

118 FERC ¶ 61,268  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Viking Gas Transmission Company

Docket No. RP07-319-000

ORDER ACCEPTING TARIFF SHEET SUBJECT TO REFUND, AND  
ESTABLISHING SETTLEMENT JUDGE PROCEDURES AND A HEARING

(Issued March 30, 2007)

1. On February 28, 2007, Viking Gas Transmission Company (Viking) filed Twelfth Revised Sheet No. 5C, First Revised Volume No. 1, proposed to become effective April 1, 2007, to make its annual Load Management Cost Reconciliation Adjustment (LMCRA), containing a Rate Schedule LMS surcharge of \$0.3252. For the reasons, appearing below, Viking's filing is accepted and the effectiveness of the new proposed surcharge rate is suspended and made effective, September 1, 2007, subject to refund, and subject to the outcome of settlement judge and hearing procedures as ordered below.

**Background and Current Filing**

2. According to Viking, its LMCRA is designed to reconcile through surcharges or credits, as appropriate, differences between the cost to Viking to maintain its line pack and the amounts Viking receives or pays for such gas arising out of the purchase and sale of such gas to resolve Balancing Party imbalances as provided pursuant to Rate Schedule LMS, to resolve imbalances associated with operational balancing agreements (OBAs) at interstate pipeline interconnections, and/or, as may be necessary to maintain an appropriate level of line pack for system management purposes. For the year beginning April 1, 2007, Viking's calculations indicate that a Rate Schedule LMS surcharge of \$0.3252 would be required to accomplish those purposes.

3. Viking recites that the Commission granted a waiver of subsection 27.4 of its FERC Gas Tariff which allowed it to use the thirteen month period from January 1,

2005 through January 31, 2006 to calculate last year's LMCRA surcharge.<sup>1</sup> It states that it is using only the eleven month period extending from February through December 2006 to calculate the current surcharge.

### **Notices, Interventions and Protests**

4. Public notice of Viking's filing was issued on March 5, 2007, with protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2006)). The timely motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice (18 C.F.R. § 385.214 (2006)). Any motions to intervene out-of-time filed before the date of this order are granted pursuant to 18 C.F.R. § 385.214(d), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Protests were filed jointly by Northern States Power Company (NSP-M), Northern States Power Company (NSP-W) and CenterPoint Energy Resources Corp., dba CenterPoint Energy Minnesota Gas (CenterPoint) (jointly, NSP/CE); and by Wisconsin Electric Power Company and Wisconsin Gas LLC (jointly, Wisconsin Companies).<sup>2</sup> Both protests raise the same concern: the dramatic increase in the amount of the proposed surcharge from that approved for the April 2006 – March 2007 period. Both protestors seek rejection of Viking's proposed LMCR adjustment.

5. NSP/CE argue that the proposed LMS surcharge is: (1) well above historical LMCRA levels (seven-fold increase), (2) will have a significant impact on themselves and other Viking customers, and (3) is not fully explained or justified by Viking.

6. The parties contend that the LMCRA surcharge is inconsistent with Viking's historical rate levels. They note that the annual LMCRA that Viking proposed in the past ranged from \$0.0381 to \$0.0452 for the 2003 through 2005 activity period. However, as characterized by the parties, the LMCRA surcharge for the 2006 activity period calculated as \$0.3215 is unprecedented and wholly unexpected.

7. NSP/CE assert that they, as larger shippers of Viking, will experience a substantial impact from the proposed adjustment. NSP-M and NSP-W state that they provide gas service to approximately 500,000 customers and that they jointly hold the largest amount of firm capacity on Viking which consists of approximately 140,183 Dth/d of firm forward haul and backhaul under a number of Viking's Rate

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<sup>1</sup> See *Viking Gas Transmission Company*, 114 FERC ¶ 61,330 (2006) at P.5.

<sup>2</sup> The Minnesota Energy Resources Corporation (MERC) filed comments in its motion to intervene, expressing its concern with the unexplained increase in the LMCRA surcharge. MERC supports the two protests discussed below.

Schedules. CenterPoint Energy, a local distribution company, serves approximately 788,000 natural gas customers, including approximately 722,000 residential customers from which CenterPoint serves its load with gas transported under contracts with four interstate pipelines including Viking. According to the parties, if the proposed LMCRA surcharge rate had been in effect for the calendar 2005 activity period, as opposed to currently effective rate, charges to NSP-M and NSP-W collectively, would have increased by \$546,016. CenterPoint calculates its increase at \$68,684 for the same period.

8. NSP/CE contend that Viking offers no explanation for the huge LMCRA increase. They also echo the Wisconsin Companies' comments pertaining to the basis for Viking's request for a waiver in its last LMCRA filing. NSP/CE raise the concern that such a fluctuation in the line pack appears to be a continuing problem due to an exponential change in the LMCRA in this proceeding. They also note that the only difference in this proceeding and the last LMCRA proceeding is that the adverse consequences fall on the Balancing Parties rather than Viking. As such, the parties conclude that the tariff mechanism in section 27 has failed for the past two years and that there is a need to avoid the consequences of such a large shift in the LMCRA.

9. NSP/CE also assert that it is unjust and unreasonable for Viking to seek waiver of its tariff methodology as it did in the last filing, to avoid large increases in the amount to be credited to Balancing Parties, and not to seek a waiver or propose a mitigation measure to avoid a similarly harsh increase in the amount to be surcharged to the Balancing Parties in this proceeding.

10. In conclusion, NPS/CE request that the Commission reject the instant filing without prejudice to Viking's resubmission of a revised filing to ensure that the LMCRA for the 2006 activity is more consistent with historical LMCRA levels. As an alternative, they suggest that the Commission establish a proceeding to more fully explore both the causes of the dramatic increase in the LMCRA, and the steps that should be taken to either modify the LMCRA mechanism or otherwise develop an LMCRA surcharge in this proceeding that is more consistent with historical levels.

11. The Wisconsin Companies contend that Viking is proposing a LMCRA that represents an increase of 1,947%, which if allowed to stand would result in a cost increase to them of \$212,340 for the 2006 activity period.

12. The Wisconsin Companies also voice concerns as to why Viking does not offer an explanation or justification of the huge LMCRA increase. They state that Viking's silence in the instant filing is a direct contrast to Viking's action in its last LMCRA

filing in Docket No. RP06-253-000<sup>3</sup> where Viking requested a waiver of its tariff in order to avoid a negative surcharge, *i.e.*, a credit, to the Balancing Parties.

13. As a result, the Wisconsin Companies request that the Commission reject the instant filing, or at the very least, accept the filing subject to the maximum allowable suspension period. The parties reason that this alternative will allow additional time for the Commission and Viking's customers to fully evaluate whether the proposed LMCRA is just and reasonable.

14. On March 27, 2007, Viking filed a motion for leave to answer and an answer to the protests of NSP/CE and the Wisconsin Companies. In its answer, Viking urges the Commission not to reject its filing, but rather to allow it to go into effect as of April 1, 2007 as it had proposed. It states that it was about to begin customer meetings to examine the continued efficacy of the LMCRA. To that end, Viking states that it has proposed a meeting with its firm transmission customers to be held April 18, 2007. Viking states that it intends to file a report with the Commission upon the conclusion of the customer meeting advising the Commission as to the results of the customer meeting and what further actions may be taken by Viking and the interested parties with respect to the LMCRA and load management on Viking's system. Under the Commission's procedural rules, answers to protests are not permitted unless otherwise ordered.<sup>4</sup>

### **Discussion**

15. The parties have argued that the 2006 LMCRA increase that Viking proposes herein is exorbitant, will have a significant impact on its customers, and that the tariff mechanism put in place in section 27 of Viking's tariff maybe flawed due to enormous shifting in the LMCRA for the past two years.

16. In Docket No. RP06-253-000, Viking requested waiver of the methodology contained in its tariff for calculating the surcharge to be in effect in the coming year to include thirteen months of actual experience instead of twelve months as contained in the tariff. Viking stated that, "fluctuation in the line pack volumes in recent months,

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<sup>3</sup> See Viking Gas Transmission Company, 114 FERC ¶ 61,330 (2006).

<sup>4</sup> 18 C.F.R. § 385.213(a)(2) (2006). Viking's desire to communicate and negotiate with its customers may unfold preparatory to, or as an element of, the settlement judge procedures we order below.

due mainly to high gas prices,<sup>5</sup> had caused a significant price distortion in the calculation of the LMCRA when compared to historical LMCRA amounts for the past three years,” that the \$0.3082 per Dth 2006 LMCRA credit calculated using the twelve months ending December 31, 2005, is exponentially greater than any credit adjustment of \$0.0381 in effect for 2005, and that such a high credit removes the incentive for balancing parties to manage their imbalances during 2006. It therefore proposed an additional month’s experience, which resulted in a surcharge of \$0.0452 per Dth, instead of the credit of \$0.3082 per Dth. Such request was unopposed and was granted. Granting of the waiver permitted Viking to calculate the LMCRA based on thirteen months of costs, avert a large credit to shippers and instead, incur a surcharge that was consistent with Viking’s LMRCA filings in prior years.

17. A review of Viking’s LMCRA filings for the past five years reflect surcharges of \$0.0039 for 2001, \$0.0009 for 2002, \$0.0002 for 2003, a credit of \$0.0381 for 2004, and a surcharge of \$0.0452<sup>6</sup> for 2005. Viking’s LMCRA filing for 2006 reflects a surcharge of \$0.32512. The Commission determines that Viking’s LMCRA’s have been stable until the last two years -- in 2005, where Viking requested and received a waiver to avoid crediting shippers, and in 2006 where Viking proposes a large LMCRA increase without explanation.

### **Hearing and Settlement Judge Procedures**

18. Viking’s LMCRA filing raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, the Commission will establish a hearing to explore issues raised in this proceeding, including, but not limited to, the issues set out in the protests regarding the disparity in the LMCRA surcharge for the past two years and the justness and reasonableness of the LMCRA surcharge mechanism set forth in section 27 of Viking’s tariff.

19. Based upon a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts the tariff sheets for filing and suspends their effectiveness to

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<sup>5</sup> In December of 2005 imbalances were valued at a price of \$11.30 per Dth compared to an average imbalance value of \$7.5395 in the prior eleven months of 2005.

<sup>6</sup> Without the waiver, the surcharge would have instead been a credit of \$0.3082 per Dth.

permit them to become effective September 1, 2007, subject to the conditions set forth in this order.

20. It is the Commission's policy generally to suspend rate filings for the maximum period permitted by statute if preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is also recognized, however, that shorter suspensions may be warranted under circumstances in which suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances are not present here. We shall therefore accept Viking's tariff filing, and suspend it, to become effective September 1, 2007, subject to refund.

21. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The LMCRA filing is hereby accepted for filing, and suspended for a five-month period, to become effective September 1, 2007, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Natural Gas Act, particularly sections 4, 5, 8 and 15 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Natural Gas Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the LMCRA filing, and the continued viability of the LMCRA mechanism. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure. A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. §375.304, must convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference is for the purpose of the clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

By the Commission.

( S E A L )

Philis J. Posey,  
Acting Secretary.