132 FERC ¶ 61,152
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Questar Pipeline Company Docket No. RP10-488-001

ORDER ON REHEARING

(Issued August 23, 2010)

1. On May 10, 2010, Questar Pipeline Company (Questar) filed a request for rehearing of the Commission's April 9 Order issued in this proceeding.[1] In the April 9 Order, the Commission found that a Questar service agreement with Anadarko Energy Services (Anadarko) contained an impermissible material deviation from Questar's form of service agreement. For the reasons discussed below, the Commission denies Questar's request for rehearing.

Background

2. On March 12, 2010, Questar filed in Docket No. RP10-488-000, a non-conforming transportation service agreement with Anadarko that includes a provision that decreases the contract quantity for each year of the contract.[2] On April 9, 2010, the Commission issued an order finding this provision to be impermissible since substantive rights are afforded to Anadarko that are not afforded to other similarly situated firm shippers that obtain service pursuant to Questar's tariff.[3] As a result, the Commission directed Questar to either revise the contract to conform to the existing Form of Service Agreement, or provide this substantive right to all firm shippers by filing revised tariff sheets (1) reflecting the valuable right to decrease contract quantities in the GT&C of its tariff; and (2) amending its Form of Service Agreement under Rate Schedule T-1 to include blank lines to fill in individual years and the option of decreasing contract quantity for each year.

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[1] *Questar Pipeline Company*, 131 FERC ¶ 61,011 (2010) (April 9 Order).

[2] For example, in year 1 the contract quantity is 50,000 Dth/day, while in year 2 the contract quantity declines to 40,000 Dth/day.

[3] *Questar Pipeline Company*, 131 FERC ¶ 61,011, at P 5 (2010).

Request for Rehearing

3. Questar states that its agreement with Anadarko does not involve a material deviation from Questar's tariff, and does not impermissibly afford substantive rights to one shipper which are not available to others. Questar argues that the April 9 Order confuses unilateral contract reduction rights, which the Commission has held to be an impermissible material deviation, with a contract that contains fixed quantities and terms, which the Commission held is permissible. Questar explains that its agreement with Anadarko involves fixed quantities for fixed periods, and does not give the shipper any rights different from those available to other shippers. Questar contends that its agreement with Anadarko is no different from signing several separate agreements for different fixed quantities and different, overlapping fixed periods. Questar explains that the parties merely incorporated the different quantities and periods in a single document for administrative convenience. Questar argues that including different quantities for different portions of a single contract does not imply undue discrimination any more than do multiple contracts for different terms and quantities. Questar explains that there are often multiple entries, as, for example, when a pipeline specifies different discounts for different receipt or delivery points. Finally, Questar states that the form of service agreement in its tariff contains blanks for quantity and term.

4. Questar explains that in *Columbia Gas Transmission Corporation*, the Commission held that a material deviation is any provision of a service agreement which goes beyond the filling in the blank in the form of service agreement of the pipeline's tariff and affects the substantive rights of the parties.[4] Questar states that the Commission explained that material deviations are either impermissible because they present a significant potential for undue discrimination among shippers, or permissible because they do not present a substantial risk of undue discrimination. Questar argues that the Commission noted that it would be impermissible to incorporate negotiated terms and conditions into individual agreements, which it characterized as ones related to operational conditions of transportation service. Questar also states that the Commission added that there are other material deviations that may be negotiated with an individual shipper to address its unique characteristics, without affecting the quality of service received by that shipper or others.[5]

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[4] Questar Rehearing Request at 3-4; (citing *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,002 (2001) (*Columbia Gas*)).

[5] *Columbia Gas*, 97 FERC at 62,004. *See also Texas Eastern Transmission Corp.*, 119 FERC ¶ 61,337, at P 7 (2007).

5. Questar states that its agreement with Anadarko was entered into in 2001, in connection with an open season for new pipeline capacity.[6] Questar contends that no customer requesting capacity was denied capacity, so its agreement with Anadarko did not harm any other shipper. Questar explains that its agreement with Anadarko was executed in the context of a pipeline expansion and reflects particular circumstances confronting this shipper. Questar further explains that Anadarko's bid sought to reserve capacity for ten years in quantities that would conform to its expected production profile for a new production area, where reserved capacity was to be reduced in future years as production declined. Questar concludes that its executed agreement with Anadarko was done in a manner consistent with its Form of Service Agreement and its tariff, and that other similarly situated shippers could request and receive similar terms.

Commission Determination

6. In its rehearing request, Questar has made clear that it is willing to offer other shippers contracts with fixed contract quantities that vary during the overall term of the contract, similar to the provisions of Anadarko's contract. For example, it states that the Anadarko contract is not discriminatory, because "other shippers could request and receive similar terms."[7] Questar asserts that its current Form of Service agreement can accommodate such contracts, because it contains blanks for term and quantity. Thus, Questar contends that the Commission should find that the Anadarko contract is conforming, and does not need to be filed.

7. The Commission finds Questar's current Form of Service agreement that includes a single blank for term and quantity with no explanation, does not provide sufficient notice to customers that they also have the same right as provided to Anadarko by entering into agreements with decreasing contract quantities. However, in light of Questar's willingness to offer shippers contracts with contract quantities that vary during the term of the contract, the Commission will require Questar to revise its Form of Service agreement to include a statement clarifying that the blanks can be filled in with multiple terms and quantities.[8] As the Commission held in *Equitrans, L.P.*,[9] a pipeline's

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[6] Questar states that the last remaining step-down is scheduled for July 1, 2011 through June 30, 2012, in the amount of 16,000 Dth/d.

[7] Questar Rehearing Request at 6.

[8] A provision akin to Wyoming Interstate Company's section 10 of its pro forma Rate Schedule FT agreement, discussed *infra*, would also give acceptable notice to shippers that varying MDQ's at varying dates was contractually available.

[9] *Equitrans, L.P.*, 131 FERC ¶ 61,090, at P 11 (2010).

Form of Service agreement for each rate schedule should have blank spaces or optional provisions which accommodate all the types of contractual provisions which the pipeline typically offers to customers under that rate schedule in the normal course of business. Compliance with this requirement helps minimize undue discrimination among customers by ensuring that all customers have notice of all the types of contractual provisions that may be negotiated. It also reduces the burden on Questar, the Commission, and others from the filing and processing of non-conforming agreements, by minimizing the number of agreements that must be filed.

8. The Commission finds that this change in the Form of Service agreement will render the agreement between Anadarko and Questar conforming. Therefore, the Commission removes any requirement that Questar renegotiate its contract with Anadarko to eliminate Anadarko's right to decreasing contract quantities during the term of the contract. In light of the fact that Questar will be revising its pro forma service agreement to make its intent to offer other shippers contracts with fixed contract quantities that vary during the overall term of the contract, similar to the provisions of Anadarko's contract, the Commission also removes the requirement that Questar list the Anadarko contract in its tariff as a non-conforming agreement.

9. Questar refers to *Ruby Pipeline Company*[10] and *Wyoming Interstate Company,*[11] where it asserts the Commission found similar agreements permitting a Maximum Delivery Quantity (MDQ) step-down as a permissible non-conforming provision. In *Wyoming*, the pipeline filed precedent agreements, one of which was with Anadarko, with MDQs that varied over the terms of the agreement. The Commission's order in that case described that contract, without ever referring to it as non-conforming. In fact, Wyoming's Form of Service agreement for firm service under Rate Schedule FT in Wyoming's pipeline tariff provides for multiple blank lines for MDQ quantities in Dth/d with corresponding blank lines for effective dates.[12] Therefore, the Form of Service

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[10] Questar cites to *Ruby Pipeline Company*, 128 FERC ¶ 61,224, at P 84 (2009) (Ruby).

[11] Questar cites to *Wyoming Interstate Company, L.L.C.*, 121 FERC ¶ 61,054 (2007) (Wyoming) and *Guardian Pipeline, L.L.C.*, 121 FERC ¶ 61,259 (2007) (Guardian).

[12] See Sixth Revised Sheet No. 88 to Wyoming's FERC Gas Tariff, Second Revised Volume No. 2.

agreement permitted varying contract quantities in the same manner as we have ordered Questar to revise its Form of Service agreement, and Anadarko's contract in that case was a conforming contract which required no special approval.

10. *Ruby* involved an open season for a new pipeline. In that open season, the pipeline offered all anchor shippers willing to enter into contracts with terms of 15 years or more for service on the proposed pipeline an optional right to reduce their MDQs during the last four years of the contract. One shipper entered into a precedent agreement which included that right, to be set forth as a non-conforming provision in that shipper's service agreement. The Commission found that provision and several other non-conforming provisions to be permissible, because they "reflected the unique circumstances involved with the construction of new energy infrastructure and provide needed financial security for all parties to ensure that Ruby's proposed project will be constructed and placed in operation."[13]

11. *Ruby* thus involved a non-conforming contract similar to a Questar non-conforming contract with another of its shippers, XTO Energy, Inc.[14] Questar's contract with XTO was filed with the Commission in September 2009 together with other service agreements deemed by Questar to contain potential material deviations from the form of service agreement in Questar's tariff.[15] That contract was for service on a newly constructed expansion of Questar's facilities. The non-conforming provision in that contract provided for a twenty-year term commencing after the facilities were placed into service and that the shipper would have a right to terminate the agreement at any time after 10 years upon 12 months prior notification. In an October 9, 2009 order, the Commission found that the non-conforming provision was permissible, because it "was included in the TSA in order to obtain capital for an expansion."[16]

12. In the instant case, Questar states that it entered into its contract with Anadarko in connection with an open season for new pipeline capacity. However, it does not state that it offered the MDQ step-down provision to all shippers participating in that open

[13] *Ruby*, 128 FERC ¶ 61,224 at P 76.

[14] This is Contract No. 2409, which has subsequently been transferred to EPWP Resources Co.

[15] This contract was filed in Docket No. RP09-1037-000.

[16] *Questar Pipeline Co*., 129 FERC ¶ 61,017 at P 9 (2009).

season as a special incentive for anchor shippers to participate in the expansion, so that it could obtain precedent agreements that would assist in obtaining capital for the expansion project. Rather, it states that it would offer an MDQ step-down provision of the type included in the Anadarko contract to any shipper, and it argues that its pro forma service agreement for firm shippers accommodates such provisions for different MDQs for different terms in the same contract.[17] Thus, the basis on which the Commission found the optional MDQ step-down provisions in *Ruby* and the October 2009 *Questar* order to be permissible material deviations does not exist in this case. Instead this is a situation where Questar is willing to make this type of provision available to all shippers, without regard to participation in an expansion. Therefore, we require it to modify its *pro forma* service agreement to provide blanks that clearly accommodate such a provision and thereby give proper notice to shippers that this option is available.

13. Questar refers to *Texas Eastern Transmission Corporation,*[18] where it asserts the Commission accepted an agreement with a unilateral reduction right since it was a longstanding agreement entered into prior to the Commission's 2001 order in *Columbia Gas* clarifying its policy on material deviations. Questar argues that it should be treated similarly to *Texas Eastern* since its agreement with Anadarko entered into in 2001 is a long-standing agreement that was designed to meet the unique production needs of Anadarko.

14. The longstanding agreement in *Texas Eastern* was entered into in 1997, prior to the Commission's 2001 order in *Columbia Gas* which clarified its policy on material deviations.[19] Questar states that it entered into the agreement with Anadarko in 2001. However, the agreement went into effect on July 1, 2002, after the Commission revised its policy on non-conforming agreements in *Columbia Gas*. Therefore, the Commission finds that Questar's current agreement with Anadarko should not be treated comparably to the longstanding agreement in *Texas Eastern*.

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[17] For example, in its rehearing request (at p. 8), Questar states, "Questar would combine agreements [with varying terms] for other shippers, and if they bid such combined periods in an open season it would evaluate the net present value of the package just as it would any other bid."

[18] Questar cites to *Texas Eastern Transmission Corp.*, 119 FERC ¶ 61,337, at P 11 (2007).

[19] *Id.*

<u>The Commission orders:</u>

(A) Questar's request for rehearing is denied.

(B) Questar is required to file revised tariff sheets consistent with this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.