

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Crossroads Pipeline Company

Docket Nos. RP07-433-000
RP07-433-001 and
RP07-433-003

ORDER ON MOTIONS AND REHEARING

(Issued July 23, 2007)

1. This order addresses several pleadings that were filed prior to and subsequent to the Commission issuing an order on May 31, 2007 (May 31 Order) in this proceeding.¹ For the reasons discussed below, this order grants motions requesting late intervention, denies a motion to postpone the technical conference established by the May 31 Order and grants rehearing of that order to the limited extent set forth below.

Introduction

2. On May 1, 2007, Crossroads Pipeline Company (Crossroads) filed proposed tariff sheets to be effective June 1, 2007, to establish (1) a new annual transportation retainage tracker mechanism 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; and (2) an increased unrecovered retainage percentage of 1.085 percent, inclusive of a 0.125 percent surcharge to recoup under-recovered company use and LAUF incurred during January, February and March of 2007 only. On May 31, 2007, the Commission accepted certain tariff sheets effective June 1, 2007, and conditionally accepted and suspended other tariff sheets, to become effective, subject to refund, June 1, 2007, and subject to the outcome of a technical conference established to address issues raised by the filing and the protests.² Specifically, the Commission accepted tariff sheets reflecting Crossroads' proposed tracker mechanism, but rejected its proposed increased retainage rate of 1.085 percent, finding that the proposed unrecovered retainage surcharge component of the rate violated the filed rate doctrine and the rule

¹ *Crossroads Pipeline Co.*, 119 FERC ¶ 61,221 (2007).

² On June 27, 2007, the Commission issued a notice that the technical conference would be held on July 31, 2007.

against retroactive ratemaking. Accordingly, the Commission directed Crossroads to file a revised tariff sheet to reflect the removal of the 0.125 percent retainage surcharge from its proposed rate, resulting in a revised retainage rate of 0.96 percent.

3. Immediately prior to and subsequent to the issuance of the May 31 Order, a flurry of pleadings, including a contested settlement, were filed in this proceeding that are of relevance to this order. On May 29, 2007, BP Canada Energy Marketing Corporation (BP) filed a motion to intervene out-of-time, protest and request for technical conference. On May 30, 2007, Crossroads filed (a) a motion for leave to answer and answer in opposition to BP's motion to intervene out-of-time and (b) a proposed settlement in Docket No. RP07-433-001 entered into with certain parties³ (May 30 Settlement). On May 31, 2007, BP filed a motion for leave to answer and answer to Crossroads' answer in opposition. On June 19, 2007, BP filed comments in opposition to the May 30 Settlement and Crossroads filed comments in support of the settlement. On June 20, 2007, Constellation NewEnergy-Gas Division, LLC (CNE-Gas) filed a motion to intervene out-of-time. On June 29, 2007, Crossroads filed (a) a motion to postpone the technical conference in order that the Commission consider the pending settlement and (b) reply comments in support of the May 30 Settlement. On July 2, 2007, in Docket No. RP07-433-003, Somerset Gas Transmission Company, LLC (Somerset) and North Coast Gas Transmission, LLC (North Coast) jointly filed a request for rehearing or, alternatively, clarification of the May 31 Order. On July 3, 2007, in Docket Nos. RP07-433-000, -001, and -002, KNG Energy, Inc. (KNG) filed a motion to intervene out-of-time. These pleadings are discussed below.

Discussion

I. Motion to Postpone Technical Conference

4. In Crossroads' June 29, 2007, motion to postpone the technical conference, Crossroads states that it believes the technical conference should not be held before the Commission finalizes its review of the pending offer of settlement filed on May 30, 2007. Crossroads proposes that rather than having the settlement review process and the technical conference progress in parallel, the Commission should permit the settlement process to be resolved before proceeding with the technical conference. Crossroads states that this action would help to further the Commission's policy favoring settlement.⁴

³ Somerset Gas Transmission Company, LLC (Somerset) and North Coast Gas Transmission, LLC (North Coast). On June 7, 2007, ProLiance Energy, LLC (ProLiance) filed a motion to hold settlement proceedings in abeyance, which it later withdrew on June 25, 2007.

⁴ *Citing Mid Louisiana Gas Co.*, 22 FERC ¶ 61,326 at 61,567 (1983).

5. Crossroads states that a key provision in the settlement is a requirement that Crossroads make its next annual fuel tracker filing on October 1, 2007. Crossroads asserts that to give life to this provision, the Commission will need to rule on the settlement by September 1, 2007, to give Crossroads time to meet this obligation. Crossroads also states that postponing the technical conference until 30 days after the resolution of the settlement will in no way prejudice the technical conference and emphasizes that the technical conference can still take place if the settlement is not approved by the Commission.

6. The Commission has reviewed Crossroads' motion to postpone the technical conference. While the Commission's policy favors settlements, the Commission denies this motion. The May 30 Settlement is contested and the issues in the proceeding must be addressed. The Commission believes that a technical conference should proceed as it will provide the parties to the proceeding an opportunity to further discuss Crossroads' technical, engineering and operational support for its proposed transportation retainage percentage, as modified by the May 31 Order.

II. Motions for Late Intervention

7. BP, CNE-Gas and KNG all filed motions to intervene out-of-time. Crossroads filed a motion for leave to answer and an answer opposing BP's motion to intervene. BP also filed a motion to answer and an answer to Crossroads opposition to its intervention. The motions of CNE-Gas and KNG to intervene out-of-time are not opposed but were filed after the May 31 Order was issued. Therefore, each of these requests must be expressly granted pursuant to the Commission's Rules of Practice and Procedure.⁵ Rule 213 of the Commission's Rules of Practice and Procedure, prohibits the filing of answers to a protest unless permitted by the decisional authority. We find that good cause exists to allow the answers of Crossroads and BP because they provide a more complete record in this proceeding.

8. In its answer, Crossroads states that only Somerset and North Coast, who represent over 85 percent of the firm, long-haul contracted capacity on Crossroads, had timely protested the May 1, 2007, filing and that shortly after May 21, 2007, these parties began settlement discussions with Crossroads which led to the settlement agreement that was filed on May 30, 2007. Crossroads argues that BP's late intervention should not be granted because (1) it fails to state good cause for the late filing; (2) it will disrupt the proceeding which will be concluded if the Commission approves the settlement; (3) BP's interest can be adequately represented by other parties in the proceeding; and, (4) it will prejudice the timely intervening parties by imposing an additional burden on them to avoid the cost and time that will come from a technical conference and delayed

⁵ 18 C.F.R. § 385.214 and 18 C.F.R. § 385.213 (2007).

implementation of Crossroads' proposal. Crossroads requested the Commission deny the late intervention and accept the May 1, 2007, filing, subject to the amendments provided in the May 30, 2007 settlement agreement.

9. BP responds that its late intervention is justified. BP explains that because of an administrative oversight by BP, it was unaware of the proposed increase until late May 2007, at which time it contacted Crossroads to discuss the proposed increase, which its Crossroads representative was only vaguely familiar with. BP contends that, irrespective of its initial oversight, its protest was filed before the Commission issued an order in the proceeding and a week after Crossroads filed its answer to Somerset's and North Coast's protest, which BP asserts more fully explained the LAUF issues and associated metering problems and fully identified that the LAUF was due to measurement problems, metering errors, and, perhaps, metering problems at the interconnects with Somerset and North Coast.

10. BP also argues that its interest cannot be adequately represented by Somerset and North Coast.⁶ BP contends that neither Somerset, North Coast, nor Proliance have interests similar to BP as a current replacement shipper receiving service on Crossroads, an agent for shippers on Crossroads and a shipper on North Coast. Further, BP argues against Crossroads' suggestion that Somerset and North Coast can adequately represent its interest, contending that there is no basis in Commission precedent that large shippers can adequately represent smaller shippers.

11. Finally, BP states that real issues continue to exist irrespective of the proposed settlement and that, at the time it filed its late intervention, Crossroads was amenable to a technical conference to discuss the LAUF gas on its system, which was the reason for the unusually high fuel rate for a pipeline with no gas-fired compression.⁷ BP states that, while it does not oppose the implementation of a fuel tracker and true-up on Crossroads' system or the use of actuals to determine its fuel rate, BP asserts that the actuals used to determine the rate should not be "reported actuals" associated with inaccurate meter readings and meter problems that Crossroads is aware of, but has not addressed. BP contends that a technical conference is an appropriate forum to explore LAUF and related issues.

⁶ BP states that it is a replacement shipper with multiple agreements for approximately 16,000 Dth/day with varying termination dates in 2007. BP states that it also has and does acquire released capacity on a month-to-month basis and is an agent for other shippers on Crossroads. Further, according to BP it will be acquiring additional capacity on both Crossroads and North Coast for a one-year term, beginning November 1, 2007.

⁷ See BP's May 31, 2007, Answer at 3-4 (*citing* Crossroads' Answer to Somerset's and North Coast's Protest at 12-13).

12. The Commission finds that BP has provided good cause for the late filing of its motion to intervene. The Commission notes that BP's out-of-time motion to intervene is the only one that included a protest and the only one that Crossroads has opposed. The Commission ordinarily grants late interventions filed before its first order on a pipeline's section 4 filing. Here, BP did file its motion to intervene before the Commission's suspension order, and as a direct customer of Crossroads, it has an obvious interest in Crossroads' rates. The Commission has considered whether granting late intervention at this stage of the proceeding will disrupt the proceeding or place additional burdens or prejudice existing parties and finds that the public interest is better served by permitting the late intervention of BP, as well as the other late interventions, to permit BP's objections to the May 1, 2007 filing and May 30 Settlement to be heard. Moreover, it appears that the interest of these parties in the outcome of the proceeding cannot be adequately represented by any existing party. Accordingly, pursuant to Rule 214, the late motions to intervene filed by the BP, CNE-Gas and KNG are granted, subject to the Commission's rules and regulations.⁸

III. Request for Rehearing or, Alternatively, Clarification

13. Somerset and North Coast request rehearing or, alternately, clarification, of the May 31 Order's acceptance of Crossroads proposal under its new tariff tracker mechanism to file all future trackers by May 1 to be effective as of June 1 each year. Somerset and North Coast urge the Commission to revise Crossroads' tariff to substitute for future annual fuel tracking filings: (1) October 1 and November 1 as the filing and effective dates, respectively; or (2) March 1 and April 1 as the filing and effective dates, respectively. Somerset and North Coast state that, if the Commission does not require these revisions above, then it should reverse or clarify the May 31 Order to ensure that the filing and effective dates for future annual tracker filings is included as an issue to be discussed at the technical conference and resolved thereafter.

14. We find that the proposed annual filing and effective dates for future annual tracker filings should be included as an issue to be discussed at the technical conference. Accordingly, we grant rehearing of the unconditional acceptance of the tariff sheet that contains the May 1 and June 1 dates that are the subject of the request for rehearing, First Revised Sheet No. 359, to the limited extent that acceptance of that sheet is made subject to the outcome of the technical conference established in this proceeding.

⁸ See 18 C.F.R. § 385.214(d)(1) (2007).

The Commission orders:

- (A) Crossroads' motion to postpone the technical conference is denied.
- (B) The late interventions of BP, CNE-Gas, and KNG are granted.
- (C) First Revised Sheet No. 359 is accepted to become effective June 1, 2007, subject to the outcome of the technical conference.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.