135 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ruby Pipeline L.L.C. Docket No. CP09-54-006

ORDER AMENDING CERTIFICATE

(Issued April 18, 2011)

1. On December 16, 2010, Ruby Pipeline L.L.C. (Ruby) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)[1] to amend the certificate of public convenience and necessity issued on April 5, 2010, authorizing construction and operation of the Ruby pipeline (April 2010 Order).[2] Ruby requests authorization to revise its initial transportation rates to include a peak/off-peak pricing option for short-term firm and interruptible services. For the reasons discussed below, this order grants the requested authorization.

I. **Background and Proposal**

2. On September 4, 2009, the Commission issued a preliminary determination (September 2009 Order) addressing the non-environmental issues raised by Ruby's application to construct and operate a new, approximately 675-mile long, 42-inch diameter pipeline, with related compression, metering, and appurtenant facilities, extending from Opal, Wyoming, to Malin, Oregon.[3] The Commission found that the proposal was required by the public convenience and necessity, but final authorization to construct the Ruby project was reserved pending completion of the Commission's environmental review.[4] In the April 2010 Order, after completion of the environmental

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[1] 15 U.S.C. § 717f(c) (2006).

[2] *Ruby Pipeline L.L.C.*, 131 FERC ¶ 61,007 (2010). Ruby is a Delaware limited liability company and subsidiary of El Paso Corporation.

[3] *Ruby Pipeline L.L.C.*, 128 FERC ¶ 61,224 (2009).

[4] *Id.* P 42.

review, the Commission issued Ruby a certificate of public convenience and necessity to construct the proposed pipeline facilities.[5]

3. As approved, the new pipeline will be able to transport approximately 1.5 million dekatherms (MMDth) per day. Ruby currently has 14 contracts for firm transportation which, following contract ramp-up, total approximately 1.1 MMDth per day. Ruby states that when it filed the certificate application in January 2009, it recognized that the proposed pipeline was not fully subscribed. Thus, Ruby stated in its application for the project that it might seek approval of rates that reflect the value between short-term and long-term contracts.

4. Ruby seeks to amend its certificate to implement a short-term peak/off-peak transportation rate option that Ruby states will enhance its ongoing marketing efforts and facilitate longer term contracting over time in order to maximize its system contracting and system use. Ruby proposes to price short-term firm peak and off-peak transportation service at recourse rates such that 12 months of combined peak and off-peak services at the proposed peak and off-peak recourse rates will produce the same revenues and cover the same costs as 12 months of long-term firm service at recourse rates. Revenues generated by the proposed peak/off-peak short-term rates, or resulting from additional long-term commitments, that exceed Ruby's cost of service will be eligible for crediting to shippers under the revenue sharing provision in Section 36 of the General Terms and Conditions of Ruby's *pro forma* FERC NGA Gas Tariff.[6]

5. Ruby proposes that it may designate, by March 1 of each year, up to four months as peak months during the twelve-month period starting April 1 and ending March 31 of the following year. All months not designated as peak for that year would be considered off-peak months. Ruby states that it will initially designate no peak/off-peak months. If no peak months are designated for the twelve-month period, the long-term firm recourse rates and interruptible rates will apply.

6. The proposed peak month short-term firm reservation rate is approximately 150 percent of the long-term maximum reservation rate, and the proposed off-peak firm reservation rate varies from 75 to 95 percent of the long-term rate depending on how many peak months Ruby has designated for the year. If Ruby has designated four peak

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[5] *Ruby*, 131 FERC ¶ 61,007, *reh'g denied*, 133 FERC ¶ 61,015 (2010).

[6] *Ruby*, 128 FERC ¶ 61,224, at P 55 (2009). In the September 2009 Order, the Commission rejected Ruby's crediting mechanism as non-conforming. However, in the April 2010 Order, the Commission granted rehearing on this point and allowed Ruby to adopt its proposed revenue crediting mechanism. *Ruby*, 131 FERC ¶ 61,007, at P 19 (2010).

months for the year, the off-peak reservation rate will be 75 percent of the long-term rate; for a three-peak-month year, it will be 83 percent; for a two-peak-month year, it will be 90 percent; and for a one-peak-month year, it will be 95 percent.

7. The proposed interruptible rate is the 100 percent load factor derivative rate of the applicable firm recourse rate. The interruptible rate for peak months is equivalent to the interruptible recourse rate. The off-peak interruptible rate is the 100 percent load factor derivative of the applicable off-peak firm reservation rate and varies from 50 to 64 percent of the peak month interruptible recourse rate depending on how many peak months Ruby has designated for the year.

8. Ruby states that its proposal is similar to the peak/off-peak month designation pricing structure currently being used by Gas Transmission Northwest Corporation (GTN).[7] Ruby states that it elected to propose a similar pricing structure because Ruby interconnects with GTN at the Malin Hub in Oregon, and will provide service to the same consumer areas. Ruby further states that once its pipeline is in service and operational use and trends are known, it will reevaluate the peak/off-peak pricing option when it files its three-year cost and revenue study as required by the April 2010 Order.

II. Notice and Interventions

9. Public notice of Ruby's application was published in the *Federal Register* on January 18, 2011.[8] There were no interventions, comments, or protests on the proposal.

III. Discussion

10. Because revising the initial transportation rates requires amending the certificate authorization granted to Ruby under section 7 of the NGA, the proposals herein also are subject to the requirements of sections 7(c) and 7(e) of the NGA.[9]

11. Consistent with the Certificate Policy Statement[10] and NGA section 7, the Commission found that Ruby's pipeline project was required by the public convenience

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[7] *See Gas Transmission Northwest Corp*., 122 FERC ¶ 61,012 (2008).

[8] 76 Fed. Reg. 2895 (January 18, 2011).

[9] 15 U.S.C. §§ 717f(c), (e) (2006).

[10] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *orders clarifying policy*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

and necessity,[11] and authorized construction of the pipeline facilities.[12] In particular, the Commission found that, since Ruby was a new company with no existing customers, there would be no subsidization of the project by existing customers.[13] The order also found that there would be no or minimal adverse impacts on existing pipelines or their customers, landowners, or communities.[14]

12. Ruby proposes to add peak/off-peak recourse rates for short-term firm and interruptible services to send appropriate price signals for short-term contracts and to create an incentive for shippers to enter into longer term contracts. Ruby proposes peak/off-peak rates consistent with Order No. 637,[15] which recognized the value of peak/off-peak rates to ration peak capacity or lead to efficient use of pipelines in periods of excess capacity.[16] Order No. 637 stated that those customers that value capacity more highly should expect to pay higher prices when capacity is scarce. Order No. 637 found that value-based peak/off-peak rates are just and reasonable cost-based rates and that, like uniform maximum rates, they would be established by taking the pipeline's annual revenue requirement and deriving from it a daily or monthly rate. Therefore, the sum of the daily or monthly rates, multiplied by the quantity used or reserved, still must not exceed the pipeline's annual revenue requirement. In other words, any increases in rates at peak periods must be offset by decreases in off-peak rates.[17]

13. Consistent with Order No. 637, Ruby's peak/off-peak rates are designed so that a shipper paying the peak and off-peak short-term firm recourse rates for one year would pay the same annually as a shipper that paid the long-term firm recourse rate for the full

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[11] *Ruby*, 128 FERC ¶ 61,224, at P 42 (2009).

[12] *Ruby*, 131 FERC ¶ 61,007 (2010).

[13] *Ruby*, 128 FERC ¶ 61,224, at P 19 (2009).

[14] *Id.* P 37-41.

[15] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v.* FERC, 285 F .3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v.* FERC, 428 F .3d 255 (D.C. Cir. 2005).

[16] Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,289.

[17] *Id*. at 31,290.

year.[18] In addition, Ruby's pro forma tariff already provides a revenue sharing mechanism in the event that Ruby collects revenues in excess of its cost of service.[19] As Ruby has stated, the peak/off-peak short-term rates should enhance marketing of its unsubscribed capacity and encourage longer term contracts. For these reasons, we find that Ruby's proposal is consistent with Order No. 637. Ruby's peak/off-peak rate proposal does not change the basis for any of our findings in the September 2009 and April 2010 Orders. Therefore, consistent with the public convenience and necessity, we will accept Ruby's proposed peak/off-peak short-term rates as initial section 7 recourse rates for Ruby's short-term firm and interruptible services.

14. Order No. 637 requires pipelines who propose peak/off-peak rates in a *pro forma* tariff proceeding to submit a cost and revenue study, pursuant to the format prescribed in section 154.313 of the Commission's regulations,[20] within 15 months of implementing peak/off-peak rates.[21] Therefore, after 12 months of experience with peak/off-peak rates, Ruby will be required to prepare a cost and revenue study and file the study within 15 months of implementing peak/off-peak rates. Ruby should include in its study any data supporting its peak month designations. Based on the cost and revenue study, the Commission will determine whether any rate adjustments are necessary to the long-term rates, and may order such adjustments prospectively.

15. The Commission on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

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[18] *Id*.

[19] Section 36.1 of Ruby's *pro forma* tariff provides that, if the total cost of service is fully recovered and the short-term firm and interruptible revenues are greater than the costs allocated to these services, Ruby will share the revenues with its recourse and most of its negotiated rate shippers. Negotiated rate shippers will receive the percentage of the revenues stated in their agreements, if any, and recourse rate shippers will receive 50 percent of their allocated share. *See Ruby*, 131 FERC ¶ 61,007, at P 17-19 (2010); *Ruby*, 128 FERC ¶ 61,224, at P 54-55 (2009).

[20] 18 C.F.R. § 154.313 (2010).

[21] Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,292.

<u>The Commission orders</u>:

(A) Ruby's certificate of public convenience and necessity is amended to authorize the proposed revisions to its initial rates, as discussed in the application and the body of this order.

(B) Ruby shall submit actual tariff sheets that comply with the requirements contained in the body of this order no less than 30 days, or more than 60 days prior to the commencement of service.

(C) Ruby shall file a cost and revenue study within 15 months of implementing peak/off-peak short term rates, as discussed in the body of this order.

(D) In all other respects, the September 2009 and April 2010 Orders shall remain in full force and effect.

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.