121 FERC ¶ 61,298
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 27, 2007

In Reply Refer To:
Cheyenne Plains Gas Pipeline Company, LLC
Docket No. RP08-103-000

Cheyenne Plains Gas Pipeline Company, LLC
PO Box 1087
Colorado Springs, CO 80944

Attention: Catherine E. Palazzari
Vice President

Reference: Negotiated Rate Agreement with Coral Energy Resources, LP

Ladies and Gentlemen:

1. On November 30, 2007, Cheyenne Plains Gas Pipeline Company, LLC (Cheyenne Plains) filed a firm transportation service agreement (TSA) with Coral Energy Resources, LP (Coral) and a revised tariff sheet.[1] Cheyenne Plains tenders the negotiated rate contract, which provides a maximum delivery quantity (MDQ) of 125,000 Dth/day during a contract term of twelve years, under the Commission's material deviation and negotiated rate policies and lists the TSA as a non-conforming agreement on the proposed tariff sheet.[2] Cheyenne Plains requests the Commission permit the tariff sheet to become effective on January 1, 2008. The Commission accepts the TSA for filing and the revised tariff sheet, effective January 1, 2008, as proposed.

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[1] Eighth Revised Sheet No. 1 to its FERC Gas Tariff, Original Volume No. 1.

[2] Cheyenne Plains notes that the TSA was initially submitted in Docket No. CP07-128-000 with a request for confidential treatment. By a letter dated October 25, 2007, the Commission's General Counsel determined the TSA should not receive confidential treatment.

2. In its filing, Cheyenne Plains states that, after the completion of an open season, Cheyenne Plains entered into a TSA with Coral for firm service from the Opal Hub in Lincoln County, Wyoming (on the Questar Overthrust Pipeline Company (Overthrust) system) for delivery to the Cheyenne Hub at the Dullknife delivery point. Because the service involves transportation across the pipeline systems of Overthrust and Wyoming Interstate Company, Ltd. (WIC), Cheyenne Plains states that it secured the necessary off-system capacity on those pipelines in order to provide service from Opal to the Cheyenne Hub (Dullknife). Cheyenne Plains notes that it has accepted turnback capacity (20,000 Dth/day from OGE Energy Resources Inc. to allow for an initial primary delivery point at the South Rattlesnake Creek (Rattlesnake) delivery point near Greensburg, Kansas, for a portion of the contract quantity. Initially, therefore, Cheyenne Plains states that the TSA will provide Coral with transportation service beginning January 1, 2008, that permits it to deliver 105,000 Dth/day of natural gas to Dullknife and 20,000 Dth/day to Rattlesnake.

3. In addition, Cheyenne Plains states that a new natural gas driven compressor station, the Kirk Compressor, located just outside Kirk, Colorado, will provide 70,000 Dth/day of capacity.[3] Upon completion of this expansion, Cheyenne Plains will provide 35,000 Dth/day to Dullknife and 90,000 Dth/day to Rattlesnake. Cheyenne Plains further states that this change in delivery point capacity will become effective from the in-service date of the Kirk Compressor through December 31, 2019.

4. Cheyenne Plains states that the Coral TSA provides two negotiated rates for service to two primary delivery points and includes negotiated rates for service to secondary points as well. For firm transportation service from Opal Hub to Rattlesnake, Coral will pay a negotiated reservation rate of $13.6875 per Dth/month ($.45 per Dth/day), plus all applicable surcharges and fuel charges under Cheyenne Plains' tariff, so long as total fuel charges for transportation services are not greater than 2.4 percent. If a fuel charge assessed for any month is greater than 2.4 percent, the monthly rate will be adjusted downward to $12.7750 per Dth/month ($.42 per Dth/day).

5. Cheyenne Plains describes a similar rate structure for firm transportation from Opal Hub to the Dullknife delivery point. Specifically, if the fuel charge assessed for service from Opal to Cheyenne Hub is not greater than 1.25 percent, Coral will pay a negotiated reservation rate of $7.6042 per Dth/month ($.25 per Dth/day), plus all applicable surcharges and fuel charges under Cheyenne Plains' tariff. Cheyenne Plains further states that if the fuel charge is greater than 1.25 percent, then the monthly rate will be adjusted downward to $6.6917 per Dth/month ($.22 per Dth/day).

6. Cheyenne Plains further states that the Coral TSA contains potentially non-conforming provisions to the applicable rate schedule FT form of service agreement.

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[3] Cheyenne Plains Gas Pipeline Company, LLC, April 2, 2007 Application, Docket No. CP07-128-000.

Cheyenne Plains argues that the Commission should find the provisions to be permissible deviations from Cheyenne Plains' *pro forma* service agreement because: (1) they support the construction of new energy infrastructure; (2) an open-season process offered the same options to all potential shippers but no other party chose to place a bid for the capacity; and (3) pursuant to paragraph 19 of the TSA, Cheyenne Plains will eliminate these provisions from the TSA prior to the in-service date of the Kirk Compressor.

7. Notice of Cheyenne Plains' filing issued on December 4, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. BP America Production Company and BP Energy Company (jointly BP) filed a protest.[4]

8. In its protest, BP states that Cheyenne Plains' TSA contains two negotiated fuel charges and the Commission should confirm that Cheyenne Plains will bear the risk of under-recovery of its fuel costs, and as a result, disallow any roll-in treatment of the fuel costs associated with this project. BP states that the Commission's policy requires that the carrier must bear the risk of under-recovery of its fuel costs for negotiated rates, and cannot shift unrecovered fuel costs to its other shippers.

9. Further, BP states that the Commission has a long-standing policy that "when a pipeline enters into a negotiated rate transaction, it assumes the risk of under-recovery of its costs, as well as the benefit of negotiating rates higher than those for recourse rate shippers."[5] As evidence to this statement, BP cites Commission policy prohibiting discounts to the cost of fuel used in connection with transportation services.[6] BP further states that the provision in the TSA that adjusts the reservation rate when fuel costs exceed a certain level must be considered a negotiated fuel rate. Therefore, BP reasons that Cheyenne Plains should not be permitted to roll-in the fuel costs associated with this type of transaction because recourse fuel rate shippers would be subsidizing the costs of

[4] BP filed this protest in both Docket Nos. CP07-128-000 and RP08-103-000 (not consolidated).

[5] *Columbia Gas Transmission Corp.*, 92 FERC ¶ 61,080, at 61,339 (2000).

[6] *See* 18 C.F.R. §284.10 (c) (2007) (stating the minimum rate "must be based on the average variable costs which are properly allocated to the service to which the rate applies"); *see also Northern Natural Gas Co.*, 121 FERC ¶ 61,136, at P 17 (2007) ("fuel is a variable cost and the Commission's regulations do not permit discounts below variable costs") *and Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119, at 61,352 (2002).

the Coral negotiated fuel charges. As a result, BP states that the only proper course is for the Commission to reject Cheyenne Plains' proposal in Docket No. CP07-128-000 to roll-in the fuel costs associated with the TSA, and price those fuel costs incrementally as BP requested in that proceeding.

10. In its protest, BP makes essentially the same argument as it made in its protest to Cheyenne Plains' certificate application in Docket No. CP07-128-000. BP seeks to have the fuel costs associated with the TSA priced incrementally, as opposed to rolled-in to existing rates. We addressed this issue in our recent order issuing Cheyenne Plains a certificate.

> With respect to rolling in the expansion fuel-related costs, the Commission will accept a pipeline's estimate of project costs and revenues, *including fuel charges and revenues*, as long as the pipeline's estimates are generally reasonable.[7] Accordingly, we will accept Cheyenne Plains' proposal, subject to Cheyenne Plains tracking the fuel attributable to the expansion volumes separately.[8] When Cheyenne Plains files its first fuel tracker after commencing service on its new Kirk compressor, the Commission's procedures will allow all of Cheyenne Plains' customers to challenge any fuel data reported therein. In the interim, we find that Cheyenne Plains' proposal will not harm its existing shippers because the shippers will continue to pay the currently effective fuel rate.[9] The concerned parties are further protected by the Commission's conditional approval of Cheyenne Plains' request for a predetermination for rolled-in rate treatment, in that the rate treatment is approved barring any significant change in the circumstances presented by the pipeline. If future rate review shows that the revenue benefits generated

[7] *See, e.g., Southern Natural Gas Co.,* 113 FERC ¶ 61,199, at P 35-38 (2005) (approving pipeline's proposed rolled-in rate treatment based on estimated project and fuel costs.) *See also Southern LNG, Inc.*, 101 FERC ¶ 61,187, at P 23-24 (2002) (declining to condition the predetermination of rolled-in rate treatment because the pipeline's revenues may decrease or its expenditures increase. The Commission found the protestors' concerns to be premature and speculative as they presented no evidence regarding the likelihood of either outcome.).

[8] *See Dominion Cove Point*, 115 FERC ¶ 61,337, at P 121 (2006).

[9] *See, e.g., Dominion Transmission Inc.,* 118 FERC ¶ 61,007, at P 125 (2007) (finding that until the rates are subsequently reviewed, "[t]he existing customers will not be affected because they will continue to pay the existing system-wide fuel costs….").

> by the project are offset by the fuel consumption associated with the project, the Commission would consider such offset a significant change in circumstances.[10]

11. Nothing in BP's protest to the instant filing changes this analysis. By allowing Cheyenne Plains to roll in its fuel costs in the manner prescribed by our previous order, we are not permitting Cheyenne Plains to escape the risk of under-recovery of its fuel costs. Nor are we allowing Cheyenne Plains to shift unrecovered fuel costs to other shippers. We expressly stated that our approval of Cheyenne Plains' rolled-in treatment of expansion fuel costs is subject to Cheyenne Plains tracking the fuel attributable to the expansion volumes separately. Once Cheyenne Plains places the Kirk Compressor in service, and files to adjust its fuel and lost reimbursement percentages, all parties will have the appropriate data to determine whether changed circumstances require incremental rate treatment to recover Kirk Compressor fuel costs. Therefore, the Commission has addressed the substance of BP's protest in Docket No. CP07-128-000, the disposition of which also applies to BP's protest here.

12. The Commission finds both the rate structure and the nonconforming provisions of the TSA to be just and reasonable, not unduly discriminatory or preferential, and not otherwise unlawful. Therefore, the Commission accepts the Coral TSA for filing and accepts the revised tariff sheet, effective January 1, 2008, as proposed, and subject to Cheyenne Plains' filing with the Commission the appropriate amendments to the TSA once it places the Kirk Compressor in service.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[10] *Cheyenne Plains Gas Pipeline Company, LLC*, 121 FERC 61,273 (2007).