126 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Bridger Pipeline LLC — Docket Nos. IS09-123-000, IS09-124-000

ORDER REJECTING TARIFF FILINGS

(Issued February 27, 2009)

1. On January 29, 2009, Bridger Pipeline LLC (Bridger) filed FERC No. 16 in Docket No. IS09-123-000 and FERC No. 17 in Docket No. IS09-124-000, to be effective March 1, 2009. Bridger states that these tariffs were filed to provide new displacement services on its pipeline. This order finds that the services proposed by Bridger do not constitute the interstate transportation of oil and do not require a Commission tariff. Accordingly, this order rejects Bridger's proposed FERC No. 16 and FERC No. 17.

Background

2. On January 29, 2009, in Docket No. IS09-123-000, Bridger filed FERC. No. 16 to provide new displacement services. Bridger states that pursuant to the proposed tariff it will provide service from Poplar Station, South Poplar Station (Fisher), Richey Station, or Glendive Station, in Montana, to Stanley Station, North Dakota; and from Stanley Station in North Dakota to Poplar Station, South Poplar Station (Fisher), Richey Station, or Glendive Station in Montana. Bridger states that these services shall be provided through displacement and only if there are sufficient offsetting displacement nominations under the tariff. Bridger states that the rate for these displacement services will be $0.15 per barrel. Bridger states that pursuant to the provisions of section 342.2(b) of the Commission's regulations,[1] it has attached a sworn affidavit that the new rates have been agreed to by at least one non-affiliated shipper who intends to use the service.

3. Also on January 29, 2009, in Docket No. IS09-124-000, Bridger filed FERC No. 17 to provide new displacement services. Bridger states that pursuant to the proposed tariff it will provide service from Fryburg Station, Billings County, North Dakota to

[1] 18 C.F.R. § 342.2(b)(2008).

Stanley Station, Mountrail County, North Dakota; and from Stanley Station to Fryburg Station. Bridger states that these services shall be provided through displacement and only if there are sufficient offsetting displacement nominations under the tariff. Bridger states that the rate for these displacement services will be $0.15 per barrel. Bridger states that pursuant to the provisions of section 342.2(b) of the Commission's regulations, it has attached a sworn affidavit that the new rates have been agreed to by at least one non-affiliated shipper who intends to use the service.

Enserco's Protest

4. On February 13, 2009, Enserco Energy Inc. (Enserco) filed a motion to intervene and protest to both filings. Enserco states that it is a marketing company specializing in the optimization of energy assets in the western and mid-continent regions of the U.S. and Canada. Enserco states that its Crude Oil Services Group purchases, aggregates and transports Rocky Mountain area crude oil lease production to area refineries or other markets. Enserco states that it is a past, current, and future shipper on the interstate, common carrier, pipeline system of Bridger and a potential shipper for the new services at issue under the tariffs. Enserco states that it is a competitor for many of the markets served by Bridger and its other True family affiliates.[2] Accordingly, Enserco states that it has a substantial economic interest in this proceeding that cannot be adequately represented by any other party.

5. Enserco asserts that Bridger's proposed new, so-called "displacement" services are inconsistent with the Interstate Commerce Act (ICA) because they are not transportation service at all. Rather, Enserco contends that the services constitute an exchange of commodity involving no transportation that are simply part of Bridger's ongoing efforts to provide preferences to its marketing affiliate, Eighty Eight Oil. Enserco submits that Bridger's proposed displacement services are on non-contiguous pipeline segments and Bridger has no means except through other pipelines to move crude oil physically between the points described in its proposed tariffs. Enserco asserts that Bridger's affiliate, Eighty Eight Oil is the dominant historical shipper on Bridger and would be the chief beneficiary of the new services. Enserco argues that Eighty Eight Oil would realize a tremendous transportation savings ($0.15 per barrel vs. $5.74 and $6.00 per barrel, respectively) over the trucking fees it currently pays to third parties. Enserco contends that these transportation cost savings will be captured by the True family of companies.

[2] Bridger Pipeline LLC, Belle Fourche Pipeline Company, Butte Pipe Line, and the marketing affiliate Eighty-Eight Oil LLC (Eighty-Eight Oil) are owned by the True family.

6. Enserco states that serious issues are also raised by the impact Bridger's proposed services may have on its prorationing procedures and the absolute lack of transparency that exists under Bridger's proposed tariffs with respect to prorationing. Enserco states that prorationing under the new services will occur under Bridger's currently effective FERC No. 2. Enserco states that FERC No. 2 is also used in connection with other physical transportation service historically provided by Bridger. Enserco asserts that it is completely unknown, nor can it be determined from Bridger's filing, how the new services will affect historical shippers' prorationing rights and how the prorationing scheme is supposed to be applied to the new displacement services. Indeed, Enserco argues that it is difficult to understand how prorationing applies at all to a service that involves no physical pipeline transportation of crude but, instead, occurs as a result of accounting entries.

7. Enserco asserts that the rates Bridger is proposing to charge under the tariffs appear to have been fashioned entirely from whole cloth. Enserco states that in its filings, Bridger provides absolutely no basis for charging $0.15 per barrel for the proposed displacement services. Enserco submits that Bridger should be required to provide cost justifications for these proposed charges together with relevant throughput data.

8. Enserco asserts that it is difficult to understand how Bridger's proposed new displacement service will benefit independent shippers in the market. Enserco states that the displacement “service” that Bridger has proposed currently operates within the marketplace as a commodity exchange. Enserco states that this occurs whenever two shippers trade crude oil in one location along the Bridger system for barrels of oil located elsewhere on the pipeline. Enserco contends that permitting the pipeline to interpose itself into a service that is already offered by the marketplace seems designed to make the service less flexible and less reliable to the advantage of Bridger and its affiliates.

Bridger’s Answer

9. On February 18, 2009, Bridger filed an answer to Enserco’s protest. Bridger asserts that the displacement services proposed in its FERC No. 16 and FERC No. 17 provide another opportunity to alleviate the first constraints producers face in the Williston Basin region of North Dakota; that is, moving barrels out of the field. Bridger asserts that the Williston Basin suffers from a lack of sufficient infrastructure, both gathering pipelines and trucks, to meet producer demand to move crude oil. Bridger argues that by offering displacement service, it can give producers more assurance that their product will avoid downstream constraints while providing a more dependable and inexpensive transportation option.

10. Bridger asserts that Enserco has no standing to protest the tariff filing because none of its general statements describe Enserco’s substantial economic interests in the

tariff filings at issue. Bridger asserts that Enserco is not even a current shipper using any of the origin and destination services being provided in FERC No. 16.

11. Bridger asserts that the fact that the pipeline has non-contiguous segments has no bearing on the issue of whether a pipeline can properly offer such a transportation service to shippers. Bridger contends that transportation service begins when a shipper tenders its barrels to a pipeline at a particular point, and asks the pipeline to deliver barrels at a different point. Bridger argues that if a shipper is able to deliver its barrel to a pipeline at a particular point, and then receive barrels at another point, the transportation service has been provided. Bridger submits that displacement services are often offered in situations where physical movement from the origin to the destination is not possible (i.e. when the pipeline flows in the opposite direction). Bridger submits that the Commission has recognized exchanges by displacement service not only in oil and products pipeline tariffs, but also as a form of transportation or transmission in both the natural gas and electric transmission contexts.

12. Bridger argues that Enserco's protest is aimed at preventing the proposed displacement services from going into effect, thus protecting its own trucking interests. Bridger asserts that Enserco's action is protectionist and anticompetitive. Bridger submits that the addition of displacement services is good for shippers and producers because it gives them an efficient, reliable and cost-effective option to transport the crude oil from North Dakota to other markets.

13. Bridger states that in the unlikely event prorationing of the displacement services is necessary, the displacement services will be prorated pursuant to the policies outlined in FERC No. 2 just as all other movements on Bridger's pipeline segments. Bridger states that it prorates the movements by segment and if it becomes necessary, Bridger will prorate the movements nominated on FERC No. 16 or FERC No. 17 by segment as well. Therefore, Bridger submits that a shipper's status on other segments of Bridger will in no way be affected by the shipper's status under FERC No. 16 or FERC No. 17.

14. Bridger states that it is proposing to charge $0.15 per barrel for all of the displacement services being offered. Bridger states that while it is true no additional transportation will take place, Bridger will incur administrative and accounting costs to provide these services. Thus, Bridger states that the $0.15 per barrel charge is based on the administrative and accounting costs incurred by Bridger for providing the displacement services. Bridger concludes that the Commission should reject Enserco's protest and allow the tariffs to go into effect as proposed.

Discussion

15. In this proceeding, Bridger requests that the Commission accept two proposed tariffs to provide displacement services between non-contiguous pipeline segments of Bridger's pipeline. As recognized by Enserco, Bridger has no means except through

other pipelines to move crude oil physically between the points described in its proposed tariffs. The Commission recognizes that an oil pipeline may provide displacement services, and displacement services by backhaul or counterflow occur on natural gas pipelines and electric transmission systems. However, in such cases, while the movement of the commodity may go against the flow of the system, the commodity itself is received into and transported on one contiguous system. Here, however, Bridger is proposing that oil be "transported," for example, from a portion of its pipeline system in North Dakota to another part of it system in Montana that are not connected to each other. The only physical transportation path would be through other pipelines and Bridger has not filed any joint tariff with these other pipelines that would make such proposed displacement services physically possible.

16. In *Western Refining Pipeline Company,*[3] the Commission declined to direct an oil pipeline to provide an exchange service in the opposite direction of the flow of a single-directional oil pipeline. In that case, the Commission determined that "since there is no actual movement of oil, there is no transportation involved. The exchange is essentially a private contractual arrangement between the parties exchanging barrels, and thus there is no need to involve the pipeline at all, for there is nothing for the pipeline to do to make an exchange happen."[4] Similarly, as described by Enserco in its protest, the service proposed by Bridger can be accomplished in the market without the involvement of a pipeline. The two shippers merely trade crude oil in one location on a pipeline system for barrels of oil located elsewhere on the pipeline and then individually arrange for transportation with the pipeline for the traded volumes. The trade thus occurs separately from the pipeline's jurisdictional transportation services. Therefore, the Commission finds that the so-called displacement services proposed by Bridger do not involve the transportation of oil in interstate commerce, and therefore, do not require a Commission tariff. Accordingly, FERC No. 16 and FERC No. 17 are rejected.[5]

[3] *Western Refining Pipeline Company,* 122 FERC 61,210 (2008).

[4] *Id.* P 16.

[5] Since the Commission is rejecting the proposed tariffs the Commission need not address other issues raised in the proceeding such as whether Enserco has a standing to file a protest, whether Bridger's proposed rate has been properly supported, or the effect of the proposed service on Bridger's prorationing policy.

<u>The Commission orders</u>:

Bridger’s FERC No. 16 and FERC No. 17 are rejected.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.