136 FERC ¶ 61,054
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 Nos. CP09-54-008, CP09-54-009

ORDER AMENDING CERTIFICATE

(Issued July 22, 2011)

1. On April 1, 2011, and June 7, 2011, Ruby Pipeline L.L.C. (Ruby) filed applications 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.[2] In Docket No. CP09-54-008, Ruby proposes to revise its initial transportation rates as previously authorized by the Commission to reflect an overall increase in the estimated cost of the facilities. In Docket No. CP09-54-009, Ruby proposes to revise its initial in-kind fuel retention rate to reflect a decrease in projected fuel consumption. For the reasons discussed below, this order grants the requested authorizations.

I. Background and Proposal

2. On September 4, 2009, the Commission issued a preliminary determination 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

[1] 15 U.S.C. § 717f (2006).

[2] *Ruby Pipeline L.L.C.*, 131 FERC ¶ 61,007, *reh'g denied*, 133 FERC ¶ 61,015 (2010) (April 2010 Order). Ruby is a Delaware limited liability company and a subsidiary of El Paso Corporation.

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

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

3. In an order issued April 18, 2011, in this proceeding, the Commission amended Ruby's certificate, authorizing Ruby to include among its service offerings a peak/off-peak pricing option for short-term firm and interruptible services.[6]

4. In Ruby's second application to amend its certificate, in Docket No. CP09-54-008, Ruby seeks to increase the previously-authorized initial transportation rates in order to more accurately reflect the projected final costs of the Ruby pipeline, based on its progress to date. Ruby states that since the issuance of the April 2010 Order granting its certificate, it has experienced unforeseen cost increases and expenses in the actual construction of the project. Ruby has determined that the cost estimates set forth in its original Exhibit K will understate the final project costs. Ruby attributes the increase in cost to several factors, including delays experienced in obtaining authorizations and permitting, additional necessary cultural resources survey and mitigation work, and litigation. Ruby states that, as a result of these factors, project construction was delayed by approximately three months, forcing Ruby to construct its project during the fall and winter months, thereby incurring significantly higher costs. Ruby estimates that its project costs have increased by approximately $590 million to a total of $3.55 billion.[7]

5. Ruby states that for purposes of computing the rates shown in second revised Exhibits N and P, it has also reflected the impacts of the new capital structure and annualized cost of debt that will be in place as of the end of the construction period.

[4] *Id.* P 42.

[5] April 2010 Order, 131 FERC ¶ 61,007.

[6] *Ruby Pipeline L.L.C.*, 135 FERC ¶ 61,033 (2011) (April 2010 Order).

[7] Ruby stated in its April 1, 2011 application that the revised project costs set forth therein did not reflect the final project costs, given that several months of construction still remained before the projected July 2011 in-service date. However, Ruby states that the updated estimates in the application are based on actual costs incurred and better-informed cost projections from its construction contractors.

Ruby asserts it has secured long-term debt associated with the project that will result in a capital structure of approximately 42 percent debt and 58 percent equity. However, Ruby explains that because its capital structure will not have at least 50 percent debt under its realized financing, it has used an imputed capital structure reflecting a 50 percent debt and 50 percent equity ratio to determine the pre-tax and after-tax returns to be included in its initial recourse rates. Finally, Ruby states it has calculated its revised initial recourse rates using billing determinants based on use of 100 percent of the project's capacity, in compliance with the September 2009 Order and the April 2010 Order.

6. Ruby proposes a revised initial recourse rate for firm long-term transportation service consisting of a monthly reservation rate of $34.5826 per Dth and a commodity charge of $0.0100 per Dth delivered.[8] Ruby proposes to similarly revise the charges for other services, including short-term firm transportation, interruptible transportation, park and loan, and swing service. Ruby states that it is not necessary to revise the previously-authorized initial fuel charge, lost and unaccounted for charge, or the Electric Power Cost surcharge to reflect the increase in project costs. Ruby maintains that should the final project costs prove to be materially less than the revised estimate of $3.55 billion, it will seek Commission authorization to lower its rates to accurately reflect the final project costs.

7. In Ruby's third application to amend its certificate, in Docket No. CP09-54-009, Ruby seeks to revise its initial in-kind fuel retention rate to reflect a decrease in the projected fuel consumption. Ruby states that its initial fuel and lost and unaccounted for rates were based on an assumed 90 percent pipeline throughput load factor based on the facility design capacity. Ruby now anticipates an approximate pipeline throughput load factor of less than 60 percent for the first several months following commencement of operations. Ruby maintains that, while long-term demand for gas in the project area remains strong, near-term pipeline utilization is expected to be lower than projected. Ruby states that the lack of near-term natural gas production growth in the Rocky Mountain supply region and significant gas-on-gas competition from Canadian supply sources will result in lower levels of pipeline throughput in the near term. With the anticipated lower throughput levels, Ruby asserts that it will be able to operate its pipeline system without the need for its gas compressors for a significant period of time

[8] In its initial application, Ruby proposed a monthly maximum reservation charge of $30.9980 per Dth and a commodity rate of $0.0150 per Dth, based on less than the total capacity of its pipeline. However, the Commission required Ruby to revise its proposed recourse rates in accordance with the Commission's policy of setting reservation rates based on 100 percent of the capacity of a system and setting commodity rates at the 100 percent load factor equivalent of the reservation rates. September 2009 Order, 128 FERC ¶ 61,224 at P 43-44, *reh'g denied*, 131 FERC ¶ 61,007, at P 20-24.

and can rely exclusively on the electric-driven compressor at the Roberson Creek compressor station.[9] Therefore, to avoid an over-collection for fuel, Ruby proposes to revise its initial in-kind fuel retention rate to reflect a decrease in the projected fuel consumption at its gas compressor stations. Ruby proposes to reduce its initial fuel retention percentage from 0.552 percent to 0.05 percent. Ruby is not seeking to revise the previously approved lost and unaccounted for retention rate of 0.15 percent or to revise its fuel mechanism. As described in section 26 of Ruby's *pro forma* tariff, Ruby will adjust its initial fuel and lost and unaccounted for rates to reflect actual experience no later than six months after Ruby's in-service date and at least every three months thereafter.

II. <u>Notice and Interventions</u>

8. Public notice of Ruby's certificate amendment applications in Docket No. CP09-54-008 and CP09-54-009 were published in the *Federal Register* on April 27, 2011[10] and June 21, 2011,[11] respectively. No interventions, comments, or protests were filed in either docket.

III. <u>Discussion</u>

9. The Commission's finding in its September 2009 Order that Ruby's pipeline project was required by the public convenience and necessity was based on an analysis of the criteria in the Certificate Policy Statement.[12] In particular, the Commission found that since Ruby was a new company with no existing customers, the Certificate Policy Statement's threshold test of no subsidization of the project's costs by existing customers would be satisfied.[13] Ruby's requests to amend its certificate to revise its initial section 7 transportation and in-kind fuel retention rates do not change the basis for that finding or the Commission's findings under the Certificate Policy Statement that there would be no

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[9] The cost of electricity needed to operate this compressor station is recovered through the Electric Power Cost surcharge, authorization for which was granted in the September 2009 Order. Ruby has not proposed to revise this surcharge.

[10] 76 Fed. Reg. 23,578 (April 27, 2011).

[11] 76 Fed. Reg. 36,108 (June 21, 2011).

[12] *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).

[13] September 2009 Order, 128 FERC ¶ 61,224 at P 19.

or minimal adverse effects on existing pipelines and their customers, landowners, or communities.[14]

10. In support of its second request to amend its certificate, in Docket No. CP09-54-008, Ruby has submitted revised cost exhibits and worksheets reflecting its increased costs. No protests or comments concerning its updated cost estimates have been filed. We will grant Ruby's request to reflect these increased costs in its initial section 7 recourse rates under Rate Schedules FT, IT, PAL, and SS-1 and in its peak/off-peak rates for short-term firm and interruptible service.

11. In its original application, Ruby calculated initial recourse rates based on a projected capital structure of 60 percent debt and 40 percent equity, and a return on equity of 14 percent. In the September 2009 Order, the Commission found that Ruby's proposed return on equity and capital structure were reasonable for a new pipeline and consistent with previous Commission orders,[15] including *MarkWest Pioneer, L.L.C.*, in which the Commission had approved a 14 percent return on equity, but required that the project sponsor design its recourse rates to reflect a capital structure of at least 50 percent debt.[16] Because Ruby will not have at least 50 percent debt under its realized financing, Ruby proposes to use an imputed capital structure of 50 percent debt and 50 percent equity to determine its pre-tax and after-tax returns included in its rates. We find that the use of an imputed capital structure of 50 percent debt and 50 percent equity is consistent with *MarkWest*.

12. In the April 2010 Order, the Commission allowed Ruby to include in its initial cost for the project its proposed allowance for funds used during construction (AFUDC) of $309,662,876, subject to Ruby's filing a representation that the proposed AFUDC accruals comply with the requirements set forth in our then-recently implemented AFUDC policy.[17] Under the Commission's revised policy on the commencement of

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

[15] *Id.* P 53 (citing *Mid-Atlantic Express*, 126 FERC ¶ 61,019, at P 31 (2009); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 27 (2008) (*MarkWest)*; *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101, at 61,653 (2005)).

[16] *MarkWest*, 125 FERC ¶ 61,165 at P 27.

[17] April 2010 Order, 131 FERC ¶ 61,007 at P 44. The cost estimate for AFUDC is detailed in Exhibit K of Ruby's Application. We note that while Ruby's estimated cost of constructing its project has increased from $2,963,027,121 to approximately $3,550,000,000, it is not requesting an increase in the initially proposed total AFUDC amount of $309,662,876.

AFUDC, a natural gas pipeline may begin accruing AFUDC when the following conditions are met: (1) capital expenditures for the project have been incurred; and (2) activities that are necessary to get the construction project ready for its intended use are in progress.[18] In its April 1, 2011 application, Ruby maintains that the amount of AFUDC included in the cost of its project is in compliance with the Commission's new policy on AFUDC accruals.[19] Ruby states that it has met the conditions required by the revised AFUDC policy because it did not begin accruing AFUDC until February 2008 following the Commission's approval of its request to initiate the prefiling process, by which time it had filed its land use application with the U.S. Department of Interior's Bureau of Land Management, executed precedent agreements with its anchor shippers, and incurred significant capital expense in developing the project. Based on Ruby's representations, its accrual of AFUDC for the project appears to be consistent with the Commission's revised policy governing the commencement of AFUDC.[20]

13. In support of its third request to amend its certificate, Ruby has submitted revised cost exhibits reflecting the proposed in-kind fuel retention percentage. No protests or comments have been filed. We will grant Ruby's request to revise its initial in-kind fuel retention percentage to reflect reduced projected fuel consumption at its gas compressor stations.

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

The Commission orders:

(A) Ruby's certificate of public convenience and necessity, as amended, is further amended to authorize revised initial recourse rates reflecting increases in projected costs and use of an imputed capital structure of 50 percent debt and 50 percent equity, as proposed in Ruby's April 1, 2011 application.

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[18] *See Florida Gas Transmission Co. LLC,* 130 FERC ¶ 61,194 (2010); *Southern Natural Gas Co.,* 130 FERC ¶ 61,193 (2010); and Accounting Release No. 5 (Revised), *Capitalization of Allowance for Funds Used During Construction*, effective March 18, 2010.

[19] Ruby's April 1, 2011 Application at 11-13.

[20] Ruby's representations that its AFUDC accruals comply with the Commission's revised policy conditions are subject to audit. April 2010 Order, 131 FERC ¶ 61,007 at Ordering Paragraph (M).

(B) Ruby's certificate of public convenience and necessity, as amended, is further amended to authorize a revised initial in-kind fuel retention percentage, as proposed in Ruby's June 7, 2011 application.

(C) In all other respects, the Commission's previous orders in this proceeding remain in full force and effect.

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.