165 FERC ¶ 61,270
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 26, 2018

In Reply Refer To:
Southern Star Central Gas Pipeline, Inc.
Docket No. RP19-357-000

Southern Star Central Gas Pipeline, Inc.
4700 Highway 56
Owensboro, KY 42301

Attention: Scott LaMar,
Director, Rates and Regulatory

Dear Mr. LaMar:

1. On November 30, 2018, Southern Star Central Gas Pipeline, Inc. (Southern Star) filed revised tariff records[1] to its FERC Gas Tariff (tariff) related to a non-conforming discount agreement and an amended FTS-M transportation service agreement[2] between Southern Star and Empire District Electric Company (Empire). Southern Star also proposes to remove two expired negotiated rate agreements from its tariff. As discussed more fully below, the revised tariff records are accepted, effective December 1, 2018, subject to condition.

2. Southern Star states that the amended FTS-M agreement with Empire conforms to the *pro forma* FTS form of service agreement in Southern Star's tariff and the conformed copy of the aforementioned agreement reflects the parties' amendment of that contract to extend its term until December 1, 2025. Southern Star also states that the parties have agreed to a new discount agreement establishing a new discounted rate for the extended contract term commencing on December 1, 2018.

3. Southern Star explains that the new discount agreement establishes the rates to be charged under the amended FTS-M agreement beginning December 1, 2018. According

---

[1] *See* Appendix.

[2] Amended Contract No. TA22489.

to Southern Star, the discount agreement includes a marketing arrangement with Empire and provides for a discount with respect to certain specified quantities, during a specified time period, from specific points of receipt and to specific points of delivery, all as permitted by section 24.1 of the General Terms and Conditions (GT&C) of Southern Star's tariff. Southern Star states that pursuant to GT&C section 24.1, such forms of discount are permissible and "shall not be considered a material deviation from Southern Star's *pro forma* service agreement as a result of such discount and Southern Star shall not be required to file such agreement with the Commission as a non-conforming contract because of such discount."[3]

4. Southern Star states that, in the discount agreement, the parties also agreed upon a mechanism providing Southern Star with a capacity release marketing right pursuant to GT&C section 11.6. Southern Star states that, as required by section 11.6, the capacity release marketing right contained in the discount agreement specifies the actions that Southern Star may take to market Empire's capacity as released capacity under the following terms:

- Any capacity proposed to be released must be released at maximum rates, or at a negotiated rate equal to or greater than maximum rates;

- The minimum quantity proposed to be released must be equal to or greater than 5,000 Dth/d;

- The term of the proposed release must be for more than one (1) year. If the requested term for the capacity is equal to or longer than the remaining term of Contract No. TA22489, then the release will be a permanent release under GT&C [s]ection 11.8; otherwise it will be a temporary release.[4]

Further, Southern Star provides Empire with an opportunity to retain the capacity by matching the price paid by the proposed replacement shipper, rather than paying the agreed upon marketing fee. Southern Star states that the capacity release marketing right is not effective until December 1, 2021, when the new discounted rate for the extended contract term is effective. Southern Star asserts that, while this capacity release

[3] Transmittal at 2.

[4] *See* Non-Conforming Service Agreement § 2.1.3 (Discount Agreement - Capacity Release Marketing Right).

marketing right may make the discounted agreement non-conforming, there is no risk of undue discrimination because it is expressly authorized by GT&C section 11.6.

5. Lastly, Southern Star proposes to remove two negotiated rate agreements from its tariff that expired November 1, 2018. Southern Star requests that the Commission grant waiver of the Commission's 30-day notice requirement and accept the revised tariff records effective December 1, 2018, because it is the date on which it will commence service at the discounted rates.

6. Public notice of the filing was issued on December 3, 2018. Interventions and protests were due as provided by section 154.210 of the Commission's regulations.[5] Pursuant to Rule 214,[6] all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the 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 adverse comments or protests were filed.

7. The Commission has stated that 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.[7] In *Columbia Gas Transmission Corp.*, 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.[8] The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered to other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.[9] However, not all material deviations are impermissible. As the Commission explained in *Columbia Gas*,[10] provisions that

---

[5] 18 C.F.R. § 154.210 (2018).

[6] *Id*. § 385.214.

[7] *Id.* §§ 154.1(d) and 154.112(b).

[8] *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia Gas*).

[9] *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

[10] *E.g., Columbia Gas*, 97 FERC at 62,003-04; *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

(continued)

materially deviate from the corresponding *pro forma* agreement fall into two general categories: (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.

8. We will accept Southern Star's non-conforming discount agreement, subject to one modification. When Southern Star markets the capacity for release, it is acting as the releasing shipper's agent. As such, Southern Star must comply with the Commission's capacity release regulations. Specifically, the proposed provision in Southern Star's capacity release marketing right requires that the release be for more than one year and at the maximum rate or at a negotiated rate equal to or greater than the maximum rate. The Commission's capacity release regulations require that releases greater than one year in length may not exceed the applicable maximum rate.[11] However, under the terms of the capacity release marketing right the negotiated rate in the instant agreement could impermissibly exceed the maximum rate. For this reason, we find that the proposed capacity release marketing right provision as structured is an impermissible material deviation from Southern Star's *pro forma* service agreement. Accordingly, Southern Star's referenced tariff records are accepted to be effective December 1, 2018, subject to the following condition. Southern Star is directed to file, within 15 days of the issuance of this order, revised tariff records to either eliminate or modify the capacity release marketing arrangement in its discount agreement with Empire to be consistent with Commission policy. Finally, we grant waiver of the prior notice requirement to allow the proposed tariff records to become effective December 1, 2018, the date of service commencement at the discounted rate, as requested by Southern Star.

By direction of the Commission. Commissioner McIntyre is not voting on this letter order.
Commissioner McNamee is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

[11] 18 C.F.R. § 284.8(b)(2) (2018). The Commission's regulations provide that "[t]he rate charged the replacement shipper for a release of capacity may not exceed the applicable maximum rate, except that no rate limitation applies to the release of capacity for a period of one year or less …."

Appendix

Southern Star Central Gas Pipeline, Inc.
FERC NGA Gas Tariff
Tariff Provisions

Tariff Records Accepted Effective December 1, 2018

Section 1, Table of Contents, 14.0.0
Section 2.1, Non- Conforming Service Agreements, 0.0.0
Section 2.1.1, Non- Conforming Service Agreements, 0.0.0
Section 2.1.2, Non- Conforming Service Agreements, 0.0.0
Section 2.1.3, Non- Conforming Service Agreements, 0.0.0
Section 3.1, Reserved For Future Use, 3.0.0
Section 3.1.1, Reserved For Future Use, 3.0.0
Section 3.1.2, Reserved For Future Use, 3.0.0
Section 3.1.3, Reserved For Future Use, 1.0.0
Section 3.2, Reserved for Future Use, 5.0.0
Section 3.2.1, Reserved for Future Use, 3.0.0
Section 3.2.2, Reserved for Future Use, 3.0.0
Section 3.2.3, Reserved for Future Use, 2.0.0