

141 FERC ¶ 61,251
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 27, 2012

In Reply Refer To:
Maritimes & Northeast Pipeline, L.L.C.
Docket No. RP13-300-000

M&N Management Company
890 Winter Street, Suite 300
Waltham, MA 02451

Attention: Joseph F. McHugh
Director, Rates & Regulatory Affairs

Dear Mr. McHugh:

1. On November 20, 2012, pursuant to section 154.1(d) of the Commission's regulations, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed tariff records to be effective December 31, 2012, which include eight currently effective, non-conforming service agreements and a list of non-conforming service agreements.¹ Maritimes requests that the Commission accept the deviations contained in the agreements and, to the extent the Commission finds any of the deviations to be material, the Commission grant any and all waivers necessary to allow the agreements to be effective as of their respective effective dates and in accordance with their respective terms. As discussed below, the Commission accepts Maritimes' proposed tariff records effective December 31, 2012 subject to further review and order of the Commission.

2. Maritimes asserts that, following the Commission's order in *Southern Star Central Gas Pipeline, Inc.*,² it undertook a review of all currently effective, Part 284 firm transportation agreements. Maritimes states that this filing is the result of that review. Maritimes explains that most of the identified deviations reflect that the parties negotiated these agreements during the developmental stage of the initial Maritimes' system or as

¹ See Appendix.

² 125 FERC ¶ 61,082 (2008) (Southern Star).

part of subsequent expansion projects. According to Maritimes, several of the deviations were identified for the Commission as part of the related certificate applications. In addition, Maritimes states that the proposed tariff records containing the list of non-conforming agreements also include a reference to Contract No. 210107. Maritimes explains that this contract was filed with the Commission and approved in Docket No. RP06-361-000 prior to the requirement for including non-conforming agreements as searchable tariff records.³

3. In its filing, Maritimes states that it identified eight contracts as potentially materially non-conforming.⁴ Maritimes asserts that four of the eight tendered contracts were entered into prior to the Commission's clarification of its policies and regulations governing the identification and filing of materially non-conforming provisions in the Commission's 2003 Policy Statement.⁵ Maritimes further states that all four contracts entered into after the 2003 Policy Statement contain the same material deviation. Specifically, Maritimes points out that Exhibit B of these contracts reflects maximum daily delivery obligations ("MDDOs") that exceed the maximum daily transportation quantity ("MDTQ").⁶ Maritimes explains that this provision is the result of unique circumstances involving Maritimes' Phase III expansion project and was filed with the Commission as part of the certificate application and noted in the Commission order.⁷

³ *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,110 (2007).

⁴ Maritimes states that, during its review, it identified four of the contracts as containing other deviations it does not believe are material.

⁵ Maritimes Transmittal at 2 (citing *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh'g*, 114 FERC ¶ 61,042 (2006) (2003 Policy Statement)).

⁶ Exhibit B of these contracts includes a footnote stating that the customer is not entitled to deliver a quantity greater than its MDTQ under the service agreement on any given day. According to Maritimes, MDDOs that exceed the MDTQ are not typically permitted under section 4.2 of Maritimes' Rate Schedule MN365.

⁷ *See Maritimes & Northeast Pipeline, L.L.C.*, 95 FERC ¶ 61,077, at 61,227 (2001), (stating that an interconnection with Algonquin will give Maritimes' shippers another downstream pipeline alternative to access markets, the Boston market being only one example, for their gas and that use of Algonquin's system will eliminate additional transportation costs incurred by Maritimes shippers that presently must use Tennessee to access markets on Algonquin, as well as the additional scheduling and curtailment risks inherent in using multiple downstream transporters. These considerations justified the conclusion that Maritimes' proposal offers benefits to its existing customers).

4. Maritimes further explains that two of these contracts were assigned as part of permanent capacity release agreements and one through the right of first refusal (ROFR) process. Maritimes argues that these shippers and Maritimes reasonably relied on the legality of the subject provisions in making long term commercial decisions; and that removal of the provisions could unacceptably cause harm after the parties had reasonably relied on provisions which it states were (a) required to comply with Commission policy or (b) necessitated by the unique circumstances related to participation in an expansion project.⁸

5. Maritimes includes with its filing a clean version of each of the eight service contracts, along with a redlined version of each of the service contracts that, Maritimes states, delineates each deviation contained in the contract from the applicable form of service agreement in effect at the time the service agreement was executed. In addition Maritimes includes a description of the deviations from the applicable form of service agreement or any other part of its tariff for each of the contracts and an explanation of why the deviations either are not material or do not change the conditions under which service is provided and, therefore, do not present a risk of undue discrimination. Maritimes also identifies in its filing what it believes to be immaterial deviations contained in four of the eight contracts.

6. Maritimes states that it and its shippers have relied on the tendered contracts in making important market and investment decisions. Maritimes argues that modifying the contracts at this time could cause significant economic harm to the parties. Maritimes, therefore, requests that the Commission, to the extent it finds any of the filed agreements to be materially non-conforming, accept those contracts for filing and grant any and all waivers necessary to allow those contracts to be effective and remain in effect.⁹

7. Public notice of Maritimes' filing was issued on November 20, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's

⁸ However, Maritimes recognizes that, consistent with the Commission's rulings in *Columbia Gas* and *Texas Eastern*, any new contracts containing such non-conforming provisions must be filed with, and approved by, the Commission before they may be placed into effect. See *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*); and *Texas Eastern*, 119 FERC ¶ 61,337 at P 11.

⁹ See, e.g., *Columbia*, 97 FERC at 62,010; *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at pp. 62,002-62,023 (supporting approval of certain contracts with deviations determined to be material under the standard announced in *Columbia* because such contracts were long-standing agreements upon which parties had a greater reliance interest than the newly entered into contracts).

regulations.¹⁰ Pursuant to Rule 214,¹¹ 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 this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

8. 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.¹² In *Columbia*,¹³ 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.¹⁴ However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.¹⁵ Therefore, there are two general categories of material deviations: (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. Moreover, if the Commission determines the contract contains a material deviation that is permissible, the Commission's regulations require the pipeline to file tariff records that reference the materially deviating contract.¹⁶

9. Maritimes has presented the Commission with numerous non-conforming service agreements. These agreements contain various deviations from Maritimes' pro forma

¹⁰ 18 C.F.R. § 154.210 (2012).

¹¹ 18 C.F.R. § 385.214 (2012).

¹² See 18 C.F.R. § 154.1(d) and 18 C.F.R. § 154.112(b) 2012.

¹³ *Columbia*, 97 FERC ¶ 61,221.

¹⁴ In *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27, the Commission stated “[s]ince there would appear to be no reason for the parties to use language different from that in the form of service agreement other than to affect the substantive right of the parties, this effectively means that all language that is different from the form of service agreement should be filed with the Commission.”

¹⁵ *Columbia*, 97 FERC at 62,004.

¹⁶ 18 C.F.R. § 154.112(b) (2012).

tariff. The Commission has not completed its review of these service agreements. Therefore, the Commission will accept Maritimes' proposed tariff records to be effective December 31, 2012, as requested, subject to further review and order of the Commission. 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 filed service agreements subject to further review and order of the Commission.¹⁷

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁷It appears that, contrary to the requirements of section 154.1(d) of the Commission's regulations, 18 C.F.R. § 154.1(d) (2009), Maritimes failed to file the non-conforming contracts in a timely manner. Maritimes is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.

Appendix

Maritimes & Northeast Pipeline, L.L.C.
FERC NGA Gas Tariff
Maritimes Database 1

Accepted effective December 31, 2012, subject to conditions

[Part 1, Table of Contents, 1.0.0;](#)

[Part 6, General Terms and Conditions, 1.0.0;](#)

[37., Non-Conforming Service Agreements, 0.0.0;](#)

[Tariff, Filed Agreements, 0.0.0;](#)

[1., Bangor Gas - contract 9003, 0.0.0;](#)

[2., Bangor Gas - contract 9004, 0.0.0;](#)

[3., Casco Bay - contract 9000, 0.0.0;](#)

[4., Emera Energy Services - contract 210132, 0.0.0;](#)

[5., Mosbacher Operating - contract 8006, 0.0.0;](#)

[6., Newington Energy - contract 210032, 0.0.0;](#)

[7., Pengrowth U.S. - contract 210163, 0.0.0;](#)

[8., Repsol Energy North America - contract 210107, 0.0.0;](#)

[9., Shell Energy North America - contract 210191, 0.0.0.](#)