

124 FERC ¶ 61,215
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.

Rockies Express Pipeline LLC

Docket No. CP08-460-000

ORDER DENYING PETITION FOR RELIEF

(Issued September 2, 2008)

1. On August 13, 2008, ConocoPhillips Company, Shell Energy North America (US), L.P., and Yates Petroleum Corporation (the Indicated Shippers) filed a petition for an injunction and a technical conference. The Indicated Shippers seek to enjoin Rockies Express Pipeline Company LLC (Rockies Express) from performing a hydrostatic test that will shut down a portion of Rockies Express' pipeline system from September 3 through September 26, 2008.

2. As described below, we will deny the Indicated Shippers' requested relief.

I. Background

3. On April 19, 2007, we authorized Rockies Express to construct and operate a 713-mile, 42-inch diameter pipeline extending from the Cheyenne Hub in Weld County, Colorado to an interconnect with Panhandle Eastern Pipeline Company in Audrain County, Missouri (the REX-West pipeline).¹ As a part of this approval, we authorized Rockies Express to operate the REX-West pipeline at a maximum allowable pressure (MAOP) of 1,480 pounds per square inch gauge (psig). We also required Rockies Express to construct and maintain its pipeline in accordance with the Department of Transportation's (DOT) safety requirements set forth in 49 C.F.R. Part 192 (2008).²

¹ *Rockies Express Pipeline LLC*, 119 FERC ¶ 61,069 (2007) (April 19 Order). We issued a Preliminary Determination for REX-West in *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 (2006).

² April 19 Order at P 75.

4. On July 14, 2008, Rockies Express posted a notice on its interactive website that from September 3 through September 26, 2008, it intended to perform hydrostatic testing on a 26.6-mile-long segment of the REX-West pipeline between the Steele City compressor station in Gage County, Nebraska and the Turney compressor station in Clinton County, Missouri. The notice stated that during this period, no service would be available at the two easternmost delivery points on REX-West – the ANR Brown and Panhandle Eastern Audrain delivery points.

5. Hydrostatic testing is a means to determine at what pressure a pipeline can transport natural gas. It necessitates the removal of all gas from the affected section of pipeline and filling the pipeline section with water for testing at the designated pressure. In a conference call with its shippers on July 15, 2008, Rockies Express explained that it was necessary to retest a segment of pipe that it had not previously tested to a high enough pressure in order to set the MAOP of the affected segment at 1,480 psig. Rockies Express states that it will need to operate at these higher pressures once its REX-East pipeline is placed into service to Lebanon, Ohio.³

II. Requests for Injunctive Relief and Technical Conference

6. The Indicated Shippers request that the Commission enjoin Rockies Express from conducting its planned hydrostatic testing in September and require Rockies Express to delay its testing for 60 to 90 days.

7. The Indicated Shippers assert that REX-West mainline capacity will be reduced by approximately 50 percent during the testing and the opportunity to re-designate delivery points provides only minimal relief, as such re-designation depends on capacity being available at these other points. The Indicated Shippers contend that September is one of the lowest demand periods in the areas along Rockies Express that will not be affected by testing – i.e., the Rockies Front Range. They allege that this lack of demand will deter efforts to redirect their gas to local markets, therefore resulting in the gas being stranded. The Indicated Shippers claim that later in the year, the demand in the Front Range will increase and provide alternative markets for the gas, mitigating the potential for shut-in gas. The Indicated Shippers allege that shutting in gas can cause significant reservoir damage and result in a permanent loss of recoverable oil and gas. In addition, the Indicated Shippers claim testing should be delayed because the current test dates coincide with hurricane season in the Gulf of Mexico and the storage injection season for most

³ On May 30, 2008, we authorized Rockies Express to construct and operate approximately 639 miles of 42-inch-diameter pipeline from the eastern terminus of the REX-West pipeline to the Clarington Hub in Monroe County, Ohio (the REX-East pipeline). Service is planned to commence on the REX-East pipeline to Lebanon, Ohio in January 2009. *Rockies Express Pipeline LLC*, 123 FERC ¶ 61,234 (2008).

local distribution companies (LDCs). Finally, the Indicated Shippers assert that their proposal to delay the testing by 60 to 90 days would not delay Rockies Express' plans to construct or place into service the REX-East pipeline.

8. The Indicated Shippers request the Commission convene a technical conference to explore the issues raised in their petition.

III. Rockies Express' Response

9. Rockies Express contends that it acted as a prudent pipeline operator in scheduling the hydrostatic testing and notifying its shippers of the planned outage in compliance with its tariff. Rockies Express asserts that it notified its shippers of the testing on July 14, 2008, almost two months before the outage, and the next day convened a conference call to address its shippers' questions.

10. Rockies Express claims that it scheduled the hydrostatic testing at a time most consistent with the public interest; September is a "shoulder month," when demand for natural gas is "relatively low." Rockies Express contends that the Indicated Shippers ignore the pricing and supply impacts that their proposed delayed outage would cause during the winter heating season.

11. Furthermore, Rockies Express contends that because it notified its shippers so early, the gas market adjusted to the planned outage. Rockies Express asserts that there is more than enough capacity to move gas out of the Rocky Mountain region during September and that the real issue for the Indicated Shippers is not the ability to move gas, but rather demand, which affects price.

12. Rockies Express also contends that engineering concerns, like the possibility that conducting the testing in November or December as requested by the Indicated Shippers could result in water freezing in the pipeline and the right-of-way being encumbered by snow, support its proposed timeframe.

13. The Indicated Shippers filed a responsive pleading to Rockies Express' response on August 22, 2008. In it, they reiterated their position that the planned September testing will significantly limit outlets for gas from the Rockies and that the testing can be delayed without harm to other markets. Although the Commission's Rules of Practice and Procedure do not permit answers to comments, we may for good cause waive this provision. We find good cause to accept Indicated Shippers' response in order to insure a complete record.⁴ Further, based on the pleading before us, we find we have sufficient

⁴ 18 C.F.R. § 385.213(a)(2) (2008).

information in the record to rule on the merits of Indicated Shippers' petition. Therefore, we will deny Indicated Shipper's request for a technical conference.

IV. Notice and Interventions

14. Notice of the Indicated Shippers' petition in Docket No. CP08-460-000 was issued on August 15, 2008. BP America Production Company, BP Energy Company, Constellation Energy Commodities Group, Inc., Sempra Energy Trading LLC, Chevron Natural Gas, Plains Exploration & Production Company, Ultra Resources Inc., and Wyoming Pipeline Authority, filed timely motions to intervene.⁵ Northern Indiana Public Service Company (NIPSCO), Northern Illinois Gas Company d/b/a Nicor Gas Company (Nicor Gas), North Shore Gas Company (North Shore), The Peoples Gas Light and Coke Company (Peoples Gas), Michigan Gas Utilities Corporation (MGU), and Wisconsin Public Service Commission (WPSC) filed a timely, joint motion to intervene. Anadarko Petroleum Corporation and Anadarko Energy Services Company also filed a timely, joint motion to intervene.

15. W. A. Moncrief, Jr. filed comments in support of the Indicated Shippers' petition. NIPSCO, Nicor Gas, North Shore, Peoples Gas, MGU, and WPSC (Joint Commenters) filed joint comments in opposition to the petition, contending that there will be more disruption to the gas market if testing occurs during the winter heating season, that the Indicated Shippers have produced no substantive evidence that their reservoirs will suffer damage, and that they, the Joint Commenters, have relied on Rockies Express' testing date and made alternative arrangements.

V. Discussion

16. In accordance with the April 19 Order and DOT's pipeline safety regulations, Rockies Express is required to conduct hydrostatic testing to verify the integrity of its pipeline and validate the certificated MAOP of 1,480 psig in order to maximize throughput. As pointed out by Indicated Shippers, there were difficulties with Rockies Express' initial testing of this segment. Therefore, the 26.6-mile segment of the pipeline that is the subject of the Indicated Shippers' petition must be retested to meet the requirements to operate at the full MAOP. Indicated Shippers do not contest the necessity of a retest; the relief requested "is to prevent the testing from occurring in September."⁶

⁵ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2008).

⁶ August 22, 2008 Answer of the Indicated Shippers at 5.

17. We find that Rockies Express has complied with all applicable provisions of its tariff in scheduling the planned September testing. Rockies Express' tariff provides that its system can be taken out of service for hydrostatic testing, provided sufficient notice is given.⁷ Here, Rockies Express provided over seven weeks of notice to allow the market to adjust to the planned outage.⁸ Shippers have been offered the opportunity to re-designate their primary delivery point rights along the affected pipeline segment to other points. Pursuant to its tariff, Rockies Express will provide reservation credits to affected shippers whose nominations to their primary delivery points cannot be confirmed.⁹

18. We find that Rockies Express has also complied with the provisions of its tariff that requires it to perform maintenance when the reduction in firm service will be minimized.¹⁰ We acknowledge that there will be a reduction of firm service on the REX-West system whenever the subject pipeline system is taken out of service for hydrostatic testing. We also acknowledge Indicated Shippers may have more difficulty finding desirable markets for their gas during September, which is expected to be a period of low demand, than they might later in the year. However, we concur with Rockies Express' assertion that the timely completion of the required testing would be at a much greater risk if it were delayed such that it might have to be performed under winter conditions,

⁷ Rockies Express "may decline to schedule and/or may curtail firm service" for several reasons including, among others, "[d]ue to routine repair and maintenance to be reasonably determined by [Rockies Express]. Rockies Express Pipeline LLC, Orig. Sheet No. 112, General Terms & Conditions (GT&C), section 3.1C.4. "In the event there is a need for [Rockies Express] to engage in routine and normal maintenance of the system, to undertake repairs and replacement of lines of pipe, to schedule DOT compliance activities . . . [Rockies Express] may issue Directional Notices . . . which will contain an estimate of the time, duration, and impact of the activity." *Id.* at Orig. Sheet No. 263, GT&C, Section 36.5D.

⁸ In fact, the Joint Commenters, LDC shippers on the REX-West pipeline, state that they relied on Rockies Express' plan and already adapted to the planned outage.

⁹ See Rockies Express Pipeline LLC, Orig. Sheet No. 113, GT&C, section 3.2C, Rockies Express Pipeline LLC, Orig. Sheet Nos. 139-40, GT&C, section 7.14.

¹⁰ Rockies Express has "the right to reduce receipts or deliveries of [g]as on any [d]ay below shipper's [maximum daily quantity] to permit maintenance, repair, overhaul, replacement, or construction of pipelines, compressors, metering, regulating, or other transmission facilities and equipment, or to maintain system integrity," provided that Rockies Express "attempt to schedule such activity during a period when it will not result in reduction to firm services, or when such reduction will be minimized." Rockies Express Pipeline LLC, Orig. Sheet No. 112, GT&C section 3.1C.9.

since test water could freeze in the lower temperatures and access to the right-of-way could be encumbered by snow and inclement weather.¹¹ The petitioners allege there will be irreparable injury “to the market” if gas is shut-in during the testing period. However, we believe there is a greater risk of harm to gas users if, rather than allowing the hydrostatic testing to go forward in September, we require Rockies Express to delay it until November or December, during the start of the winter heating season, when demand for natural gas will likely be higher.

19. In the past, we have acknowledged that pipeline operators need reasonable discretion to manage their systems and we have generally deferred to a pipeline’s expertise as an operator.¹² Under the circumstances discussed above, we find that Rockies Express’ plan for hydrostatic testing in September is reasonable. Accordingly, the Indicated Shippers’ request that we require Rockies Express to delay its planned September hydrostatic testing of its system is denied.

The Commission orders:

The Indicated Shippers’ August 13, 2008 requests that we require Rockies Express to delay its planned September hydrostatic testing of a portion of its system and convene a technical conference are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ Rockies Express states that it also plans to perform other maintenance projects at the same time as the outage, reducing the need to disrupt service in the future.

¹² *Natural Gas Pipeline Co.*, 41 FERC ¶ 61,164, at 61,412 (1987).