

131 FERC ¶ 61,026
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 15, 2010

In Reply Refer To:
Steckman Ridge, LP
Docket No. RP10-498-000

Steckman Ridge, LP
P.O. Box 1642
Houston, TX 77251

Attn: Janice K. Devers
General Manager, Tariffs and Commercial Development

Reference: Non-Conforming Service Agreement

Ladies and Gentlemen:

1. On March 16, 2010, Steckman Ridge, LP (Steckman) filed a non-conforming service agreement with New Jersey Natural Gas Company (NJN)¹ and a revised tariff sheet² adding this service agreement to the list of non-conforming agreements in its tariff. Steckman requests that the service agreement and applicable tariff sheet be approved effective April 1, 2010, consistent with the commencement date of the service agreement. In addition, Steckman requests a waiver of the 30-day notice requirement contained in section 154.204 of the Commission's regulations.³ The Commission accepts the non-conforming service agreement and revised tariff sheet to become effective on April 1, 2010, as requested, subject to conditions discussed below.

2. On January 20, 2010, Steckman executed a service agreement under Rate Schedule FSS with NJN. Steckman asserts that NJN is an affiliate of NJR Steckman Ridge Storage Company, a co-owner of Steckman Ridge. Steckman states the service

¹ Contract No. 920029-R1 with New Jersey Natural Gas Company.

² First Revised Sheet No. 222A to Steckman's FERC Gas Tariff, Original Volume No. 1.

³ 18 C.F.R. § 154.207 (2009).

agreement includes a material deviation from its Rate Schedule FSS Form of Service Agreement in section 3 to accommodate a prudency review of this agreement by the New Jersey Board of Public Utilities (BPU). Steckman states the non-conforming language provides that NJN will offer an amendment to the rates under this service agreement should the BPU disallow NJN the recovery of a portion of the rate specified in the service agreement. Steckman argues that this rate change, if accepted, will not adversely impact any other customers of Steckman because it has market based rate authority. Moreover, Steckman states that, if it is unwilling to accept NJN's proposal to amend the rates under the service agreement, NJN may terminate the service agreement the following March 31, the end of the traditional storage cycling season.

3. Specifically, the non-conforming language in section 3 of the agreement provides:

If at any time during the first three (3) years of the Primary Term of the Service Agreement, the New Jersey Board of Public Utilities (BPU) disallows the recovery of some or all of the cost incurred by Customer under this Service agreement, Customer shall promptly notify Steckman Ridge in writing and offer to Steckman Ridge an amendment reflecting a pricing formula, if applicable, designed to produce prices equal to that portion of Steckman Ridge's charges recoverable through the BPU customer. If within ten business (10) days of its receipt of Customer's notice, Steckman Ridge has not accepted the proposed amendment, Customer may terminate this Service Agreement on no less than thirty (30) days' written notice to Steckman Ridge, to be effective on the following March 31. No retroactive adjustment will be made for cost incurred by Customer prior to the effective date of the termination.

4. Steckman asserts that while the agreement's language deviates from the form of service agreement, it does not present a risk of undue discrimination and is consistent with Steckman's market based rate authority. Steckman contends the deviating provisions in NJN's Service Agreement are unique because the agreement recognizes that NJN is a local distribution company (LDC) subject to the jurisdiction of the NJPUC. Accordingly, Steckman requests that the Commission approve the deviations contained in the service agreement and requests waiver of section 154.207 of the Commission's regulations⁴ and any other appropriate waivers that may be required for the Commission to accept the service agreement and approve the tariff changes effective as of April 1, 2010.

5. Public notice of the filing issued on March 18, 2010 with interventions and protests due by March 29, 2010. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2009)), all timely motions to intervene and

⁴ 18 C.F.R. § 154.207 (2009).

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 this proceeding or place additional burdens on existing parties. No protests or comments were filed.

6. The Commission accepts the non-conforming service agreement and revised tariff sheets subject to conditions. The Commission also finds that good cause exists to grant waiver of the notice requirements of section 154.207⁵ of the Commission's regulations to allow the proposed tariff sheet and service agreement to become effective April 1, 2010, as proposed.

7. The Commission will only approve material deviations to a form of service agreement if the deviations do not change the conditions under which service is provided and do not present a risk of undue discrimination.⁶ The Commission has held that provisions in service agreements that permit a shipper to terminate the contract early are valuable rights, which present too much potential for undue discrimination unless they are offered in the pipeline's tariff pursuant to generally applicable conditions.⁷ The Commission explained that, while a pipeline may place reasonable conditions on the negotiation of such rights, requiring the pipeline to file generally applicable tariff provisions setting forth those conditions is the best means of assuring that those rights are negotiated in a not unduly discriminatory manner.

8. In section 3, the non-conforming provision provides that, if the BPU disallows recovery of some or all of the costs NJN incurs under this agreement, and NJN offers an amendment to the pricing formula to reflect the BPU's ruling, NJN has the right to unilaterally terminate the service agreement on no less than 30 days written notice if Steckman has not accepted the proposed amendment. Steckman's tariff contains no provision offering contract termination rights of this nature pursuant to not unduly discriminatory conditions. Accordingly, the Commission conditions the acceptance of the instant non-conforming service agreement subject to a requirement that Steckman either renegotiate a new agreement without the non-conforming language contained in section 3 or, in the alternative, file a revised tariff sheet offering such a provision to similarly situated shippers.

⁵ *Id.*

⁶ *Natural Gas Pipelines Negotiated Rate Policies and Practices, modification of negotiated rate policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

⁷ *Tennessee Gas Pipe Line Co.*, 97 FERC ¶ 61,225, at 62,029-30 (2001).

9. In this regard, the Commission recognizes that NJN as an LDC, is subject to state agency regulation of its rates, business practices, and business decisions, unlike other shippers. Therefore, it may be reasonable for Steckman to propose tariff language offering early termination rights only to shippers subject to state agency regulation in the same manner as NJN.⁸

10. Steckman is directed to make a compliance filing within 30 days of the date of this order consistent with the above discussion.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸ See *Columbia Gulf Transmission Co.*, 105 FERC ¶ 61,351 (2003) (*Columbia Gulf*); see also *Florida Gas Transmission Co.*, 101 FERC ¶ 61,401, at P 10 (2002); *ANR Pipeline Co.*, 99 FERC ¶ 61,310, at 62,321 (2002), *reh'g*, 101 FERC ¶ 61,246 (2002);