

133 FERC ¶ 61,256
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 29, 2010

In Reply Refer To:
Bison Pipeline LLC
Docket No. RP11-76-000

Bison Pipeline LLC
717 Texas Street
Suite 2400
Houston, TX 77002-2761

Attention: John A. Roscher, Director
Rates and Tariffs

Reference: Filing in Compliance with Order Issuing Certificate and Order No. 714

Ladies and Gentlemen:

1. On April 20, 2009, Bison Pipeline LLC (Bison) filed an application pursuant to section 7(c) of the Natural Gas Act to construct and operate a new interstate natural gas pipeline. On October 18, 2010, Bison filed a baseline electronic filing of its FERC Gas Tariff, *Bison Tariffs*,¹ in compliance with Order No. 714² and the Commission's Order Issuing Certificate (Certificate Order), issued on April 9, 2010, Order Amending Certificate, issued on September 15, 2010, and Order Denying Rehearing and Granting Clarification, issued on September 16, 2010.³ In addition, in accordance with section 154.201 of the Commission's regulations, Bison filed marked versions of its executed service agreements highlighting the non-conforming language contained in the agreements. Bison's targeted in-service date was originally projected to be

¹ See Appendix. Bison's Tariff Title is "Bison Tariffs." "Tariff Title" is the meta data element used to name the tariff data base.

² *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

³ *Bison Pipeline LLC*, 131 FERC ¶ 61,013 (2010); 132 FERC ¶ 62,163 (2010); 132 FERC ¶ 61,231 (2010).

November 15, 2010; however, Bison now estimates that the project will be placed in-service in January 2011. We accept Bison's revised tariff records to be effective the later of December 29, 2010 or the date Bison's facilities are placed in service, subject to further conditions as described below.

2. Notice of Bison's compliance filing was issued on October 19, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

3. Bison is a new interstate pipeline that will provide transportation service from the Dead Horse region near Gillette, Wyoming to an interconnection with Northern Border Pipeline Company in Morton County, North Dakota by a 302 mile, 30-inch diameter pipeline. The non-conforming service agreements submitted by Bison are with each of the four shippers that signed precedent agreements for the project.⁶ Each of the service agreements contain non-conforming provisions in section 10.2 (a) that allow Bison to terminate the service agreement upon written notice to the shipper if (i) "Shipper or any Guarantor of its obligations fails to provide Credit Support or replacement Credit Support within ten days of notice by Company to Shipper;" (ii) "a petition is filed, under any Chapter of the United States Bankruptcy Code, by or against Shipper, any affiliate of Shipper or any Guarantor of shipper's obligations hereunder;"⁷ or (iii) "Shipper fails to pay when due any sum for which it is obligated under this Service Agreement, or Shipper fails to comply with any other obligation under this Service Agreement, Rate Schedule FT-1 or Company's FERC Gas Tariff." The agreements further provide in section 10.2 (c) that "Any termination pursuant to section 10.2... shall be effective upon Shipper's receipt of Company's termination notice."

⁴ 18 C.F.R. § 154.210 (2010).

⁵ 18 C.F.R. § 385.214 (2010).

⁶ The four customers are Anadarko Energy Service Company, MidAmerican Energy Company, Minnesota Energy Resources Corporation, and Williams Gas Marketing, Inc.

⁷ The agreement with Williams Gas Marketing, Inc. provides that termination will not occur if the bankruptcy petition is dismissed within 60 days.

4. These provisions deviate from Bison's tariff, which allows shippers thirty days to provide an acceptable guarantee or collateral if they are determined to be non-creditworthy (Part 6.40.1.8 of the General Terms and Conditions (GT&C)), allows a shipper to continue service if it fails to satisfy Bison's creditworthiness criteria by providing and maintaining described credit alternatives (GT&C Part 6.40.1.2), and allows Bison to terminate service for nonpayment in full of an invoice after 30 days notice to the customer and to FERC following 30 days notice of suspension to the customer (GT&C Part 6.6.5).

5. Under the Natural Gas Act, the termination of a shipper's contract is an abandonment of service.⁸ The Commission's regulations and policy require the pipeline to provide the Commission with at least 30 days notice of termination to ensure that the shipper has the opportunity to raise questions about its termination before abandonment occurs.⁹ This also provides the Commission with the ability to ensure that the termination is in the public convenience and necessity. Bison's non-conforming provisions which provide in section 10.2(c) that the termination is effective upon the customer's receipt of the termination notice are inconsistent with the Commission's regulations and policy since they do not provide the 30 day notice to the Commission to afford it the opportunity to review the service abandonment. Therefore, Bison is directed to modify the non-conforming agreements within 60 days of the date of this order to comply with the Commission's regulations requiring the Commission be notified at least 30 days prior to the effective date of the termination of the agreements.

6. Although the Commission's Certificate Order found that the non-conforming provisions relating to termination rights would be permissible,¹⁰ that determination was based on the description of the termination rights as detailed in Bison's certificate application. That application stated that the shippers have the right to terminate their Precedent Agreement under certain circumstances prior to the in-service date of the project and the shipper's proposed service agreement also contained "certain termination rights held by Bison."¹¹ The certificate application did not describe in detail Bison's termination rights nor did it state that the termination rights do not provide for the 30 day notice to the Commission as required by 18 C.F.R. § 154.602. The Commission's approval of the non-conforming provisions in the Certificate Order was limited only to

⁸ 15 U.S.C. § 717f (2006).

⁹ 18 C.F.R. § 154.602; *see Northern Natural Gas Co.*, 103 FERC ¶ 61,276, at P 51-56 (2003).

¹⁰ *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 55 (2010).

¹¹ *Bison Pipeline LLC*, April 17, 2009 Application, at 19.

the items described in the certificate application¹² and Bison's description of the termination provision differs from what is included in the service agreement.

7. In addition, section 10.2(a)(iii) of the service agreements provides Bison with the right to terminate the agreement if "Shipper fails to comply with any other obligation under this Service Agreement, Rate Schedule FT-1 or Company's FERC Gas Tariff." The Commission finds this provision to be overly broad because it provides Bison with termination rights that are not clearly defined in its tariff and appear to go beyond any creditworthiness need of Bison or its lenders. Therefore, Bison is directed to modify the non-conforming service agreements within 60 days of the date of this order to eliminate this provision, or explain fully why it is needed and what type of breaches would be considered sufficient cause to terminate service.

8. Bison states it has adopted in its Baseline Tariff all of the Business Practice and Electronic Communication Standards required by the Commission in 18 C.F.R. section 284.12 in accordance with Order No. 587-T and the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ) Standards, Version 1.8. On March 24, 2010, the Commission issued Order No. 587-U, which required pipelines to make filings to incorporate Version 1.9 of the NAESB WGQ Standards into their tariffs on September 1, 2010, to take effect on November 1, 2010.¹³ Bison is directed to file to incorporate Version 1.9 of the NAESB WGQ Standards within 60 days of the issuance of this order.

9. Finally, when Bison files in compliance with 18 C.F.R. section 157.20(c)(2) it should make this informational filing with the Commission through the eTariff portal as a supplement to the existing Docket No. using a Type of Filing Code 620. In addition, Bison is advised to include as part of the eFiling description, a reference to Docket No. CP09-161-000 and the actual in-service date for this project.¹⁴

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹² *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 63 (2010).

¹³ *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, FERC Stats. & Regs. ¶ 31,307 (2010) (Order No. 587-U).

¹⁴ *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

Appendix

Bison Pipeline LLC
Bison Tariffs
FERC NGA Gas Tariff

Tariff Records Effective the Later of December 29, 2010, or the Date Bison's Facilities are Placed in Service, Subject to Conditions:

- Tariff, Original Volume No. 1, 0.0.0
- PART 1, TABLE OF CONTENTS, 0.0.0
- PART 2, PRELIMINARY STATEMENT, 0.0.0
- PART 3, MAPS, 0.0.0
 - 3.1 - Maps, System Map, 0.0.0
- PART 4, STATEMENT OF RATES, 0.0.0
 - 4.1 - Statement of Rates, Rate Schedules FT-1 & IT-1, 0.0.0
 - 4.2 - Statement of Rates, Rate Schedule PAL, 0.0.0
 - 4.3 - Statement of Rates, Annual Charge Adjustment (ACA), 0.0.0
 - 4.4 - Statement of Rates, Statement of Negotiated Rates, 0.0.0
- PART 5, RATE SCHEDULES, 0.0.0
 - 5.1 - Rate Schedules, Rate Schedule FT-1, 0.0.0
 - 5.1.1 - Rate Sch FT-1, Availability, 0.0.0
 - 5.1.2 - Rate Sch FT-1, Qualification for Service, 0.0.0
 - 5.1.3 - Rate Sch FT-1, Applicability and Character of Service, 0.0.0
 - 5.1.4 - Rate Sch FT-1, Rates, 0.0.0
 - 5.1.5 - Rate Sch FT-1, Company Use Gas, 0.0.0
 - 5.1.6 - Rate Sch FT-1, Authorized Overrun, 0.0.0
 - 5.1.7 - Rate Sch FT-1, Right of First Refusal, 0.0.0
 - 5.1.8 - Rate Sch FT-1, Release of Firm Capacity, 0.0.0
 - 5.1.9 - Rate Sch FT-1, Uniform Quantities, 0.0.0
 - 5.1.10 - Rate Sch FT-1, General Terms and Conditions, 0.0.0
 - 5.2 - Rate Schedules, Rate Schedule IT-1, 0.0.0
 - 5.2.1 - Rate Sch IT-1, Availability, 0.0.0
 - 5.2.2 - Rate Sch IT-1, Qualification for Service, 0.0.0
 - 5.2.3 - Rate Sch IT-1, Applicability and Character of Service, 0.0.0
 - 5.2.4 - Rate Sch IT-1, Rates, 0.0.0
 - 5.2.5 - Rate Sch IT-1, Company Use Gas, 0.0.0
 - 5.2.6 - Rate Sch IT-1, Uniform Quantities, 0.0.0
 - 5.2.7 - Rate Sch IT-1, General Terms and Conditions, 0.0.0
 - 5.3 - Rate Schedules, Rate Schedule PAL, 0.0.0
 - 5.3.1 - Rate Sch PAL, Availability, 0.0.0
 - 5.3.2 - Rate Sch PAL, Applicability and Character of Service, 0.0.0
 - 5.3.3 - Rate Sch PAL, Rate and Payment, 0.0.0

- 5.3.4 - Rate Sch PAL, Rate Schedule PAL Points of Service, 0.0.0
- 5.3.5 - Rate Sch PAL, Notifications, Allocations and Curtailment, 0.0.0
- 5.3.6 - Rate Sch PAL, Failure by Shipper to Respond, 0.0.0
- 5.3.7 - Rate Sch PAL, Reservation Charge Credits, 0.0.0
- 5.3.8 - Rate Sch PAL, General Terms and Conditions, 0.0.0
- PART 6, GENERAL TERMS AND CONDITIONS, 0.0.0
- 6.1 - GT&C, Definitions, 0.0.0
- 6.2 - GT&C, Pressure and Temperature, 0.0.0
- 6.3 - GT&C, Measuring Equipment, 0.0.0
- 6.3.1 - GT&C, Company's Measuring Equipment, 0.0.0
- 6.3.2 - GT&C, Check Measuring Equipment, 0.0.0
- 6.3.3 - GT&C, Right of Access, 0.0.0
- 6.3.4 - GT&C, Reasonable Care, 0.0.0
- 6.3.5 - GT&C, Testing Measuring Equipment, 0.0.0
- 6.3.6 - GT&C, Correction and Adjustment, 0.0.0
- 6.3.7 - GT&C, Failure of Measuring Equipment, 0.0.0
- 6.3.8 - GT&C, Preservation of Records, 0.0.0
- 6.4 - GT&C, Measurement Reporting, 0.0.0
- 6.5 - GT&C, Quality of Gas, 0.0.0
- 6.6 - GT&C, Billing and Payment, 0.0.0
- 6.6.1 - GT&C, General, 0.0.0
- 6.6.2 - GT&C, Billing and Invoice, 0.0.0
- 6.6.3 - GT&C, Imbalance Statement, 0.0.0
- 6.6.4 - GT&C, Payment and Disputes, 0.0.0
- 6.6.5 - GT&C, Remedies for Failure to Pay Invoice, 0.0.0
- 6.6.6 - GT&C, Delinquency Charge, 0.0.0
- 6.6.7 - GT&C, Late Billing, 0.0.0
- 6.6.8 - GT&C, Billing Error/Prior Period Adjustments, 0.0.0
- 6.7 - GT&C, Request for Operating Information, 0.0.0
- 6.8 - GT&C, Indemnity, 0.0.0
- 6.9 - GT&C, Liability for Non-Performance, 0.0.0
- 6.10 - GT&C, Nominations/Allocation Capacity/Confirmations/Scheduling, 0.0.0
- 6.10.1 - GT&C, Nomination Procedures, 0.0.0
- 6.10.2 - GT&C, Nomination and Scheduling Timeline, 0.0.0
- 6.10.3 - GT&C, Firm Transportation Nomination Line Items, 0.0.0
- 6.10.4 - GT&C, Nomination Validation, 0.0.0
- 6.10.5 - GT&C, Allocation of Capacity, 0.0.0
- 6.10.6 - GT&C, Confirmation Process, 0.0.0
- 6.10.7 - GT&C, Scheduling, 0.0.0
- 6.11 - GT&C, Operational Flow Order, 0.0.0
- 6.11.1 - GT&C, Circumstances Warranting OFO, 0.0.0
- 6.11.2 - GT&C, Net Pipeline Position (NPP), 0.0.0
- 6.11.3 - GT&C, Actions Taken by Company Prior to Issuance of an OFO, 0.0.0
- 6.11.4 - GT&C, Issuance of OFO Watch, 0.0.0

- 6.11.5 - GT&C, Issuance of OFO, 0.0.0
- 6.11.6 - GT&C, Affected Shipper/Interconnected Party Compliance, 0.0.0
- 6.11.7 - GT&C, Treatment of Shipper Imbalances, 0.0.0
- 6.11.8 - GT&C, Failure to Respond to OFO, 0.0.0
- 6.11.9 - GT&C, OFO Penalty, 0.0.0
- 6.11.10 - GT&C, Termination of OFO, 0.0.0
- 6.12 - GT&C, Separate Liability of Shipper, 0.0.0
- 6.13 - GT&C, Curtailment, 0.0.0
- 6.14 - GT&C, Shipper Delivery Right and Warranties, 0.0.0
- 6.15 - GT&C, Company Responsibility for Gas, 0.0.0
- 6.16 - GT&C, FERC Annual Charge Provision, 0.0.0
- 6.17 - GT&C, Receipt Point and Delivery Point Flexibility/Segmentation, 0.0.0
- 6.17.1 - GT&C, Flexible Point Rights, 0.0.0
- 6.17.2 - GT&C, Point Capacity Scheduling Rights under FT Service Agmts, 0.0.0
- 6.17.3 - GT&C, Segmentation Rights, 0.0.0
- 6.18 - GT&C, Right of First Refusal, 0.0.0
- 6.18.1 - GT&C, Applicability, 0.0.0
- 6.18.2 - GT&C, Avoidance of Right of First Refusal, 0.0.0
- 6.18.3 - GT&C, Notice to Shipper, 0.0.0
- 6.18.4 - GT&C, Shipper's Response to Notice, 0.0.0
- 6.18.5 - GT&C, Posting/Bid Procedures, 0.0.0
- 6.19 - GT&C, Facilities Policy, 0.0.0
- 6.20 - GT&C, Contractual Notices, 0.0.0
- 6.21 - GT&C, Defaults, 0.0.0
- 6.22 - GT&C, Measurement of Flowing Gas, 0.0.0
- 6.23 - GT&C, Imbalance Resolution, 0.0.0
- 6.24 - GT&C, Severability, 0.0.0
- 6.25 - GT&C, Survival of Obligation, 0.0.0
- 6.26 - GT&C, Posting/Awarding of Available and Planned Pipeline Capacity, 0.0.0
- 6.26.1 - GT&C, Posting of Firm Capacity, 0.0.0
- 6.26.2 - GT&C, Bid Procedures, 0.0.0
- 6.26.3 - GT&C, Awarding of Best Bid(s), 0.0.0
- 6.26.4 - GT&C, Interim Sales of Capacity, 0.0.0
- 6.27 - GT&C, Release of Firm Capacity, 0.0.0
- 6.27.1 - GT&C, Rights and Obligations of Shipper, 0.0.0
- 6.27.2 - GT&C, Offer Requirements, 0.0.0
- 6.27.3 - GT&C, Bid Requirements, 0.0.0
- 6.27.4 - GT&C, Parameters for Capacity Release Transactions, 0.0.0
- 6.27.5 - GT&C, Posting of Offers, Bids, and Awarded Transactions, 0.0.0
- 6.27.6 - GT&C, Selection of Best Bid, 0.0.0
- 6.27.7 - GT&C, Capacity Release Timeline, 0.0.0
- 6.27.8 - GT&C, Standard Recall Notification Periods, 0.0.0
- 6.27.9 - GT&C, Deadline for Reput, 0.0.0
- 6.27.10 - GT&C, Company's Right to Terminate a Temporary Capacity Release, 0.0.0

- 6.27.11 - GT&C, Offers to Purchase Capacity Release, 0.0.0
- 6.27.12 - GT&C, Marketing of Capacity Release, 0.0.0
- 6.27.13 - GT&C, Reservation Charge Revenue Credits, 0.0.0
- 6.27.14 - GT&C, Bankruptcy, 0.0.0
- 6.28 - GT&C, Reservation of Capacity for Expansion Projects, 0.0.0
- 6.29 - GT&C, Liability, 0.0.0
- 6.30 - GT&C, Service Requests, 0.0.0
- 6.31 - GT&C, Complaint Procedure, 0.0.0
- 6.32 - GT&C, Internet Websites, 0.0.0
 - 6.32.1 - GT&C, Description, 0.0.0
 - 6.32.2 - GT&C, Informational Postings Site, 0.0.0
 - 6.32.3 - GT&C, Customer Activities Site, 0.0.0
 - 6.32.4 - GT&C, Username/Password, 0.0.0
 - 6.32.5 - GT&C, Archiving and Retrieval of Archived Information, 0.0.0
 - 6.32.6 - GT&C, Confidentiality, 0.0.0
 - 6.32.7 - GT&C, Reliance Upon User Actions, 0.0.0
- 6.33 - GT&C, Electronic Transactions Contracting, 0.0.0
- 6.34 - GT&C, Operational Balancing Agreement Policy, 0.0.0
- 6.35 - GT&C, Data Elements, 0.0.0
- 6.36 - GT&C, Pooling/Title Transfer Tracking, 0.0.0
 - 6.36.1 - GT&C, Pooling, 0.0.0
 - 6.36.2 - GT&C, Transfer Points, 0.0.0
 - 6.36.3 - GT&C, Applicability and Character of Title Tracking Service, 0.0.0
 - 6.36.4 - GT&C, Nomination for Company Provided Title Transfer Tracking, 0.0.0
 - 6.36.5 - GT&C, Third Party Provided Title Transfer Tracking, 0.0.0
- 6.37 - GT&C, Negotiated Rates, 0.0.0
- 6.38 - GT&C, Discounting, 0.0.0
- 6.39 - GT&C, Off-System Services, 0.0.0
- 6.40 - GT&C, Creditworthiness, 0.0.0
 - 6.40.1 - GT&C, Credit Evaluation, 0.0.0
 - 6.40.1.1 - GT&C, Determination of Creditworthiness, 0.0.0
 - 6.40.1.2 - GT&C, Failure to Satisfy Creditworthiness, 0.0.0
 - 6.40.1.3 - GT&C, Evaluation of Interruptible Services, 0.0.0
 - 6.40.1.4 - GT&C, Loaned Gas, 0.0.0
 - 6.40.1.5 - GT&C, Imbalances Due Company, 0.0.0
 - 6.40.1.6 - GT&C, Construction of New Facilities, 0.0.0
 - 6.40.1.7 - GT&C, Ongoing Credit Review, 0.0.0
 - 6.40.1.8 - GT&C, Notification of Failure to Meet Creditworthiness, 0.0.0
 - 6.40.1.9 - GT&C, Shipper Default, 0.0.0
 - 6.40.2 - GT&C, Designating Representatives for Creditworthiness Notices, 0.0.0
- 6.41 - GT&C, Company Use Gas, 0.0.0
- 6.42 - GT&C, Non-Conforming Agreements, 0.0.0
- 6.43 - GT&C, Agents, 0.0.0
- 6.44 - GT&C, Reservation Charge Credits, 0.0.0

6.45 - GT&C, Operational Purchases and Sales of Gas, 0.0.0

6.46 - GT&C, Waivers, 0.0.0

6.47 - GT&C, Headings, 0.0.0

6.48 - GT&C, Penalty Revenue Credits, 0.0.0

PART 7, FORM OF SERVICE AGREEMENT, 0.0.0

7.1 - Service Agmts, Rate Schedule FT-1, 0.0.0

7.1.1 - Service Agmts, Rate Schedule FT-1 - Exhibit A, 0.0.0

7.2 - Service Agmts, Rate Schedule IT-1, 0.0.0

7.2.1 - Service Agmts, Rate Schedule IT-1 - Exhibit A, 0.0.0

7.3 - Service Agmts, Rate Schedule PAL, 0.0.0

7.3.1 - Service Agmts, Rate Schedule PAL - Exhibit A, 0.0.0

PART 8, NON-CONFORMING AGREEMENTS WITH NEGOTIATED RATES, 0.0.0

8.1 - NC/Neg Rate Agmt, Anadarko Energy Services Company FT-1 Agmt (#FT0001), 0.0.0

8.2 - NC/Neg Rate Agmt, MidAmerican Energy Company FT-1 Agmt (#FT0002), 0.0.0

8.3 - NC/Neg Rate Agmt, Minnesota Energy Resources Corporation FT-1 Agmt (#FT0003), 0.0.0

8.4 - NC/Neg Rate Agmt, Williams Gas Marketing, Inc. FT-1 Agmt (#FT0004), 0.0.0