129 FERC ¶ 61,047
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 19, 2009

In Reply Refer To:
Cheyenne Plains Gas Pipeline
Company, L.L.C.
Docket No. RP09-1054-000

Cheyenne Plains Gas Pipeline Company, L.L.C.
P.O. Box 1087
Colorado Springs, CO 80944

Attention: Catherine E. Palazzari, Vice President

Reference: New Negotiated Rate Agreement

Dear Ms. Palazzari:

1. On September 18, 2009, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) filed a new firm transportation service agreement (Agreement) and Eleventh Revised Sheet No. 1 to its FERC Gas Tariff, Original Volume No. 1. The new Agreement implements a permanent release of capacity by Berry Petroleum Company (Berry) to Augustus Energy Partners, LLC (Augustus). The new Augustus Agreement contains identical provisions to the previously filed and accepted Berry Agreement. The revised tariff sheet removes the Berry Agreement and adds the Augustus Agreement to Cheyenne Plains' list of non-conforming agreements. Cheyenne Plains requests the Commission accept the Augustus Agreement for filing and grant waiver of section 28.13(b) of its General Terms and Conditions (GT&C) to effectuate the permanent release from Berry to Augustus. As discussed below, the Commission grants the above-mentioned waiver, and accepts the Augustus Agreement and the related tariff sheet to become effective October 20, 2009.

2. Cheyenne Plains states that the Augustus Agreement reflects the permanently released capacity previously held by Berry pursuant to Contract #21016 in accordance with the capacity release provisions in section 28.8 of its GT&C. Cheyenne Plains further states that pursuant to the terms of the permanent release, the obligations and responsibilities of both Cheyenne Plains and Augustus will continue as originally contracted with Berry, i.e., Augustus has "stepped-into-the-shoes" of Berry.

3. Cheyenne Plains states that the Augustus Agreement conforms to Cheyenne Plains' *pro forma* service agreement with the exception of one provision carried over from the original Berry Agreement. Cheyenne Plains states that paragraph 15 retains the requirement on the part of the shipper to provide evidence of creditworthiness equal to at least one year of reservation and commodity charges. Cheyenne Plains further states that the Agreement's creditworthiness requirement was a result of the need to reasonably ensure that the costs of an expansion project, the Yuma Lateral, would be recovered from the shippers supporting the expansion. Cheyenne Plains asserts that given that Augustus is stepping-into-the-shoes of Berry, who was an expansion shipper, it is appropriate to continue the requirement in the Augustus Agreement. Cheyenne Plains notes that the creditworthiness provision was previously reviewed and accepted by the Commission.[1] The contract term of the Augustus Agreement is from August 1, 2009 through December 31, 2016. Footnote No. 1 of Exhibit B of the Augustus Agreement describes the negotiated rate previously approved by the Commission.

4. To effectuate this permanent release of capacity between Berry and Augustus, Cheyenne Plains requests waiver of section 28.13(b) of its GT&C to the extent such waiver is necessary. The relevant part of section 28.13(b) states, "The Releasing Shipper shall remain bound and liable for payment of the reservation charge under the TSA unless the Replacement Shipper is paying the maximum reservation rate for the entire contract term, provided that any requisite consent(s) are obtained from applicable financial institution(s)." In the instant filing, Cheyenne Plains explains that Augustus is acquiring the Berry capacity for the remaining term of the Agreement at a rate equal to the negotiated reservation rate of the Berry Agreement. Cheyenne Plains also states that no other party bid for the capacity. Augustus has agreed to pay the negotiated reservation rate to: (1) permanently release Berry of its obligations under the original Agreement; (2) maintain Cheyenne Plains' financial indifference to the release; and (3) satisfy certain Cheyenne Plains lender requirements.

5. Public notice of Cheyenne Plains' filing was issued on September 23, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2009)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

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[1] *Citing Cheyenne Plains Gas Pipeline Co., L.L.C.*, Docket No. RP09-171-000 (Jan. 16, 2009) (unpublished letter order).

6. The Commission accepts the Augustus Agreement, and Cheyenne Plains' revised tariff sheet to become effective October 20, 2009. Additionally, for good cause shown, the Commission grants the requested waiver of section 28.13(b) of Cheyenne Plains' GT&C to permit Cheyenne Plains to effectuate the permanent release between Berry and Augustus. The release will promote the Commission's goal of not unnecessarily inhibiting the permanent release of capacity that a shipper no longer needs.[2]

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[2] *See, e.g.*, *North Baja Pipeline LLC*, 128 FERC ¶ 61,082, at P 14 (2009).