

135 FERC ¶ 61,091
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.

Trailblazer Pipeline Company LLC

Docket No. RP11-1939-000

ORDER REJECTING TARIFF RECORD AND DENYING WAIVER

(Issued April 28, 2011)

1. On March 31, 2011, Trailblazer Pipeline Company LLC (Trailblazer) filed a revised tariff record¹ and supporting workpapers to reflect its annual Expansion Fuel Adjustment Percentage (EFAP) pursuant to section 41 of its General Terms and Conditions (GT&C) of its FERC Gas Tariff, Fifth Revised Volume No.1. Trailblazer requests a limited waiver of sections 41.4(b), 41.4(c), 41.4(e), and 41.5 of its GT&C to place into effect an EFAP of 3.2 percent. As discussed below, the Commission denies the requested waiver and rejects the proposed tariff record.
2. Trailblazer proposes an EFAP of 3.2 percent to be effective May 1, 2011, which represents a small increase over the 3.18 percent EFAP rate effective during the prior period. Trailblazer requests waiver of various parts of the fuel tracker provisions in section 41 in order to obtain the EFAP of 3.2 percent. Trailblazer explains that adherence to the fuel tracker provisions in section 41 of its GT&C would cause a significant increase in the proposed EFAP on May 1, 2011, to a rate exceeding 8 percent.² Trailblazer states that the waiver and resulting lower rate of 3.2 percent will “mitigate the impact of such a significant fuel increase to its customers.”³
3. Specifically, Trailblazer requests waiver of sections 41.4(b), 41.4(c), and 41.4(e) to calculate the EFAP based upon the most recent four year average historical data, rather than base period data as defined by the tariff. Applying this methodology, Trailblazer obtains a current rate of 3.2 percent (to recover annual ongoing energy costs) and a

¹ Sheet No. 7, Expansion Fuel Reimbursement Percentage, 1.0.0 to Fifth Revised Volume No.1, FERC NGA Gas Tariff.

² See Trailblazer’s Filing at 2 n.6 .

³ *Id.*

deferred rate of 2.22 percent (recovering the balance in the deferred account in order to reconcile actual fuel collections with actual costs), which combine for a total EFAP rate of 5.42 percent.

4. Trailblazer also requests waiver of section 41.5 to exclude collections pursuant to the deferred rates so that it may charge only the current rate of 3.2 percent. Trailblazer states that a similar provision was approved by the Commission in its 2009 and 2010 annual filings.⁴ Trailblazer states that the deferred account contains \$10,985,186, which includes the balance of the deferred account of \$6,453,218 carried over from Trailblazer's last fuel tracker filing in Docket No. RP10-542-000. While postponing recovery of the deferred account, Trailblazer states that the current rate as proposed in its filing is designed to recover Trailblazer's current costs should transportation volumes return to previously higher levels. By collecting the current rate, Trailblazer suggests that the deferred account will not grow if its underlying assumptions (including its expectation of more transportation volumes) are correct. Trailblazer states that it will forego carrying costs on the deferred account balance of \$10,985,186 until such time as it includes these costs in a future filing. However, Trailblazer will continue to assess carrying costs on amounts that accumulate in the deferred account that are incurred after the end of the 12-month period.

5. Public notice of the filing was issued on March 31, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2010)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any unopposed 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 the proceeding or place additional burdens on existing parties. Williams Gas Marketing, Inc. (Williams) and Marathon Oil Company (Marathon) filed protests. Western Gas Resources, Inc. (Western) submitted comments with its intervention.

6. Marathon, Williams, and Western⁵ object to Trailblazer's request for waiver of sections 41.4 and 41.5 of its GT&C. Marathon and Williams state that Trailblazer has negotiated fuel rate caps with five of its six expansion shippers, and that Trailblazer has selected an EFAP (3.2 percent) equal to its negotiated rate cap with these five expansion shippers. Marathon and Williams assert that the waiver request is contrary to section 38.5 of Trailblazer's GT&C, which they state requires Trailblazer to absorb the under-recovery of fuel costs due to negotiated fuel rate discounts or caps. Marathon and Williams also contend that Trailblazer's filing is contrary to Commission policy, which

⁴ *Trailblazer Pipeline Co. LLC*, 131 FERC ¶ 61,084 (2010); *Trailblazer Pipeline Co. LLC*, 127 FERC ¶ 61,098 (2009).

⁵ In its filing, Western states that it generally supports the arguments raised by Marathon.

requires a pipeline to absorb the under-recovery of fuel costs due to negotiated fuel rate discounts or caps.⁶ Williams states that Trailblazer has failed to show which amounts in the deferred account relate to under-recoveries of fuel costs from negotiated rate shippers, and Williams asserts that Trailblazer should be required to absorb under-recoveries from negotiated fuel rate shippers as a loss, to the extent it cannot recover it within the 3.2 percent capped fuel rate before the expiration of the negotiated rate contracts in 2012 and 2013.

7. Marathon and Williams contend that Trailblazer has failed to provide good cause to depart from the fuel tracker mechanism in its tariff, which Marathon states would have required an EFAP rate of 8.44 percent. Marathon and Williams state that Trailblazer's proposed EFAP filing departs from the provisions in its tariff by using four-year monthly averages as opposed to the base period and other projections specified by its tariff. Williams asserts that Trailblazer has not demonstrated that these four year averages are likely to be a better estimate of the amounts in the coming year. Although the Commission has granted waivers in the past, Marathon argues that this is the first time that Trailblazer has fully discarded its tariff mechanism.

8. Marathon and Williams state that Trailblazer's request for waiver is not justified, that Trailblazer's proposal primarily serves to protect itself rather than to mitigate rates that expansion shippers with rate caps would pay. Marathon notes that when Trailblazer received waiver the past two years in Docket No. RP09-479-000 and Docket No. RP10-542-000, it did not mention the negotiated rate cap of 3.2 percent. Marathon asserts that Trailblazer has now for the past three years requested more time to smooth out the effects of an unexpected fuel rate increase. Meanwhile, Marathon observes that the amounts in Trailblazer's deferred account continue to increase from \$3,025,433 two years ago, to \$6,453,218 one year ago, to \$10,985,186 at present. Williams also asserts that the amounts in the deferred account have grown substantially, and that this trend will likely continue if Trailblazer's waiver request is granted.

9. The protestors urge the Commission to direct Trailblazer to re-file its fuel calculations according to the procedures in its tariff. Williams also requests that the Commission order Trailblazer to provide in its current filing and in future filings a showing of the amounts in the deferred account representing under-recoveries of fuel costs related to negotiated rate contracts. Williams also requests that the Commission clarify that Trailblazer is prohibited from collecting from recourse rate shippers any such fuel cost under-recoveries.

⁶ *E.g.*, Williams Gas Marketing, Inc., April 12, 2011 Protest at 3 (citing *Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248, at P 20 (2011)).

10. The Commission denies waiver and rejects Trailblazer's tariff filing. The Commission denies the requested waivers of sections 41.4(b), 41.4(c), 41.4(e), and 41.5 of Trailblazer's GT&C. Trailblazer has not demonstrated good cause to depart from the fuel tracking mechanism contained within its tariff for the third consecutive year. Following waivers the past two years which allowed Trailblazer to forgo collection of its deferred account,⁷ the sum in Trailblazer's deferred account has continued to increase from just over \$3 million to nearly \$11 million, and the Commission is concerned that further deviation from Trailblazer's tariff will result in continued accumulation in the deferred account to be paid by future customers. Further, Trailblazer has not demonstrated that the assumptions underlying its proposal to use a four-year average to determine the current component of the EFAP rate are likely to reflect its actual recovery needs or volumes. Moreover, unlike Trailblazer's waiver requests in 2009 and 2010, several of Trailblazer's customers have expressed strong opposition to this waiver in 2011. Trailblazer's tariff provides an annual fuel tracker mechanism. Trailblazer, like all pipelines, is obligated to comply with the terms of its own tariff. Thus, the Commission denies waiver and rejects this filing as inconsistent with Trailblazer's tariff. Trailblazer should file revised EFAP rates and applicable workpapers consistent with section 41 of Trailblazer's GT&C. Moreover, in its treatment of negotiated rate contracts, Trailblazer is obligated to comply with the terms of its tariff and the Commission's policies.⁸

The Commission orders:

(A) The tariff record in footnote 1 is rejected.

(B) The requested waiver of sections 41.4(b), 41.4(c), 41.4(e), and 41.5 of Trailblazer's GT&C is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ *Trailblazer Pipeline Co. LLC*, 131 FERC ¶ 61,084; *Trailblazer Pipeline Co. LLC*, 127 FERC ¶ 61,098.

⁸ *E.g., Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248 at P 13.