UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Crossroads Pipeline Company Docket No. RP07-433-000

ORDER CONDITIONALLY ACCEPTING CERTAIN TARIFF SHEETS AND ACCEPTING AND SUSPENDING, SUBJECT TO REFUND, OTHER TARIFF SHEET AND ESTABLISHING A TECHNICAL CONFERENCE

(Issued May 31, 2007)

1. On May 1, 2007, Crossroads Pipeline Company (Crossroads) filed tariff sheets,[1] and supporting work papers proposing to establish an annual transportation retainage tracker and a new retainage percentage for company use and lost and unaccounted for gas (LAUF) in section 35 (Transportation Retainage Adjustment (TRA)) of the General Terms and Conditions (GT&C) of its tariff. Crossroads also proposes an unrecovered retainage surcharge percentage to recoup under-recovered company use and LAUF incurred during January, February and March of 2007 only. Crossroads proposes a June 1, 2007, effective date for the revised tariff sheets. The filing was protested. For the reasons discussed below, the Commission accepts tariff sheets reflecting the new tracker mechanism, effective June 1, 2007. The Commission also conditionally accepts, and suspends the tariff sheet reflecting the proposed retainage rate, to become effective June 1, 2007, as proposed, subject to refund and conditions. The Commission also establishes a technical conference to address the issues raised by the filing.

Background

2. Section 35 of Crossroads' tariff currently permits Crossroads to annually adjust the retainage applicable to Rate Schedules Firm Transportation-1 (FT-1) and Interruptible Transportation-1 (IT-1). The applicable retainage is set forth at Sheet No. 6 of the tariff. Crossroads established the current retainage percentage of 0.2 percent in 1995, when it was first certified. In the intervening years, Crossroads never adjusted the retainage percent, despite periodically under-recovering its use and LAUF. To remedy this past

[1] Fifth Revised Sheet No. 6, First Revised Sheet Nos. 39, 359, and 360 and Original Sheet No. 361 of its FERC Gas Tariff, First Revised Volume No. 1.

under-recovery issue and promote ease of future adjustments in keeping with Commission precedent, Crossroads proposes here to: (1) establish a retainage tracking mechanism similar to that used by its sister pipelines, Columbia Gulf Transmission Company (Columbia Gulf) and Columbia Gas Transmission Corporation (Columbia); and, (2) increase the current retainage percentage from 0.2 percent to 1.085 percent, inclusive of a 0.125 percent unrecovered retainage surcharge. Crossroads explains that the proposal consists of two parts: (1) a projected rate to recover anticipated LAUF gas for the annual period June 1, 2007 through May 31, 2008; and (2) a surcharge rate based on under-recovered LAUF gas quantities for the first three months of 2007.

3. Existing section 35 of the GT&C allows Crossroads an annual adjustment to its retainage percent if required, but does not prescribe how the retainage is determined. According to Crossroads, Columbia Gulf and Columbia have used Commission approved tracker tariff provisions that require the calculation of the retainage percent by determining LAUF quantities for the preceding year and determining whether retainage was over or under-recovered in the past.

4. Crossroads states proposed section 35 is modeled after section 33 and section 35 of Columbia Gulf's and Columbia's GT&C, respectively. Like Columbia Gulf's and Columbia's provisions, Crossroads' proposal uses the prior calendar year (the deferral period) and requires calculating and reconciling actual deferral period retainage requirements with retainage quantities actually collected through rates over that same period. According to Crossroads, this over or under-recovered component then becomes part of the retainage percent in the subsequent year's filing. Similarly, Crossroads explains that the pipeline estimates the total retainage quantities required for the 12 months commencing with the effective date of the annual filing (June 1), which is based on a corresponding estimated level of throughput for the same future period. Crossroads states this amount becomes the current component of the revised retainage percentage. Crossroads emphasizes that its proposal is virtually identical to Columbia Gulf's and Columbia's previously approved tariff provisions.

5. Crossroads also includes the affidavit of the manager providing technical engineering support for the pipeline who works for Columbia Gas.[2] He explains that field operations staff performed: (1) tests and inspections of the measurement equipment; (2) leakage inspections on the measurement facilities; and (3) surveys on the pipeline for leaks, to identify the source of gas loss. Furthermore, he states that those surveys found no leaks, but inspections in May and June of 2006 revealed that two gas chromatographs were incorrectly determining the energy content of the gas and required gas quantity adjustment corrections in August 2006. Crossroads states that it continues performing inspection work on its system and plans completion of more work over the next few months.

[2] Mr. Harris' Affidavit, Measurement and Regulation Manager for Columbia Gas.

6. Crossroads based the currently effective 0.2 retainage percent on data provided in its initial 1995 application for certification that was not tied to actual operating experience or actual LAUF quantities. In the intervening years, Crossroads became aware that actual LAUF quantities periodically exceeded the retainage percent set forth in the tariff and but decided to absorb those losses. However, over the past three years, Crossroads states that it has consistently under-recovered its current retainage level of 0.2 percent and reports in Appendix C, a net under-recovery of 300,273 Dth for 2006.

Crossroads' Filing

7. In the instant filing, Crossroads submits its annual adjustment to the retainage percent applicable to transportation on its system, pursuant to existing section 35 of its GT&C.[3] Crossroads submits that although it has authority to adjust retainage since its initial certificate authorization of 0.2 percent, it has never done so. Crossroads asserts that for the reasons set forth below, it requires an adjustment to recover, prospectively, all of Crossroads' current retainage requirements.

8. Crossroads states the LAUF portions of the current component of the retainage are based upon the calculated estimate for the 12-months beginning June 1, 2007, based on projected system-wide throughput. Consequently, Crossroads proposes to charge the current component for LAUF quantities of 0.96 percent as shown on Appendix A.

9. Crossroads also proposes to establish the initial deferral period commencing January 1, 2007. Consequently, the under-recovered component in this filing is limited to only the first three months of 2007 rather than the preceding calendar year (January 1, 2006 through December 31, 2006). In Appendix B, Crossroads shows the actual experience during the initial three-month deferral period. To assist in collecting the under-recoveries incurred in 2007, Crossroads proposes to add a 0.125 percent under-recovered surcharge component to the current component of the retainage described above.[4] In subsequent annual filings, Crossroads proposes to true-up any under or over-collections via the surcharge mechanism established in proposed section 35. Crossroads states that, while Crossroads bases its initial surcharge proposed here on the first three

[3] The forerunner to GT&C section 35 was GT&C section 15, which authorized Crossroads to annually adjust its retainage percent and was approved in Crossroads' initial certificate order. *See Crossroads Pipeline Co.*, 71 FERC ¶ 61,076 at 61,266 (1995); *order on reh'g*, 73 FERC ¶ 61,138 (1995). GT&C section 15 was moved to section 35 in Crossroads' October 1, 2001 tariff filing that was approved by Commission order on October 31, 2001. *See Crossroads Pipeline Co.*, 97 FERC ¶ 61,126 (2001).

[4] Crossroads states that, as of the date of this filing, only the first three months of 2007 data is available.

months of 2007 only, in subsequent years the deferral period will comprise the 12 months of the preceding calendar year.

Public Notice, Interventions and Protests

10. Public notice of Crossroads' filing issued on May 4, 2007. Interventions and protests were due May 13, 2007, as provided in section 154.210 of the Commission's regulations.[5] Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted.[6] Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. On May 14, 2007, Somerset Gas Transmission Company, LLC (Somerset) and North Coast Gas Transmission, LLC (North Coast) jointly filed a motion to intervene, protest, request for rejection or, alternatively, maximum suspension, summary disposition and establishment of a technical conference. On May 21, 2007, Crossroads filed an answer to Somerset and North Coast's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2)(2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. Accordingly, we will accept Crossroads' answer because it provides information that assisted us in our decision-making process.

11. The protestors assert that the Commission must reject this filing because Crossroads fails to provide sufficient information to justify the proposed retainage percent from 0.2 to 1.085 percent, which they argue is over a 500 percent increase. They argue that the proposed rate increase demonstrates that the Commission must reject the proposed implementation of a fuel tracker. Somerset and North Coast further opine that Crossroads' justification for its tracker and fuel retention rate is insufficient because: (1) it is based on limited operations and a limited period of time; (2) the pipeline has known of this problem for some time; and, (3) no specific reasons for the calculated under-collections are presented in Mr. Harris' Affidavit. Somerset and North Coast specifically argue that Mr. Harris' Affidavit does not specify: (1) the seriousness of the investigation the pipeline has pursued; (2) how much more the pipeline intends to do; (3) the level of maintenance performed on the pipeline; nor, (4) whether the maintenance has been adequate.[7]

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[5] 18 C.F.R. § 154.210 (2006).

[6] 18 C.F.R. § 385.214 (2006).

[7] Protest at 3-6. The Protestors also raise issues concerning the anticompetitive implications of Crossroads' proposal. *Id.*

12. Moreover, continue the protestors, if the Commission does not reject the May 1, 2007 filing, it must summarily reject the 0.125 percent surcharge because it patently violates the prohibition against retroactive ratemaking.[8] They assert that the Commission previously ruled in the context of fuel tracker proposals that a customer must at the least have notice as of the time of prior period transportation of possible adjustments to the rates applicable to that transportation to avoid the ban against retroactive ratemaking.[9] They contend that similarly, the Commission has ruled that the existing pipeline tariff must provide notice of an adjustment for prior periods to allow pass through of the adjustment through a fuel tracker.[10] They submit that Crossroads' customers clearly had no notice that Crossroads would later recoup, via a future charge, costs not recovered under the existing fuel retention tariff charge.

13. The protestors argue that, if the Commission does not reject the May 1, 2007 filing, the Commission must suspend it for the maximum five-month period, to be effective subject to refund on November 1, 2007. Somerset and North Coast submit that Commission policy clearly warrants suspension of the extraordinary increase in the fuel rate by the maximum five-month period, since no extraordinarily harsh or inequitable results would occur.[11] They also submit that Commission precedent requires such a suspension. Specifically, they point to the proceedings in *OkTex Pipeline Company (OkTex)*,[12] where the Commission dealt with a proposal and circumstances virtually identical to those presented here. They argue that the same facts exist here. Specifically, they argue that, like OkTex, Crossroads is small, its operations uncomplicated and it provides no explanation for the recent and alarming increase in fuel needs nor taken any action to correct it. They further assert that, similarly, the proposed increase is over five-fold[13] and the pipelines' fuel consists of essentially only LAUF gas. Therefore, the

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[8] *Id.* at 13 (*citing PUCC* v. *FERC*, 988 F.2d 154 at 161 (D.C. Cir. 1993); n. reference omitted).

[9] *Id. (citing Transcontinental Gas Pipe Line Corporation*, 95 FERC ¶ 61,299 at 62,022 (2001)).

[10] *Id. (citing TransColorado Gas Transmission Company*, 112 FERC ¶ 61,135 at P 14 (2005)).

[11] Protest at 7 (*citing Northern Natural Gas Company*, 95 FERC ¶ 61,315 at 62,077 (2001)).

[12] *Id. (citing OkTex Pipeline Company*, 108 FERC ¶ 61,101 (2004)).

[13] Somerset and North Coast state that elimination of the 0.125 percent surcharge lowers the proposed fuel retention rate to 0.96 percent, which, compared to Crossroads' existing fuel retention percent of 0.2, would increase its existing fuel retention rate by 4.8 times. *Id.* at 8, note 13.

protestors conclude that the directly applicable Commission precedent of *Ok Tex* compels a maximum suspension of the increase in fuel retention, as well as the proposed fuel tracker mechanism. In addition, Somerset and North Coast reiterate that the huge and unexplained increase in fuel retention as well as the fuel tracker itself would have obvious, unwarranted and severe anticompetitive effects, which they argue compel a maximum five-month suspension.[14]

14. The protestors further argue that, if the Commission does not reject the instant filing, the Commission must require Crossroads to respond to data requests and then convene a technical conference. In support of this position, Somerset and North Coast refer to the *OkTex* proceeding, where the Commission first directed the pipeline to respond to data requests[15] and in a subsequent order convened a technical conference.[16] The protestors contend that based on the highly material factual issues raised by this filing, a data request and technical conference are required. Somerset and North Coast include in their protest a request for additional information on five specific items they believe Crossroads should provide.[17]

15. The protestors request a technical conference to fully develop the anticompetitive consequences that they argue would arise from the implementation of the Crossroads' proposed fuel retention rate and fuel tracker mechanism. They also raise concerns on the proposed fuel tracker's May 1 filing date's affect on future annual filings. They argue that a May 1 filing date would be utterly arbitrary, particularly because the May 1, 2007 filing in the instant docket will be made effective on November 1, 2007. They propose an October 1 future filing date so that each fuel tracker filing, including the May 1, 2007 filing, would be in effect for an entire year. The protestors also argue that a June 1 effective data is out of sync with the market realities of selling transportation capacity in market served by Crossroads. They assert that an October 1 filing date of future filings will allow potential North Coast shippers to know all of the principal components of their delivered cost to facilitate making a decision on North Coast capacity.[18]

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[14] *Id.* at 8-9.

[15] *Id.* at 9 (*citing OkTex*, 108 FERC ¶ 61,101 at P 7).

[16] *Id.* (*citing OkTex Pipeline Company*, 108 FERC ¶ 61,227 (2004)).

[17] *See id.* at 9-10.

[18] The protestors argue that if the October 1 date is not selected, the Commission should require a March 1 date for future annual filings, which corresponds to the beginning of the summer season for all customers. *See* Protest at 10-12.

Crossroads' Answer

16. In its answer, Crossroads requests that the Commission accept its proposed retainage percentage increase and implementation of LAUF and fuel use tracker tariff provisions. Crossroads refutes the request that the Commission reject the proposal and emphasize that even in the case on which the protesters rely, the Commission did not reject the filing.[19] In addition, Crossroads asserts that the concept of a tracker provision is well established and supported by Commission policy and precedent[20] as a means of protecting both customers and pipelines. Crossroads also states that its requested increase in the retainage rate, while large, is reasonable and justified.

17. Crossroads also argues that the Commission should reject the protestors' request for a maximum suspension period because the protestors' reliance on *OkTex* ignores other cases where the Commission approved large increases in retainage rates without suspension.[21] Crossroads asserts that the protestors fail to comprehend, or ignore, the significant financial losses Crossroads absorbed over the last years. Specifically, Crossroads states that its LAUF losses for 2005 and 2006 were 50 percent and 29 percent, respectively, of its gross revenues.[22] Therefore, Crossroads argues that suspending its filing for a maximum of five months would produce extraordinarily harsh and inequitable results. In the alternative, Crossroads maintains, the Commission can grant relief and place rates into effect immediately, subject to refund, therefore protecting shippers if the Commission ultimately approves a lower retainage rate.

18. Crossroads disagrees with the protestors' argument that Crossroads has no need for an increase in its existing retainage rate of 0.2 percent.[23] Crossroads submits that its projected retainage factor of 0.96 percent is designed and intended to recover Crossroads' actual LAUF gas for the period June 1, 2007 through May 31, 2008 and is based on actual LAUF gas quantities incurred during 2006 – the most recent calendar year and the best estimate of future LAUF gas quantities. Crossroads asserts that the Commission permitted "dramatic increases" in LAUF gas quantities that were protested.[24] Crossroads

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[19] *See OkTex Pipeline Company*, 108 FERC ¶ 61,101 (2004).

[20] *See Dominion Cove Point LNG, LP*, 106 FERC ¶ 61,339, at P 17 (2004); *see also Colorado Interstate Gas Company*, 112 FERC ¶ 61,356, at PP 13-14 (2005), *citing ANR Pipeline Company*, 110 FERC ¶ 61,069, at P 26 (2005).

[21] *See, e.g., Questar Pipeline Company*, 105 FERC ¶ 61,405, at PP 11-12 (2003).

[22] *See* Crossroads' Answer at 3.

[23] *Citing* Protest at 4.

[24] *See Questar Pipeline Company*, 109 FERC ¶ 61,226 (2004).

states that in *Questar*, the Commission found that "Questar's L&U amounts are within the meter error levels specific in the tariff, and therefore approves them."[25] Crossroads asserts that section 26.12 of its GT&C permits a 2 percent error in metering and that its proposed LAUF retainage rate is just over one-half of that permitted error. Therefore, Crossroads maintains that its proposed 0.96 percent projected rate is not an unreasonable request and should be granted.

19. Crossroads refutes the protestors' argument that if the Commission approves the increased retainage percent and tracker filing, then Crossroads will have no incentive to maintain its system or remedy the problem. Crossroads argues that it has the incentive to reduce LAUF quantities and will continue to have that incentive with its proposed changes since Crossroads must compete against other pipeline systems through its rates and if its transportation charges, including retainage factor remains high the Crossroads will likely lose business or be unable to attract new shippers. In addition, Crossroads states that the protestors' argument: (1) conflicts with Commission policy[26] that approves tracker mechanisms as a means of recovering retainage; and (2) improperly challenges Crossroads' professional integrity and respect for its obligation to maintain its system and to operate it in a prudent manner.

20. Crossroads disagrees with the protestors' description of the proposed 0.125 percent surcharge as retroactive ratemaking. Crossroads states that its request is not for revenues, but is a pass through of LAUF under-recoveries incurred commencing January 1, 2007 for the first three months of 2007. In other words, Crossroads asserts that it is not seeking application of its proposed tracker mechanism for 2006 as a prior period adjustment, but is merely asking recovery of the full costs of its LAUF for all of 2007 as if it had made the instant filing effective January 1, 2007, rather than June 1, 2007. Thus, Crossroads requests compensation for doing business by allowing it recovery of losses incurred beginning January 1, 2007. However, as a concession, Crossroads states that it will remove the 0.125 percent surcharge as long as it can ultimately recover its LAUF losses beginning January 1, 2007, in its subsequent tracker filing.

21. Crossroads states that it agrees with the protestors' request for a technical conference and will provide the information requested associated with the efforts to identify and address the LAUF gas on the system. Crossroads submits that its system is limited and believes that its increase in LAUF lies with the meters. Unfortunately, Crossroads states that thorough review of this issue is limited by its access to information held by the protestors. Specifically, Crossroads submits that it can review the gas balances across its system, but not the gas balances across the protestors' systems. More

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[25] *Citing* Id. P 35.

[26] *See ANR Pipeline Company*, 110 FERC ¶ 61,069, at P 26-28 (2005).

specifically, Crossroads states that its historical negative transportation imbalances created between its system and the protestors may result from measurement errors with their meters, therefore creating not only LAUF quantities, but also, perhaps, a transportation imbalance. Crossroads believes that reviewing the protestors' Gas Balance Reports for the years 2005 and 2006, tracking gas receipts and deliveries across their systems, will help identify any potential issues with the meters at Crossroads' interconnections. Therefore, Crossroads states that a technical conference should explore not only Crossroads' efforts to date to reduce LAUF, but also provide Crossroads the protestors' data to see if any of the LAUF gas recorded by Crossroads has been "found" by the protestors.

22. Finally, Crossroads states that based on the protestors' complaint that Crossroads' May 1 filing date is burdensome, Crossroads is willing to move all subsequent annual tracker filings to March 1 and set an April 1 effective date for those filings. However, Crossroads will not withdraw the instant filing requesting a June 1, 2007, implementation.

Discussion

23. The Commission has reviewed Crossroads' filing, as well as the protest in this proceeding. We will accept Crossroads' proposed tracker mechanism. We find that Crossroads' proposed transportation tracking provision, which is similar to tracking mechanisms approved for its sister pipelines, is just and reasonable. In addition, we note that Crossroad's transportation tracking provision is consistent with Commission policy and precedent[27] which requires a true-up provision as part of any periodic tracking mechanism to ensure just and reasonable operation of that mechanism.

24. However, the Commission finds that Crossroads has not justified its proposed 0.125 unrecovered retainage surcharge. This surcharge reflects under-recoveries that occurred during the months of January, February and March of 2007, before the instant filing. However, the Commission has held that when, as here, a pipeline implements a new tracker and true-up mechanism, it may not include in the initial true-up any under-recoveries that occurred prior to the effective date of the tariff provision. As explained in *HIOS*,[28] any true-up of such prior under-recoveries violates the filed rate doctrine and the rule against retroactive ratemaking. Accordingly, the Commission finds that Crossroads' proposed retainage percent of 1.085 is unjust and unreasonable and therefore rejects the proposed increase. The Commission directs Crossroads to file a revised tariff sheet

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[27] *See Colorado Interstate Gas Company*, 112 FERC ¶ 61,356, at PP 13-14 (2005), *citing ANR Pipeline Company*, 110 FERC ¶ 61,069, at P 26 (2005).

[28] *High Island Offshore System, L.L.C.*, 112 FERC ¶ 61,050, at P 145 (2005) (*HIOS)*.

within 30 days of this order to reflect the removal of the 0.125 retainage surcharge from its instant proposal resulting in a revised retainage rate of 0.96 percent effective, subject to refund and the conditions of this order, June 1, 2007.

25. The Commission concludes that Crossroads has not adequately supported its proposed retainage percentage and, therefore, will conditionally accept and suspend the rate sheet reflecting the proposed retainage percentage and permit the retainage percentage as modified to eliminate the surcharge percentage to become effective, subject to refund and conditions and subject of a technical conference established herein. Although we find that further procedures are necessary to address the issues raised by the proposed retainage percentage in the May 1, 2007 filing, we will not follow the procedures the protestors point to in *OkTex*. Instead, the Commission will direct its Staff to convene a technical conference in order to address the issues raised by the May 1, 2007 filing and the protest. At the conference, the Commission Staff and the parties to the proceedings will have the opportunity to further discuss Crossroads' justification and support for its proposed transportation retainage percentage. Crossroads should be prepared to address the concerns raised by the parties in this proceeding and, if necessary, to provide additional technical, engineering and operational support for its proposed transportation retainage percent. In addition, any party proposing alternatives to Crossroads' proposal should also be prepared to support its position with adequate technical, engineering and operational information. Finally, based upon its analysis of the information provided in this proceeding, the Commission Staff may issue data requests prior to the technical conference or a notice of the technical conference may contain questions that need to be addressed by Crossroads or other parties at the conference.

Suspension

26. Based on a review of the filing, the Commission finds that the proposed rate tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept in-part and reject in-part the tariff sheets for filing, and suspend their effectiveness for the period set forth below, subject to the conditions in this order.

27. The Commission's policy regarding tariff filing suspensions is that filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[29] It is recognized, however, that shorter suspensions may be warranted in circumstances where

[29] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

suspension for the maximum period may lead to harsh and inequitable results.[30] Such circumstances exist here. Therefore, the Commission will exercise its discretion to suspend for a shorter period and conditionally accept and suspend, subject to refund, the proposed rate tariff sheets effective June 1, 2007**,** subject to the conditions of this order and to the outcome of the technical conference established herein and further order of the Commission.

The Commission orders:

(A) Fifth Revised Sheet No. 6 is accepted and suspended to become effective June 1, 2007, subject to refund and conditions set forth in the text above and to the outcome of the technical conference established below.

(B) First Revised Sheet Nos. 39, 359, and 360 and Original Sheet No. 361 are accepted effective June 1, 2007.

(C) The Commission Staff is directed to convene a technical conference to address the issues raised by Crossroads' filing and report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[30] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension).