

130 FERC ¶ 61,234  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 24, 2010

In Reply Refer To: Questar Southern Trails  
Pipeline Co.  
Docket No. RP10-388-000

Questar Southern Trails Pipeline Co.  
180 East 100 South  
P.O. Box 45360  
Salt Lake City, UT 84145-0360

Attention: L. Bradley Burton, General Manager  
Federal Regulatory Affairs and Chief Compliance Officer

Reference: Sempra Energy Trading LLC FT Contract No. 4027

Ladies and Gentlemen:

1. On February 22, 2010, Questar Southern Trails Pipeline Company (Southern Trails) submitted revised tariff sheets<sup>1</sup> and a non-conforming transportation service agreement<sup>2</sup> (TSA) for review. Southern Trails requests that the Commission accept the proposed tariff sheets effective March 24, 2010, and find that the TSA contains a permissible deviation from the FT *pro forma* service agreement. As discussed below, the Commission finds that the TSA contains impermissible material deviations from the FT *pro forma* service agreement, and therefore accepts the revised tariff sheets to be effective March 24, 2010, subject to conditions.

2. In its filing, Southern Trails states that the TSA contains a non-conforming “evergreen” provision which has not been filed with the Commission.<sup>3</sup> This provision

---

<sup>1</sup> Seventh Revised Sheet No. 1, Fifth Revised Sheet No. 6, First Revised Sheet No. 7, and Sheet Nos. 8-9, to its FERC Gas Tariff, Original Volume No. 1.

<sup>2</sup> Sempra Energy Trading LLC, FT Contract No. 4027.

<sup>3</sup> It appears that Southern Trails failed to timely file the subject service agreements  
(continued)

states that “[the] agreement shall continue from year-to-year unless Shipper gives written notice to terminate the agreement 90 days prior to the termination or renewal date.” Southern Trails contends that this provision is a permissible deviation as it does not present a substantial risk of undue discrimination because “it merely functions to permit the shipper to continue service under a negotiated rate that is equal to Southern Trails’ current recourse rate.”

3. Southern Trails also proposes revisions to several tariff sheets. These revisions include: (1) additions to the Table of Contents to include the Statement of Negotiated Rates and the Statement of Non-Conforming Contracts, (2) revisions to its Statement of Negotiated Rates, (3) a new Statement of Non-Conforming Contracts, and (4) reserving sheets 8-9 for future use.

4. Public notice of Southern Trails’ filing was issued on February 23, 2010, with comments and protests due on or before March 8, 2010. No protests or adverse comments were filed.

5. The Commission finds that the filed service agreement contains an impermissible material deviation from the FT *pro forma* service agreement. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline’s form of service agreement, the Commission’s regulations require the pipeline to file the contract containing the material deviations with the Commission.<sup>4</sup> In *Columbia Gas Transmission Corporation*,<sup>5</sup> the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (2) affects the substantive rights of the parties. A material deviation may be permissible if the Commission finds that such deviation does not constitute a substantial risk of undue discrimination.<sup>6</sup> Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission permits the contract containing the

---

in compliance with section 154.1(d) of the Commission’s regulations. Applicants are reminded that they must submit required filings on a timely basis, or face possible sanctions by the Commission. See *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008).

<sup>4</sup> 18 C.F.R. § 154.1(d) (2009).

<sup>5</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

<sup>6</sup> *Columbia*, 97 FERC ¶ 61,221 at 62,004.

material deviation, the Commission's regulations require the pipeline to file tariff sheets that reference the materially deviating contract in its tariff.<sup>7</sup>

6. In the instant case, the "evergreen" provision in the Sempra contract is not included in the FT *pro forma* service agreement and therefore constitutes a material deviation from the FT *pro forma* service agreement. Such a provision goes beyond filling in the blank spaces with the appropriate information allowed by the tariff and it substantively affects the rights of the parties. The Commission finds that the "evergreen" provision is a material deviation from Southern Trails' FT *pro forma* service agreement, and also presents a substantial risk of undue discrimination. The option to continue a contract indefinitely on a year-to-year basis is a valuable right. Because Southern Trails' FT *pro forma* service agreement does not provide for such a provision, shippers that are similarly situated to Sempra cannot take advantage of this valuable "evergreen" option.

7. Accordingly, Southern Trails must either offer this "evergreen" provision to all of its similarly situated shippers by revising its tariff to include this option as part of the FT *pro forma* service agreement, or Southern Trails and Sempra must renegotiate an agreement without the impermissible non-conforming language. Therefore, the Commission accepts the proposed tariff sheets subject to Southern Trails, within 30 days, filing to remove the Sempra TSA from the list of permissible non-conforming contracts, and complying with the other conditions of this letter order.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

---

<sup>7</sup> 18 C.F.R. § 154.112(b) (2009).