107 FERC ¶ 61,275
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

June 17, 2004

In Reply Refer To:
Viking Gas Transmission Company
Docket No. RP04-299-000

Viking Gas Transmission Company
P. O. Box 542500
Omaha, Nebraska 68154-8500

Attention: Raymond D. Neppl, Vice President
Regulatory Affairs & Market Services

Reference: Non-Conforming Service Agreement

Ladies and Gentlemen:

1. On May 18, 2004, Viking Gas Transmission Company (Viking) filed a May 1, 2004 Agreement for firm transportation service under Rate Schedule FT-A to comply with a Commission-approved March 16, 1999 Settlement (Settlement) in Docket No. RP98-290-001.[1] Article XI to the Settlement requires the conversion of firm contracts under Rate Schedules FT-B and FT-C to Rate Schedule FT-A service upon the complete roll-in of certain expansion facility costs. According to Viking, the conversion of the May 1, 2004 Agreement from Rate Schedule FT-C results in contract language that does not conform to the currently effective FT-A form of service agreement. The filing includes tariff sheets[2] to implement a list of non-conforming service agreements pursuant to section 154.112(b) of the Commission's Regulations.[3] Viking requests a May 1, 2004 effective date for the tariff sheets consistent with the effective date of the non-conforming agreement.

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[1] See Viking Gas Transmission Company, Order Approving Settlement, 87 FERC ¶ 61,167 (1999).

[2] Fifteenth Revised Sheet No. 39 and Original Sheet No. 87I to FERC Gas Tariff, First Revised Volume No. 1.

[3] Section 154.112(b) requires a pipeline to file service contracts that deviate in any material aspect from the form of service agreement in its tariff, and to reference such contracts in its FERC Gas Tariff Volume No. 1.

2. We accept the tariff sheets referencing the non-conforming agreement effective May 1, 2004, as proposed. Our acceptance of this filing is in the public interest because Viking implements a contract conversion in compliance with the Settlement, as agreed to by the pipeline and its customers.

3. Public notice of the filing issued on May 26, 2004, permitting comments, protests or interventions as provided in section 154.210 (18 C.F.R. ' 385.214 (2004)) of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. ' 385.214 (2004)) all timely filed motions to intervene and any motions to intervene out-of-time filed before the date this order issues are granted. No protests or adverse comments were filed.

4. In the instant filing, Viking submits its May 1, 2004, Agreement (the Agreement) with J. R. Simplot (Simplot) as a non-conforming contract under Rate Schedule FT-A (No. AF0070) to convert the underlying November 1, 1997 agreement for firm transportation service under Rate Schedule FT-C to FT-A service in compliance with Article XI to the Settlement.[4] Review of the Agreement and Viking's *pro forma* FT-A shows the following.

5. Article 10.1 to the Agreement continues a 20-month notice period prior to expiration of the Agreement, rather than the six-month notice provided in the FT-A. In its transmittal letter, Viking explains that Simplot's original FT-C agreement contained this provision. Because carrying forward this previously acceptable provision implements the Commission-approved Settlement and will not affect the terms and conditions of service or result in any undue discrimination among Viking's other shippers, we accept this deviation in the Agreement, as non-material in nature. However, our acceptance of this deviation, here, does not abrogate Viking's requirement to file all future FT-A service agreements containing a different notice period from the six months prior notice required by the currently effective FT-A form of service agreement.

6. Article 10.2 to the Agreement requires Simplot to balance all receipts and deliveries upon termination of the contract. The Agreement adds language under this provision (not contained in the FT-A), stating that such contract termination does not relieve Viking of any refund obligation to a shipper resulting from a final Commission order. According to the transmittal letter, Simplot requested the additional language. We find this provision unnecessary, but harmless surplusage, since Commission policy requires Viking to make refunds to all shippers for any overcharges during the period the service agreement is in effect, regardless of whether those shippers have since left the system.

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[4] See Viking Gas Transmission Company, 87 FERC ¶ 61,167 (1999).

7. Article 10.3 to the Agreement requires Viking to provide thirty days prior notice to terminate the Agreement for Simplot's failure to pay for service. However, service may continue under the Agreement if within the thirty-day notice period Simplot assures payment. The *pro forma* FT-A limits all other shippers to fifteen days prior termination notice to remedy nonpayment. We find the *pro forma* FT-A's fifteen-day restriction may be contrary to Commission policy.[5] The Commission is currently promulgating generic creditworthiness standards, which will: (i) require a pipeline to provide thirty days notice prior to terminating a shipper's service due to nonpayment; and (ii) allow the shipper to continue service by providing an advance payment to cure nonpayment within thirty days of the pipeline's notice date.[6] In light of the ongoing rulemaking on creditworthiness regulations, we accept the instant filing although Viking may need to revise its tariff (i.e., the *pro forma* FT-A) in a separate compliance proceeding if ordered by the Commission in the final rule on creditworthiness issues.

8. Article 12.1 to the Agreement permits the shipper certain assignment rights with Viking's written consent, which shall not be "unreasonably withheld". Again, Viking simply seeks to carry forward this caveat from the underlying FT-C agreement, pursuant to a Commission-approved settlement. For this reason, we find that this language is acceptable.

9. Article 13.6 to the Agreement essentially presents the same concerns discussed above in Article 10.3. Here, Viking provides Simplot with thirty days notice to terminate the Agreement in the event of a breach of warranty and allows Simplot thirty days to cure the breach. However, the *pro forma* FT-A limits shippers to a fifteen-day prior

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[5] See section 154.602 which requires thirty days of advance notice to the shippers and the Commission prior to contract termination.

[6] See Creditworthiness Standards for Interstate Natural Gas Pipelines, February 25, 2004, Docket No. RM04-4-000, FERC Stats. & Regs. ¶ 32,573, 69 Fed. Reg. 8587.

termination notice period and a fifteen-day cure period. In accepting the provision as part of the FT-C to FT-A conversion, we advise Viking that we may ultimately direct Viking to revise its *pro forma* FT-A to provide all other shippers a thirty-day prior termination notice period and a thirty-day cure period, either as part of the creditworthiness rulemaking, or in another docket.

By direction of the Commission.

Magalie R. Salas,
Secretary

cc: All Parties