 Policy Statement clarified that pipelines are required to file all service agreements with deviations and to red-line the deviating service agreements against the existing form of service agreement, and that it has followed that procedure with this filing. Stingray red-lined service agreements executed prior to the 2003 Policy Statement against the form of service agreement in effect at the time the service agreement was executed. Stingray maintains this is appropriate because the earlier forms of service agreement do not deviate materially from the current form and the provisions of Stingray's tariff and, to the extent these earlier forms were filed today as deviating service agreements, Stingray submits that they would be found to be conforming. Stingray indicates that Appendix K to this filing explains how each provision of the earlier forms of service agreement conforms to the existing tariff.

5. Stingray notes that, as reaffirmed by the Commission's 2003 Policy Statement, the Commission defines “a material deviation as any provision of a service agreement that goes beyond the filling-in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties”,⁵ and that the Commission's policy is that such material deviations may be acceptable if “such deviations do not change the conditions under which service is provided and do not present a risk of undue discrimination.”⁶ Stingray submits that while the agreements filed herewith contain deviations from the applicable form of service agreement, the deviations are either not material, or they do not change the conditions under which service is provided and do not present a risk of undue discrimination.

6. Stingray states that, in accordance with the 2003 Policy Statement, it submitted: (1) a clean version of each of the service agreements for filing, along with a red-lined version of each of the service agreements that clearly delineates each deviation contained in the agreement from the form of service agreement; and, (2) a clean copy of each of the discount agreements, reserve dedication or discount commodity rate agreements, all amendments to the agreements, and any letter agreements or assignment agreements related to the service agreements.⁷

⁴ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh'g*, 114 FERC ¶ 61,042 (2006).

⁵ 2003 Policy Statement at P 27.

⁶ *Id.*

⁷ Stingray indicates it has not submitted red-lined versions of these agreements because there were no related pro forma agreements in Stingray's Gas Tariff at the time these agreements were executed against which these agreements can be compared.

7. To assist the Commission in its review of these agreements, Stingray has provided numerous cross-referencing appendices. Appendix A, provides a detailed narrative outlining the deviating terms of each of these agreements, the effect of such terms on the rights of the parties, and why each such deviation, to the extent it is a deviation at all, does not change the conditions under which service is provided and does not present a risk of undue discrimination and, therefore, should be accepted by the Commission.⁸

8. Appendices B-H include charts describing the filed agreements (cross-reference charts), with particular focus on ITS service agreements and reserve-dedication or discount commodity rate agreements. Collectively, these cross-reference charts indicate the occurrences of the deviating provisions contained in each service agreement, the terms of each discount or reserve dedication agreement, the effect of each provision on the rights of the parties, and why each provision is either not a material deviation, or does not change the conditions under which service is provided and does not present a risk of undue discrimination. The cross reference charts are designed to aid the Commission and its Staff in reviewing this voluminous filing and should assist in organizing the review and analysis of various provisions that appear in multiple agreements.

9. Appendix I provides a detailed description of one FTS service agreement, dated February 15, 1996, between Stingray and Ashland Exploration, Inc., one associated discount agreement, dated March 1, 1996, and detailed descriptions of all amendments related to this FTS service agreement.⁹ Appendix J provides a detailed description of one rate discount agreement, dated March 1, 1995, related to an ITS agreement, between Stingray and Shell Offshore, Inc. and Shell Gas Trading Company (SGT), who is now shipping under Nexen Petroleum Sales U.S.A., Inc.

10. In addition to the foregoing, Stingray has provided a brief overview of the agreements. Stingray emphasizes that the following overview is intended to assist the Commission by providing a general understanding of the agreements, and it recommends that the Commission should look to the appendices and narrative document in Appendix A for a more comprehensive description of each potentially deviating provision. Stingray's overview proffers that its ITS form of service agreement has had nine iterations between April 1, 1989 and May 10, 2005. Stingray's overview indicates that

⁸ See 2003 Policy Statement at P 32-33; *East Tennessee Natural Gas Co.*, 105 FERC ¶ 61,162, at P 18 (2003).

⁹ Though not included in the narrative document, Appendix A, or in the one applicable cross-reference chart in Appendix F, the agreements described in Appendices I and J are located under the "Ashland" and "Nexen Sales" tabs respectively in the Contract Binders.

the effective dates of each ITS form of service agreement are: April 1, 1989; February 1, 1990; October 1, 1991; December 1, 1993; December 1, 1995; May 1, 1997; January 1, 1999; August 1, 2003; and May 10, 2005. The three versions dated April 1, 1989 - October 1, 1991 are similar in format and content (collectively, old-form). Additionally, Stingray further explains that the forms effective December 1, 1993 - May 10, 2005 are similar in format and content to each other (collectively, new-form), but are substantially different in format from the old-form. Thus, Stingray has redlined each ITS service agreement, except two, against the form of service agreement at the time the agreement was executed.

11. In brief, Stingray explains that the agreements fall roughly into six main categories comprised of the following: (1) 10 ITS service agreements, including related amendments, that are dated between March 23, 1989 and September 17, 1993, which were red-lined against the old-form; Stingray asserts that none of these changes constitute a material deviation from the pertinent form of service agreement and, under the Commission's current policy, none of the changes are considered material deviations from the relevant form; (2) 44 ITS service agreements and one FTS service agreement, including any related amendments, that are dated between September 18, 1993 and May 1, 2006, which were red-lined against the new-form; making the same assertions in the first category, Stingray states that none of these changes constitute a material deviation; (3) 9 ITS rate discount agreements and one FTS rate discount agreement, including any related amendments, that are dated between February 1, 1995 and July 22, 1998, the associated provisions of which Stingray asserts that the Commission has routinely approved;¹⁰ Stingray further asserts that none of the associated provisions affect the jurisdictional service of other shippers on Stingray's system and are not the types of provisions that the Commission found to be an impermissible material deviation;¹¹ (4) 59 ITS rate discount agreements, including related amendments, that are dated between November 1, 1999 and April 1, 2006; Stingray asserts that, though dissimilar in format, these agreements and associated provisions are substantively similar in content to those in the third category and therefore draws the same conclusions reflected in the third category; (5) 40 reserve dedication or discount commodity rate agreements, including related amendments; Stingray asserts these agreements also include contract provisions similar to those in the third and fourth categories and, thus, draws the same conclusions;

¹⁰ Stingray cites: *Northern Natural Gas Company*, 110 FERC ¶ 61,321 (2005); *El Paso Natural Gas Company*, 109 FERC ¶ 61,146 (2004); *Gulfstream Natural Gas Transmission System, L.L.C.*, 108 FERC ¶ 61,294, at P 7 (2004); *ANR Pipeline Co.*, 102 FERC ¶ 61,235 (2003).

¹¹ Stingray cites: *CenterPoint Energy Gas Transmission Co.*, 104 FERC ¶ 61,280, at P 5-7 (2003); *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001); *Gulfstream Natural Gas System, L.L.C.*, 108 FERC ¶ 61,294, at P 7 (2004).

and (6) 10 letter agreements or assignment agreements, which Stingray asserts are informational in nature, do not alter the substantive rights under the related contract and include contract provisions similar to those in the third and fourth categories.

12. Finally, Stingray notes that most of the agreements included with this filing have been in effect for a long period of time, and the parties have made significant long-term commercial decisions in reliance on these agreements. Stingray asserts that the Commission has approved various contracts in the past on the basis of the significant reliance interest that the contracting parties had in their long-standing contractual arrangements.¹² Accordingly, Stingray requests that the Commission consider the parties' significant reliance interest on the agreements included in this filing.

13. In RP07-120-000, Stingray inadvertently submitted a previously approved version of Sheet No. 2 (Tenth Revised Sheet No. 2)¹³ to include a list of currently effective non-conforming service agreements in its tariff. Therefore, in RP07-120-001, Stingray filed an amendment on January 8, 2007, submitting Eleventh Revised Sheet No. 2, in order to correct this pagination error. No other changes were made to the tariff sheet. Accordingly, the Commission rejects Tenth Revised Sheet No. 2 as moot and accepts Eleventh Revised Sheet No. 2, subject to the conditions of this order.

14. Stingray requests that the Commission accept these non-conforming agreements for filing and grant any and all waivers necessary to allow these agreements to be effective as of their respective effective dates and to remain in effect in accordance with their respective terms. Stingray requests that the tariff sheets filed herewith be made effective on January 21, 2007.

15. Public notice of the instant filings were issued with interventions, comments, 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 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any motions 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 interventions, comments, or protests were filed.

¹² Stingray cites: *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,010 (2001); *ANR Pipeline Co.*, 98 FERC ¶ 61,247, at 62,002 (2002).

¹³ Tenth Revised Sheet No. 2 had already been used and approved by the Commission in Docket No. RP06-452-000.

16. Stingray has presented the Commission with original and revised tariff sheets, and 174 non-conforming and potentially non-conforming service agreements. These agreements contain various deviations from Stingray's tariff. The Commission has not completed its review of these tariff sheets and service agreements. The Commission will accept Eleventh Revised Sheet No. 2, Original Sheet Nos. 205-208 and Sheet Nos. 209-299, to become effective January 21, 2007, as proposed, subject to further review and order of the Commission. The Commission will reject Tenth Revised Sheet No. 2 as moot. Since the Commission has yet to complete its review of the service agreements, and because they have been in effect for a significant period already, the Commission will also accept all of the service agreements accompanying the instant filings, effective on their respective effective dates, subject to further review and order of the Commission.

By direction of the Commission.

Magalie R. Salas,
Secretary.