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March 4, 2020

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501

Subject: Tariff Advice Letter 316-4

Dear Commissioners:

This filing is transmitted in compliance with 3 AAC 48.200-430 and Order U-12-125(1). As explained in more detail below, ENSTAR is not seeking approval of any tariff sheets as part of this TA filing.

On April 25, 2016, the Commission issued LO L1600193, approving the gas sales agreement (“GSA”) by and between Alaska Pipeline Company (“APC”) and Furie Operating Alaska, LLC (“Furie”) dated February 26, 2016 (“Furie GSA”), which ENSTAR Natural Gas Company, a division of SEMCO Energy, Inc. (“ENSTAR”) had filed for the Commission’s consideration in TA 282-4.¹ On October 31, 2017, the Commission issued LO L1700450 approving an Amendment to the Furie GSA (“Amendment”), which ENSTAR had filed for the Commission’s consideration in TA 296-4. On December 23, 2019, the Commission issued LO L1900468 approving the Second Amendment to the Furie GSA (“Second Amendment”), which ENSTAR had filed for the Commission’s consideration in TA315-4. APC and Furie have agreed to further amend the GSA as detailed below. In light of the Commission’s direction in Order U-12-125(1), ENSTAR requests approval of the attached Third Amendment (“Third Amendment”)² to the Furie GSA. The Amendment will help ENSTAR ensure reliable supply to its over 147,000 gas sales customers.

BACKGROUND

Furie, a small producer in Cook Inlet, has expended significant resources to produce natural gas from the Kitchen Lights Unit (“KLU”), an offshore gas field development that required

¹ APC, not ENSTAR, is the party to the proposed GSA. The Commission regulates APC and ENSTAR as a single entity. The use of the name “ENSTAR” in this filing is intended to include both APC and ENSTAR, unless the context clearly requires otherwise.

² See Attachment A, The Settlement Agreement and Release between Furie Operating Alaska, LLC and Alaska Pipeline Company and the Third Amendment to Gas Sale and Purchase Agreement between Furie Operating Alaska, LLC and Alaska Pipeline Company.

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installation of a platform in Cook Inlet. In August 2019, following production and drilling challenges, Furie filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware (“Bankruptcy Court”) as discussed in more detail below.

In January 2019, Furie experienced freezing issues that caused blockages and the cessation of all flow in its subsea pipeline from its offshore platform to its onshore processing facilities. Because it was not able to produce and deliver gas from its wells, Furie declared a “Force Majeure Event”³ and stopped deliveries of gas under the GSA on January 24, 2019. In a letter dated January 23, 2019, ENSTAR received notice from Furie purporting to declare a “Force Majeure Event” under Section 11.1(b) of the GSA approved by the RCA in TA 282-4 and as amended in TA 296-4. Furie was unable to meet certain contractual requirements due to production challenges as asserted in their declared Force Majeure Event. On February 11, 2019, ENSTAR issued a formal Default Notice to Furie under the terms of the GSA.⁴ On April 25, Furie notified ENSTAR that its Force Majeure event had concluded.

During the alleged Force Majeure Event, ENSTAR met customers’ needs through additional withdrawals of gas from its storage inventory in Cook Inlet Natural Gas Storage Alaska, LLC (“CINGSA”) and short-term gas purchases. ENSTAR determined that terminating the GSA could negatively affect the competitiveness of the Cook Inlet gas market; therefore, ENSTAR and Furie negotiated a Second Amendment dated April 25, 2019, which was approved by the Commission on December 23, 2019. The Second Amendment reflected the reduced production volumes available for purchase on a firm basis and postponed firm deliveries until January 1, 2020.

ENSTAR calculated that the alleged Force Majeure Event caused a total of more than \$2 million in cover damages, and it invoiced Furie monthly for that amount, plus accrued interest.

ENSTAR conducted an investigation of the validity of the Force Majeure Event. Following extensive negotiations, ENSTAR agreed to enter into a compromise and settlement of its cover damages claim against Furie. As such, ENSTAR entered into a Settlement Agreement and Release (“Settlement”) with Furie on February 13, 2020. In this Settlement, Furie has agreed to deliver 250,000 Mcf⁵ of gas (“Settlement Gas Volumes”) with a total value of \$1.7 million (“Total Settlement Value”) to ENSTAR⁶ following approval of the Settlement by the Bankruptcy Court. The Bankruptcy Court issued an order today, March 4, 2020, approving Furie’s entry into the

³ Furie’s Letter to APC declaring a Force Majeure is attached to this TA as Attachment B. APC provided a copy of the letter to the Commission on January 28, 2019.

⁴ ENSTAR’s Default Notice Letter to Furie was filed with the Commission on February 11, 2019 and is attached as Attachment C.

⁵ An Mcf is one thousand cubic feet. An MMcf is 1,000 Mcf or 1 million cubic feet. A Bcf is 1,000,000 Mcf or 1 billion cubic feet.

⁶ The 250,000 Mcf will be transferred from Furie’s account in CINGSA to ENSTAR’s account in CINGSA. ENSTAR estimates that the delivery of the gas, via a storage balance transfer that incurs no delivery charge, will result in a reduction in its average cost of stored gas of more than \$0.55 per Mcf.

Settlement Agreement; a copy of the Order is attached as Attachment D. If Furie fails to deliver the Settlement Gas Volumes by the agreed upon dates or within fifteen days, then APC may draw on the Letter of Credit for the difference between the value of the gas delivered and the Total Settlement Value. The Third Amendment reflects the items agreed upon in the Settlement Agreement and will take effect after the Commission’s approval and the occurrence of other conditions precedent, detailed below.

In LO L1600193, the Commission stated, “ENSTAR, with the cooperation of Furie, is commended for meeting the intent of the legislature for diversified supply contracts and different pricing mechanisms. ENSTAR has adopted diversification policies to set aside or carve out an allocation of their supply portfolios to small independent producers in Cook Inlet. These provisions conform to legislative policy and the recommendations of the Commission as expressed in a concurring statement to TA242-4.” ENSTAR remains committed to the goal of securing a diversified supply portfolio. While Furie is experiencing financial uncertainty and has suffered interruptions in its production, it does have four producing wells, and ENSTAR is hopeful that Furie will be able to meet its amended contractual commitments.

KEY FEATURES OF THE AMENDMENT

The key provisions of the Third Amendment are summarized below. (Capitalized terms used but not defined herein have the meanings provided in the Furie GSA, Amendment, Second Amendment and Third Amendment.)

Effective Date

The following five conditions have to be met for the Third Amendment to be deemed effective: (1) Bankruptcy Court authorizes the Seller to enter into the Third Amendment,⁷ (2) Bankruptcy Court authorizes the Seller to assume the GSA, (3) Seller has assumed the GSA pursuant to the terms set forth in the order approving such assumption, (4) Seller may continue to operate its business after emerging from Bankruptcy, and (5) the effective date of the Plan of Reorganization filed with the Bankruptcy court has occurred

Gas Volumes (Section 2.1a)

To reflect Furie’s reduced production capacity, the Third Amendment reduces the Firm Annual Contract Quantity (“ACQ”) during the last two years of the Extended Term. The amended ACQ is as follows:

| | Contract Year Beginning | Annual Contract Quantity (Bcf) |
|--|--------------------------------|---------------------------------------|
| | April 1, 2019* | 1.138 |

⁷ A copy of this Order is attached as Attachment D.

| | | |
|---------------|---------------|-------|
| | April 1, 2020 | 3.650 |
| Extended Term | April 1, 2021 | 1.551 |
| Extended Term | April 1, 2022 | 1.186 |

*Firm deliveries began on January 1, 2020.

Daily Deliverability (Section 2.1b)

To reflect the anticipated reduction in available deliverability, the Firm Daily Contract Quantity (“DCQ”) was reduced during the last two years of the Extended Term. The amended DCQ is as follows:

| | Contract Year Beginning | Firm Daily Contract Quantity (MMcf per Day) |
|---------------|--------------------------------|--|
| | April 1, 2019* | 12.5 |
| | April 1, 2020 | 10 |
| Extended Term | April 1, 2021 | 4.25 |
| Extended Term | April 1, 2022 | 3.25 |

*Firm deliveries began on January 1, 2020.

While the Third Amendment reduces the available annual volumes and deliverability available during the optional years, APC will have the right of first refusal for any available volumes up to the original commitments set out by the Second Amendment (up to 8.5 MMcfd during the Contract Year 4 and 6.5 MMcfd during the Contract Year 5). This additional gas, if available, will be priced at the same price as Firm Gas as set forth in the amended Section 3.1d.

| Volumes | Cost per Mcf | |
|------------------------------------|---------------------------------------|---------------------------------------|
| | Contract Year beginning April 1, 2021 | Contract Year beginning April 1, 2022 |
| Firm Gas (the “Firm Volume Price”) | \$6.71 | \$6.85 |
| ROFR Gas | \$6.71 | \$6.85 |
| Discretionary Gas | Not to exceed \$9.85 | Not to exceed \$10.05 |

Creditworthiness (Section 12.1)

To reflect the reduced volume commitments by Furie, Section 12.1 is amended to reduce the amount of the irrevocable standby letter of credit, which currently stands at \$6 million, to the following levels:

| | |
|---------------|---------------|
| April 1, 2020 | \$3.0 million |
| April 1, 2021 | \$2.5 million |
| April 1, 2022 | \$2.0 million |

FURIE BANKRUPTCY

On August 9, 2019, Furie Operating Alaska, LLC voluntarily petitioned for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. ENSTAR has closely followed the bankruptcy proceedings. Furie has consistently listed the GSA with APC as an executory contract, indicating that Furie intends to assume the contract as it exits Chapter 11 bankruptcy. Furie received competing bids for its assets; Kachemak Exploration LLC (“Kachemak”) has apparently emerged as the successful bidder. Furie and Kachemak filed a joint Plan with the Bankruptcy Court on February 26, and proposed May 4 for a hearing on confirmation of the Plan.

ENSTAR will continue to actively track the bankruptcy proceeding and will advise the Commission if the Furie GSA is assigned to a different entity as a result of the bankruptcy, or if the Bankruptcy Court provides any modifications.

COMMISSION APPROVAL

ENSTAR seeks Commission approval due to its direction in Order U-12-125(1), in which the Commission stated as follows:

We advise ENSTAR that any amendments, supplements, modifications, clarifications, or other agreements affecting a GSA subject to our approval must be filed for our approval before gas costs incurred under the affected GSA are included in ENSTAR’s rates.

This language indicated to ENSTAR that any amendment of a gas sales agreement must be submitted for the Commission’s approval before the Commission will approve cost recovery of gas purchased under the GSA in question.

ENSTAR is not seeking a revision of any tariff sheet in this filing. The Furie GSA is already listed in ENSTAR’s Determination of Gas Cost Adjustment in Tariff Section 708e (Sheet 89). The effect of the amendment was taken into account in ENSTAR’s current Gas Cost Adjustment (TA 311-4) that was approved by LO L1900266 dated June 20, 2019 (in Section 2301 on Sheet 221).

ENSTAR respectfully requests that the Commission approve the Third Amendment at the conclusion of the standard notice and review period.

Sincerely,

ENSTAR Natural Gas Company



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Attachments:

- Attachment A: The Settlement Agreement and Release between Furie Operating Alaska, LLC and Alaska Pipeline Company and the Third Amendment to Gas Sale and Purchase Agreement between Furie Operating Alaska, LLC and Alaska Pipeline Company
- Attachment B: Furie's Letter to APC declaring Force Majeure Event
- Attachment C: APC's Default Notice to Furie
- Attachment D: Bankruptcy Court Order Approving Furie's Entry into Settlement Agreement