

126 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Petal Gas Storage, L.L.C.

Docket Nos. RP08-421-001
RP08-421-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued March 4, 2009)

1. On July 24, 2008, the Commission issued an order¹ which conditionally accepted the June 24, 2008 filing of Petal Gas Storage, L.L.C. (Petal) which proposed numerous changes to its General Terms and Conditions (GT&C) and the tariff's *pro forma* service agreements. The order required Petal to revise its proposal and make a number of changes. On August 13, 2008, Petal filed revised tariff sheets² to comply with the July 24 Order.
2. On August 25, 2008, BP American Production Company and BP Energy Company (collectively referred to as BP) filed a request for rehearing of the July 24 Order. BP asserts the Commission erred by approving Petal's proposal to schedule Interruptible Transportation Service (ITS) nominations based on the sum of the rates that the shipper pays for ITS service and interruptible storage service (Rate Schedule ISS). BP and ArcLight Energy Marketing, LLC (AEM) protested the compliance filing. For the reasons discussed below, the Commission grants rehearing, conditionally accepts Petal's revised tariff sheets, and requires Petal to make additional revisions.

¹ *Petal Gas Storage, L.L.C.*, 124 FERC ¶ 61,082 (2008) (July 24 Order).

² See Appendix.

Background

3. AEM protested Petal's June 24, 2008 filing stating it was "troubled by the use of the combined value to the owners of Petal of both ISS and IT." AEM claimed this would permit "Petal to require IT shippers purchase ISS in order to make a purely IT transaction between two pipeline interconnections."³ The July 24 Order denied the protest stating that revised section 1(d) of Rate Schedule ITS specifically provides service for any customer who executes an "ITS agreement only and agrees to comply with the balancing provisions contained in section 9, herein." The order stated that the tariff does not require the execution of an ISS agreement to receive transportation service only.⁴ Thus, the order held that the predicate advanced by AEM on this issue was not supported by the current effective tariff or the instant proposal.

4. The July 24 Order rejected Petal's proposal to require firm and interruptible transportation shippers to maintain a balancing agreement under Rate Schedules Interruptible Storage Service (ISS) or Advancing Service (AVS), or to obtain equivalent balancing services from an approved third-party balancing provider.⁵

5. Petal proposed at section 4.1 of its GT&C to separately state the scheduling priorities for storage and transportation services. Petal's proposal gave a higher scheduling priority to authorized overrun service for firm transportation service, as compared to interruptible transportation service. The Commission required Petal to revise both the existing tariff provision and the proposed tariff provisions in section 4.1 of GT&C to give overrun services and interruptible services the same priority.⁶

6. Regarding service to firm shippers, Petal proposed to interrupt service pro rata based on confirmed nominations. The Commission conditionally accepted Petal's proposal contingent upon Petal clarifying its tariff to state that Petal would base curtailments extending beyond one day on confirmed nominations for that curtailment day.⁷ The Commission also directed Petal to revise its tariff

³ AEM's Protest at 10.

⁴ July 44 Order at P 44.

⁵ *Id.* P 17.

⁶ *Id.* P 13.

⁷ *Id.* P 14.

provisions to provide full reservation charge credits when the pipeline curtails firm service and to include a partial reservation charge credit to shippers when curtailment is due to *force majeure*.⁸ The Commission also directed Petal to revise its tariff to include the Simple Negligence Standard, so that Petal may be wholly or partially liable for damages caused in whole or part by its negligence.⁹

7. In section 20 of its GT&C, Petal proposed to clarify that a shipper who contracts for storage service may sell its storage working gas by title transfer if Petal determines the transfer will not affect its ability to meet its obligations to existing shippers or the operations of its storage facilities. The Commission directed Petal to remove the 24 hour approval proposal or explain how it is consistent with the policies approved in Order No. 712.¹⁰

Petal's Compliance Filing

8. Petal resubmitted all of the tariff sheets submitted on June 24, 2008, with the new effective date, July 25, 2008 as set forth in the Appendix. Petal revised section 4.1 of its GT&C to clarify that unauthorized overrun service for firm and interruptible shippers will have the same scheduling priority. Petal revised section 4.4(a) of its GT&C to state that it would base curtailments extending beyond one day on confirmed nominations for that curtailment day. Petal revised section 9.2 of Rate Schedule ITS and section 11.2 of Rate Schedule FTS to remove the requirement that shippers acquire separate daily balancing service with Petal or a Petal-approved third party. Petal revised section 4.5 of its GT&C to clarify that Petal may be liable for damages caused in whole or part by its negligence.

9. Petal revised section 4.4 of its GT&C to clarify that it will provide a full reservation charge credit to firm customers when Petal fails to deliver on any day at least 98 percent of a Shipper's confirmed nomination, except for situations not under Petal's control. A partial reservation charge credit equal to the confirmed volume that is not delivered will apply where curtailment is the result of events beyond Petal's control.

10. In GT&C section 20, Petal deleted the requirement that shippers wait for Petal's 24 hour approval process when conducting title transfers of gas in storage. Petal also revised its tariff language to clarify that it may not disallow any in-field

⁸ *Id.* P 19 and 23.

⁹ *Id.* P 28.

¹⁰ *Id.* P 38.

storage transfer tied to a release of the associated capacity, consistent with Order No. 712. However, the revised section did not change the language in the tariff that Petal would allow the in-field transfer when Petal “in its sole discretion” determined that the transfer will not affect Petal’s ability to meet its obligations to existing customers or otherwise adversely affect its operational integrity.

Notice

11. Notice of Petal’s compliance filing issued on August 15, 2008. Protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). On August 25, 2008, AEM and BP filed protests.

BP’s Rehearing Request

12. BP contends the Commission erred by approving Petal’s proposal to schedule ITS nominations as part of the daily scheduling procedures based on the bundled rate the shipper pays for ITS service and interruptible storage service (Rate Schedule ISS). BP asserts that Petal should only consider the unbundled ITS rate in determining the scheduling priority for a shipper’s ITS nominations. Similarly, BP requests the Commission clarify that in scheduling ITS service for an ITS/FSS shipper, Petal cannot take into account the rate that the shipper pays for Firm Storage Service (FSS).

13. BP states that Petal’s existing tariff provided that scheduling priorities are based on the rate the shipper pays for the pertinent service, ITS or ISS, citing GTC § 4.3, Third Revised Sheet No. 113. However, Petal’s June 24 filing revised the section. BP asserts the revised section now provides that the highest priority for IT service is that receiving gas from or delivering gas to a firm storage service, but then provides that:

A lower priority shall be given to all other IT service, with the highest total rate given the highest priority, including the sum of the rates for the ITS service and any associated interruptible storage service.

14. BP refers to AEM’s prior protest which objected to Petal’s proposal because it combined the rate for ISS and ITS services in scheduling ITS. BP argues that while the July 24 Order denied the protest, see P 3, *supra*, the order did not address the “bundling” contention.

15. BP asserts the Commission erred because the unbundled ITS rate should be the only rate considered by Petal in determining the scheduling priority for a shipper’s ITS nominations. BP argues that scheduling based on bundling of a

shipper's ITS rate and ISS rate is contrary to Commission policy that promotes the unbundling of transportation and storage services so that a shipper can choose which service to utilize, citing *Transcontinental Gas Pipeline Corp.*, 112 FERC ¶ 61,170, at P 116 (2005) (*Transcontinental*). BP contends that "the bundling of ITS and ISS could force an ITS shipper to execute a contract for I[S]S for the sole purpose of increasing the total rate paid by the shipper so that the shipper would have a higher priority in connection with acquiring an ITS contract."¹¹ BP states the same holds for a shipper increasing the rate for ISS for the sole purpose of gaining an advantage in Petal's rate-based scheduling of ITS service. BP states shippers on Petal should be able to choose which service, ITS *or* ISS, they will acquire.

16. BP argues that Petal's bundling of ITS and ISS rates essentially transforms Petal's ITS, which is cost-based because Petal has not demonstrated the lack of market power in the transportation service, into a market-based rate service. BP asserts that the Commission has held that it violates Commission policy for a pipeline to bundle rates for a market-based rated service and a cost-based rate service because it transforms the cost-based rate service into a market-based rate service.¹²

17. BP also argues that bundling ITS and ISS rates violates Commission policy that a shipper that pays the maximum rate for a service must have the highest priority for this service. By bundling, a shipper may have to pay higher than the maximum rate to get the highest priority in contracting and scheduling contrary to the Commission policy that shippers who pay more than the maximum recourse rate do not have a higher priority than a shipper paying the maximum rate.¹³ BP argues that Petal's proposal violates this Commission policy because the bundling of ITS and ISS would require a shipper to offer to pay more than the ITS maximum rate to have the higher priority in contracting and scheduling.

18. BP also requests that the Commission clarify that in scheduling ITS service for an ITS/ FSS, Petal cannot take into account the rate that the shipper pays for FSS.

¹¹ Rehearing request at 3. The bracket reflects a change in the quote to correct an error, otherwise the argument does not follow.

¹² *Transok*, 97 FERC ¶ 61,362 (2001).

¹³ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,491 (1996).

Discussion

19. The Commission grants rehearing. Petal provides two distinct services. The revised proposal essentially links them together. By creating a *de facto* bundling of ITS/ISS service, Petal's proposal violates the Commission policy promoting the unbundling of transportation service so that a shipper can choose which service to utilize. In *Transcontinental, supra*, the Commission found the bundling of the pipelines withdrawal service with its FT service was unjust and unreasonable because "customers should have the option of choosing whether to contract for separate and distinct service."¹⁴ The Commission denied rehearing because the pipeline did not show why bundling was necessary for operational reasons. The same is true here.

20. We also clarify that in scheduling ITS services for an ITS/FSS shipper, Petal cannot consider what a shipper pays for FSS. Accordingly, the Commission finds merit with BP's request and directs Petal to revise its tariff language to state that Petal can only consider the shipper's ITS rate when scheduling ITS nominations.

Protests to Compliance Filing

21. Both AEM and BP protest sections 20.1 and 20.2 of Petal's GT&C dealing with in-field transfers of gas in storage and request that the Commission reject Petal's proposed changes to title transfers of gas in storage. They state that in the July 24 Order, the Commission found that Petal failed to show why the proposed limit on in-field transfers was necessary and directed Petal to remove its 24 hour approval proposal or explain how it is consistent with Order No. 712.

22. BP argues the only proposed change Petal made in its Compliance Filing is that Petal added that it "may not disallow an in-field transfer tied to a release of the associated storage capacity." AEM asserts that Petal's new revised language is almost identical to the original and it actually allows Petal to exercise its proposed veto authority at any time. AEM maintains the Commission should instruct Petal to delete the proposed restriction on in-field title transfers of storage inventory in their entirety. BP argues that not only does Petal fail at providing an operational justification for its proposal, but the language to govern the transfer is flawed. BP states the Commission does not allow a tariff to authorize the pipeline to act in its "sole discretion."¹⁵

¹⁴ 112 FERC ¶ 61,170 P 116.

¹⁵ *Freebird Gas Storage*, 111 FERC ¶ 61,054, at P 42 (2005).

23. Both AEM and BP assert the operational harm that Petal referred to in the example it included in its transmittal letter stems from the firm injection rights of the other shipper to the transaction, not from the in-field transfer. They both urge the Commission to reject the proposed limits on an in-field transfer of storage inventory.

24. BP protests that Petal did not comply with the Commission's directive to provide full reservation charge credits when Petal curtails service because revised GT&C section 4.4 only provides a credit if Petal fails to deliver at least 98 percent of the customer's confirmed nomination. BP asserts the Commission previously rejected other pipelines' proposals for a similar 2 percent curtailment credit tolerance, and therefore the Commission should reject the proposed 2 percent Curtailment Credit Tolerance as contrary to Commission policy.

Discussion

25. The Commission finds merit in BP's protest on the reservation charge credit. The Commission directed Petal to provide a full reservation charge credit when the pipeline curtails in non-force majeure situations. The revised section, GT&C section 4.4 provides that Petal will provide a credit when Petal fails to deliver at least 98 percent of the shipper's confirmed nomination. The Commission has rejected proposals by other pipelines which provided that the credit would apply only when the pipeline delivered less than 98 percent of the shipper's confirmed nomination. Thus, in *SC Resources, LLC*, the Commission explained:

The Commission's policy regarding reservation charge adjustments is that where scheduled gas is not delivered due to a non-force majeure or planned maintenance event, there must be a full reservation charge adjustment as to the undelivered amount. This is because the failure was due to the pipeline's conduct and was within its control. SGRM's proposal not to provide reservation charge credits when it schedules at least 98 percent of a shipper's nominations in non-force majeure situations does not comply with Commission policy because it requires shippers to bear the risk associated with interruption of service within the pipeline's control. SGRM is directed to revise its

tariff to provide reservation credit when it does not provide 100 percent of its scheduled service.¹⁶

26. Petal's proposed language violates Commission policy that a pipeline must provide a full reservation charge credit when the pipeline curtails service. Accordingly, Petal must revise section 4.4 and eliminate the 98 percent limitation in non-*force majeure* situations.

27. The Commission also finds merit in the protest of Petal's proposed limitations on in-field title transfers of storage inventory. The Commission directed Petal to remove the 24 hour approval process for title transfers, and to state that it may not disallow any in-field storage transfer tied to a release of the associated capacity, consistent with Order No. 712, both of which Petal has done in the revised GT&C section 20. However, in that section Petal proposes to retain its ability to deny in-field transfers in certain limited circumstances to protect its operational integrity, and Petal described the circumstances requiring that action in the following example included in Petal's transmittal letter:

Assume Shipper A has purchased a one-turn, firm storage service with a maximum storage quantity ("MSQ") of 214,000 Dth, and associated firm injection rights of 1,000 Dth/day (i.e., 214 days to fill the account). Shipper B has a substantially greater MSQ of 5,000,000 Dth, and associated firm injection rights of 250,000/day (i.e., 20 days to fill the account), under a 12 turn firm storage service. Shipper A finds that it has a zero storage balance near the end of the summer injection season, and therefore requests Shipper B (who has filled his account) to transfer the entire 214,000 from its account to Shipper A. To replace that transferred quantity, Customer B buys 214,000 Dth from a third party on the next day, and seeks to nominate that volume (which is within its daily entitlement) to be injected on one day. The problem under this scenario, however, is that when salt dome cavern pressures are at or near maximum (near the end of the injection season), the pressure in the caverns is higher than otherwise; and as a result, the available

¹⁶ 122 FERC ¶ 61,180 (2008); see also *Express Pipeline*, 116 FERC ¶ 61,272, P 63 (2006).

compression does not permit the same level of volumes to be injected. While Petal could have satisfied its firm service obligation to Shipper A to inject 1,000 Dth per day over a 214 day period, it may not be able to accommodate the Shipper B nomination to inject 214,000 Dth in one day.

28. We agree with protestors that the example Petal furnished does not demonstrate that the in-field transfer has the potential to adversely affect operational integrity of the system. Rather, as protestors assert, any operational problems stem from the injection rights of the other shipper to the in-field transfer. Protestors note the tariff already provides Petal with the tools to prevent such harm when Petal cannot receive or deliver scheduled volumes.¹⁷ Moreover BP proposes a solution for Petal to avoid such harm by adopting ratcheted injection rights that decrease as the pressures in its caverns increase, if Petal can demonstrate an operational need for this restriction. The Commission agrees with AEM and BP that Petal has failed to demonstrate the need for limitations on in-field title transfers. The Commission rejects Petal's proposed changes to sections 20.1 and 20.2 of its GT&C, and Petal must revise that section consistent with the instant discussion.

The Commission orders:

(A) BP's request for rehearing is granted.

(B) The tariff sheets listed in the Appendix are accepted subject to the conditions discussed in the body of this order.

¹⁷ Section 4.4(a) of Petal's tariff (Fourth Revised Sheet No. 113, provides as follows:

4.4 Interruption

(a) If on any day, due to any cause whatsoever, Petal's capability to receive or deliver volumes is impaired so that Petal is unable to receive or deliver all the volumes which are scheduled, then interruption of storage or transportation service shall be made in reverse order of priority set forth in section 4.1.

(C) Within 20 days of issuance of this order, Petal is directed to file revised tariff sheets consistent with the discussion in the body of this order

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX**Petal Gas Storage, L.L.C.****FERC Gas Tariff, Original Volume No. 1*****Tariff Sheets Accepted Effective July 25, 2008:***

First Revised Sheet No. 1A	Sixth Revised Sheet No. 110
Fourth Revised Sheet No. 2	Substitute Second Revised Sheet No. 111
First Revised Sheet No. 11A	Third Revised Sheet No. 112
Fifth Revised Sheet No. 15	Fifth Revised Sheet No. 115A
First Revised Sheet No. 65	First Revised Sheet No. 115C
Third Revised Sheet No. 75	Second Revised Sheet No. 120
First Revised Sheet No. 77	Third Revised Sheet No. 122
Substitute First Revised Sheet No. 82	Eighth Revised Sheet No. 126
First Revised Sheet No. 85	Eighth Revised Sheet No. 127
Substitute First Revised Sheet No. 89	First Revised Sheet No. 134
Original Sheet No. 90	Fifth Revised Sheet No. 210
Sheet Nos. 91 – 99	Fifth Revised Sheet No. 222
First Revised Sheet No. 103B	Original Sheet No. 235
First Revised Sheet No. 103C	Original Sheet No. 236
Fifth Revised Sheet No. 104	Original Sheet No. 237
Sixth Revised Sheet No. 105	Original Sheet No. 238
Second Revised Sheet No. 107	Original Sheet No. 239
Third Revised Sheet No. 108A	Original Sheet No. 240
Seventh Revised Sheet No. 109	Original Sheet No. 241

***Tariff Sheets Conditionally Accepted, Effective July 25, 2008,
Subject to Further Revision or Clarification:***

Substitute Fourth Revised Sheet No. 113
 Second Revised Sheet No. 114
 Substitute Second Revised Sheet No. 128

Tariff Sheets Rejected as Moot

First Revised Sheet No. 82
 First Revised Sheet No. 89
 Second Revised Sheet No. 111
 Fourth Revised Sheet No. 113
 Second Revised Sheet No. 128