

136 FERC ¶ 61,146  
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. RP11-2295-000

ORDER REJECTING TARIFF RECORDS

(Issued August 31, 2011)

1. On July 25, 2011, Trailblazer Pipeline Company LLC (Trailblazer) filed revised tariff records<sup>1</sup> and supporting workpapers to modify the fuel tracker mechanism in its tariff and to implement a new Expansion Fuel Adjustment Percentage (EFAP) pursuant to the new mechanism effective September 1, 2011. As discussed below, the Commission rejects the proposed tariff records.

**I. Description of Trailblazer's Filing**

2. Trailblazer proposes to modify the fuel tracker provision in its tariff to subject additional, longstanding services to its fuel tracker mechanism and the resulting EFAP rate. Currently, Trailblazer's EFAP only applies to volumes transported under Rate Schedule FTS subject to the Expansion 2002 Recourse Rates. In its filing, Trailblazer proposes also to charge the EFAP rate to (a) interruptible service, (b) reverse firm backhaul transportation service,<sup>2</sup> and (c) overruns under Rate Schedule FTS.

3. Trailblazer explains that its system contains a total capacity of 846,000 Dth/day. Of this capacity, 324,000 Dth/day consists of capacity added in the pipeline's 2002 Expansion. The remaining capacity, referred to as Existing Capacity, comprises approximately the 522,000 Dth/day of capacity that was available prior to the 2002

---

<sup>1</sup> See Appendix.

<sup>2</sup> Reverse firm backhaul transportation refers to shippers with primary points for backhaul transportation that use secondary points in order to achieve a forward-haul movement.

Expansion. Trailblazer's current rates and the allocation of costs between Existing System capacity and the Expansion System capacity are contained within Trailblazer's 2010 Settlement in Docket No. RP10-492-000 (2010 Settlement). Regarding the allocation of fuel costs, Article 4 of this Settlement provides:

The Settlement Rates set forth in Appendix A applicable to Existing System Firm shippers include \$1,646,698 in costs associated with fuel reimbursement. All other fuel reimbursement costs incurred by Trailblazer for firm transportation shall be collected from the Expansion System shippers pursuant to Section 41 of the General Terms and Conditions ("GT&C") in Trailblazer's Tariff ("Section 41").<sup>3</sup>

4. Trailblazer states that currently shippers utilizing interruptible service, overrun service under Rate Schedule FTS, and reverse firm backhaul transportation are only allocated a very small share of the \$1,646,698 fixed portion of fuel costs embedded in the base rates for Existing System capacity.<sup>4</sup> However, Trailblazer asserts that Expansion 2002 capacity is being utilized to effectuate these services. Trailblazer elaborates that Rate Schedule ITS for interruptible service, FTS overrun volumes and reverse firm backhaul transportation volumes only become available on Trailblazer when firm capacity – Existing and Expansion – is not being fully utilized by FTS shippers. Trailblazer asserts that recently Trailblazer's Existing System capacity has flowed at a higher load factor than Expansion System capacity. Trailblazer explains that for the twelve months ended April 2011, Existing System capacity flowed at 98.9 percent load factor while Expansion System capacity flowed at 61.2 percent load factor. Thus, Trailblazer states that applying the fuel tracker for Expansion System capacity to these shippers is consistent with Commission principles that cost incurrence must follow cost causation.

5. Additionally, Trailblazer contends that its filing will address shipper practices that Trailblazer claims prevent its full recovery of actual prudently incurred fuel costs. Trailblazer states that between May 4, 2011, through May 18, 2011, it attempted to

---

<sup>3</sup> The 2010 Settlement was approved by the Commission on April 30, 2010. *Trailblazer Pipeline Co. LLC*, 131 FERC ¶ 61,096 (2010). The 2010 Settlement superseded a prior settlement approved by the Commission on January 23, 2004, in Docket No. RP03-162-000, *et al. Trailblazer Pipeline Co. LLC*, 106 FERC ¶ 61,034 (2004).

<sup>4</sup> Trailblazer explains that interruptible rates are based upon 100 percent load factor of the currently effective FTS rate applicable to Trailblazer's Existing System capacity.

charge its Expansion 2002 Shippers an 8.14 percent EFAP.<sup>5</sup> Trailblazer states that during this period Expansion 2002 Shipper throughput dropped by approximately half and that Expansion 2002 Shippers opted to use other transportation contracts that were not subject to the EFAP, including the services that Trailblazer seeks to incorporate into its fuel tracker mechanism by this filing.

6. Consistent with the proposed tariff changes, Trailblazer proposes a new EFAP rate of 5.62 percent, reflecting the levels of interruptible, FTS overrun, and reverse firm backhaul transportation volumes that Trailblazer states were actually transported over the annual period ending March 31, 2011, consistent with the base period utilized in Docket No. RP11-2168. The proposed 5.62 percent EFAP rate is the sum of a current component of 3.09 percent to recover projected costs in the instant period and a deferred component of 2.53 percent to recover accumulated under-recoveries from prior periods. Trailblazer requests an effective date of September 1, 2011, and further adds that should the Commission view the issues in this proceeding as being in common with those set for hearing in RP11-2168-000, Trailblazer would not oppose consolidation of the dockets provided that the Commission accepts the revised EFAP on Sheet No. 7 effective on September 1, 2011, subject to refund.

## **II. Notice, Interventions, Protests and Answers**

7. Public notice of the filing was issued on July 27, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2011)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), 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. Tenaska Marketing Ventures (Tenaska) and Shell Energy North America (US), L.P., (Shell) filed timely protests and BP America Production Company and BP Energy Company (collectively, "BP") filed timely comments. On August 11, 2011, Indicated

---

<sup>5</sup> Between May 4, 2011, and May 18, 2011, Trailblazer imposed an 8.14 percent EFAP without waiting for the Commission to accept Trailblazer's May 2, 2011 filing in Docket No. RP11-1939-001 that proposed to implement such a rate. On May 18, 2011, the Commission rejected Trailblazer's filing. *Trailblazer Pipeline Co. LLC*, 135 FERC ¶ 61,161 (2011) (May 18 Order). Additionally, contrary to Trailblazer's practice between May 4, 2011 and May 18, 2011, the Commission later specified that Trailblazer could not charge its negotiated fuel rate shippers more than the 3.20 percent fuel rate cap specified by its tariff and negotiated fuel rate contracts. *Trailblazer Pipeline Co. LLC*, 136 FERC ¶ 61,007, at P 32-33 (2011) (July 1 Order).

Shippers<sup>6</sup> submitted a late protest. The Commission accepts Indicated Shippers' late protest given Indicated Shippers' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.<sup>7</sup>

8. On August 15, 2011, Trailblazer filed an answer and on August 18, 2011, Trailblazer filed a supplemental answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. The Commission accepts the answer and supplemental answer filed by Trailblazer because these answers have provided information that assisted our decision-making process.

### **III. Discussion**

#### **a. Proposed Changes to the Fuel Mechanism.**

##### **i. Protests and Comments**

9. Tenaska and Shell aver that Trailblazer's proposal to impose the EFAP on interruptible service, firm overrun service, and reverse firm backhaul transportation is barred by the 2010 Settlement. Tenaska and Shell assert that article 4 of the settlement embeds in the rates for firm service on the Existing System a stipulated amount of costs (\$1,646,698) associated with fuel reimbursement. Tenaska and Shell state that the settlement also requires that all other fuel reimbursement costs incurred by Trailblazer for firm transportation shall be collected from Expansion System shippers. Shell adds that authorized overrun service for Existing Shippers was identified in Appendix A of the 2010 Settlement as a service for Existing System shippers subject to the 100 percent load factor rate for Existing System shippers. Tenaska further emphasizes that articles IV and

---

<sup>6</sup> Western Gas Resources, Inc., Williams Gas Marketing, Inc., and Marathon Oil Company.

<sup>7</sup> The Commission notes that protests were due August 8, 2011. In their filing, Indicated Shippers provided no explanation for why they filed their protest three days late. Trailblazer objects that the late-filing impaired Trailblazer's ability to draft an answer. However, unless otherwise authorized by the decisional authority, Commission regulations do not allow such answers, and, in any event, the Commission has also accepted Trailblazer's supplemental answer that addressed the arguments raised by Indicated Shippers. Although the Commission will accept Indicated Shippers protest, the Commission emphasizes the importance of submitting filings in a timely manner.

VII provide that Trailblazer is permitted to alter its rates and fuel allocation mechanism only upon the expiration of the rate case filing moratorium on January 1, 2014.<sup>8</sup>

10. Tenaska also objects to Trailblazer's effort to support its proposal by alleging the use of Expansion System capacity by shippers using interruptible service, reverse firm backhaul transportation service, and overruns under Rate Schedule FTS. Tenaska states that Trailblazer's assertions are "academic" because the 2010 Settlement prohibits Trailblazer from extending its EFAP to these additional shippers. Tenaska emphasizes that Trailblazer only claims that interruptible transportation and reverse firm backhaul transportation "typically" use Expansion System capacity, but does not demonstrate how much of this expansion capacity these transactions actually use. Tenaska argues that absent the development of a formal evidentiary record regarding flow patterns and actual compressor usage, Trailblazer has not established that these services require expansion capacity.

11. Tenaska adds that Trailblazer established its current fuel allocation between Existing and Expansion System shippers in 2003 in its rate case settlement in Docket No. RP03-162-000. During this period and continuing after the 2010 Settlement, Tenaska states that Trailblazer marketed and sold daily reverse firm backhaul transportation to Tenaska and other shippers, selling quantities that at times equaled quantities for forward-haul transportation. Tenaska asserts that the fuel costs were embedded in its demand charges and that Trailblazer never raised concerns about the inappropriate allocation of fuel costs. Tenaska argues that Trailblazer's arguments are undermined by seven years' of Trailblazer's ongoing practice.

12. Shell also claims that Trailblazer's proposal improperly imposes on interruptible, reverse firm backhaul, and Rate Schedule FTS overrun shippers costs that were incurred prior to the effective date of the proposed revisions. Shell states that section 154.403(c)(3) of the Commission regulations require that the pipeline state in the GT&C of its tariff which rate schedules are subject to the fuel reimbursement percentage. Further, Shell states that section 154.403(d)(4) of the Commission's regulations adds that the pipeline "must not recover costs and is not obligated to return revenues which are applicable to the period pre-dating the effectiveness of the tariff language setting forth the periodic rate mechanism, unless permitted or required to do so by the Commission."<sup>9</sup> Shell states that Trailblazer's provision seeks to recover from the deferred account costs that were incurred in a prior period that Trailblazer was unable to collect through the then-effective EFAP which did not apply to reverse firm backhaul transportation, interruptible, or FTS overrun service.

---

<sup>8</sup> Tenaska Protest at 4 (citing 2010 Settlement, Art. 7.1).

<sup>9</sup> Shell Protest at 3 (quoting 18 C.F.R. § 154.403(d)(4)).

13. Shell adds that if Trailblazer included \$1,646,698 of its fuel costs in Existing System firm shippers' rates, it would be appropriate for Trailblazer to deduct that quantity from the fuel costs it has listed in Exhibit B, Attachment B. Otherwise, Trailblazer would be collecting \$1,646,698 of fuel costs from both its Existing System firm shippers and its Expansion System shippers, in violation of the 2010 Settlement.

14. In contrast to Tenaska and Shell, Indicated Shippers aver that Trailblazer's current tariff provision actually requires Trailblazer to assess the EFAP on overrun, interruptible, and reverse firm backhaul shippers. Indicated Shippers state that under sections 1.11 – 1.13 of Trailblazer's GT&C, an "Expansion 2002 Shipper" is a shipper entering into a contract for firm services using capacity resulting from the 2002 Expansion certificated in Docket No. CP01-64-000. Indicated Shippers assert that the 2010 Settlement establishes Trailblazer's responsibility for the unrecovered fuel costs in Trailblazer's Deferred EFAP account.

15. Indicated Shippers also argue that Trailblazer's proposal includes unrecoverable fuel costs. Indicated Shippers state that the significant drop in Trailblazer's proposed EFAP rates from 8.69 percent<sup>10</sup> to 5.62 percent<sup>11</sup> is entirely attributable to the projected increase in throughput volume from 73,518,498 Dth to 113,815,287 Dth with the addition of other services. Indicated Shippers state that this proposal reinforces allegations by shipper parties in prior fuel tracker proceedings that Trailblazer's design of prior period EFAP rates has been based upon a substantial understatement of Expansion System throughput. Indicated Shippers argue that Trailblazer is not entitled to recover fuel costs that it opted not to collect from the shippers by section 38.5 of Trailblazer's tariff. Indicated Shippers argue that the proper application of section 38.5 would eliminate the entirety of the deferred component of Trailblazer's EFAP.

16. BP also states that Trailblazer's current tariff already requires that shippers using capacity resulting from the 2002 Expansion be subject to Trailblazer's EFAP; thus, according to BP, Trailblazer's proposed tariff revision appears to be unnecessary. However, BP expresses concern that the proposed tariff language might encroach on Existing System shippers who were not intended to be subject to the Expansion fuel rate. BP states that a clarification to Trailblazer's tariff should state that "Transactions not subject to Expansion Fuel Reimbursement" include transportation throughput within the

---

<sup>10</sup> The 8.69 percent fuel rate consists of a current rate of 4.78 percent and a deferred rate of 3.91 percent.

<sup>11</sup> The 5.62 percent fuel rate consists of a current rate of 3.09 percent and a deferred rate of 2.53 percent.

190.5 Bcf of Existing system capacity. BP states that existing shippers (including replacement shippers) utilizing this capacity have never been subject to expansion fuel charge.

**ii. Trailblazer's Answer and Supplemental Answer**

17. In its Answer, Trailblazer contends that its proposal is consistent with the 2010 Settlement. Trailblazer asserts that the agreement as to the dollar value for fuel relates only to the fuel to be included in the base rates for rate schedule FTS service applicable to the 522,000 Dth/day of the Existing System firm capacity. Trailblazer asserts that "Expansion System shippers" as it appears in the 2010 Settlement is not defined. Trailblazer specifically notes that the parties did not use the term "Expansion 2002 Shipper" which was used in Trailblazer's tariff and which Trailblazer states was defined as a shipper which has entered into a firm Agreement between Trailblazer and a shipper for capacity resulting from Expansion 2002 under Docket No. CP01-64-000. Trailblazer asserts that the term "Expansion System shippers" must thus be given its plain meaning, which Trailblazer defines as any shipper that uses expansion capacity. Trailblazer reiterates that because the Existing System capacity was utilized at 98.9 percent load factor, shippers using interruptible, authorized overrun under Rate Schedule FTS, and reverse firm backhaul service are using the expansion capacity.

18. Trailblazer states that the 2010 Settlement only made one provision regarding fuel allocation, a single allocation of dollars (\$1.6 million) to Existing System firm capacity. Regarding interruptible service, Trailblazer notes that section 4.1 only relates to fuel costs for "firm transportation" and does not preclude Trailblazer from expanding the EFAP to interruptible transportation from Expansion System shippers that clearly utilize expansion facilities. Trailblazer states that although the settlement established interruptible and authorized overrun service at 100 percent load fact of the FTS base rate, the parties did not agree to any specific allocation of fuel costs.

19. Trailblazer additionally argues that it is consistent with Commission policy to charge the IT, reverse firm backhaul, and FTS overrun shippers for accumulations in its deferred account. Trailblazer asserts that that tracker mechanisms by their very nature recognize intergenerational shipper issues and thus do not guarantee that the same group of shippers that incurred the tracked costs will be assessed the tracked costs. Given the existence of the deferred component in the tracker mechanism outlined in section 41 of Trailblazer's GT&C, Trailblazer asserts that its tariff permits recovery of previously incurred costs from new or different shippers.

20. In its Supplemental Answer and Answer, Trailblazer asserts that the tariff change is necessary to recover its fuel costs and disputes Indicated Shippers' argument that Trailblazer could under its current tariff collect a fuel charge for interruptible, reverse firm backhaul, and authorized overrun service. Trailblazer agues that footnote 1 of Sheet No. 7 in its tariff clearly provides that the EFAP only applies to volumes transported

under Rate Schedule FTS to which the Expansion 2002 Recourse rates are applicable under section 5.1 (b) of Rate Schedule FTS. Regarding reverse firm backhaul transportation, Trailblazer asserts that firm transportation contracts, such as firm backhaul agreements entered into outside of Docket No. CP01-64-000, are not Expansion 2002 Agreements under Trailblazer's tariff. Trailblazer adds that the Existing System rate was appropriate given that the primary path of the contract is a backhaul using no Expansion System capacity, and if nominated as contracted, does not incur a separate fuel charge. In response to BP, Trailblazer states that it does not intend to assess EFAP other than to those transactions listed in Section 41.2(j), which according to Trailblazer would exclude those shippers using the Existing capacity of 522,000 Dth/day that is not dependent upon the expansion.

21. In response to Shell, Trailblazer adds that the workpapers used to calculate the proposed EFAP rates in the July 25 Filing allocate \$1,646,698 of its fuel costs to the Existing System. In its supplemental answer responding to Indicated Shippers, Trailblazer argues that its deferred account was properly calculated.

22. Trailblazer states that in the alternative, the Commission should set any issues related to Trailblazer's proposed expansion of the EFAP to interruptible, reverse firm backhaul, and authorized overruns for hearing.

### **iii. Commission Decision**

23. The Commission rejects Trailblazer's proposed tariff records. Trailblazer's proposal to assess the EFAP for interruptible service, reverse firm backhaul transportation service, and overruns under Rate Schedule FTS is contrary to the 2010 Settlement. Article 4.1 of the 2010 Settlement provides:

The Settlement Rates set forth in Appendix A applicable to Existing System Firm shippers include \$1,646,698 in costs associated with fuel reimbursement. All other fuel reimbursement costs incurred by Trailblazer for firm transportation shall be collected from the Expansion System shippers pursuant to Section 41 of the General Terms and Conditions ("GT&C") in Trailblazer's Tariff ("Section 41").

Trailblazer asserts that the 2010 Settlement does not define "Existing System" or "Expansion System" shippers, and thus these terms must be interpreted to refer to the shippers whose throughput happens to be using either expansion or existing capacity. The Commission is not persuaded by Trailblazer's argument. In light of the absence of a definition for "Existing System" and "Expansion System" shippers, the Commission's interprets Article 4 of the 2010 Settlement in the context of the rates incorporated into the 2010 Settlement and our ratemaking expertise. Under the terms of the settlement, all three classes of service (interruptible, authorized overrun, and reverse firm backhaul) have fuel costs already incorporated into their base settlement rates. First, Authorized

overrun service is assigned a rate that is the 100 percent load factor of Existing Shipper rates, which reflects the \$1,646,698 fuel costs allocated to Existing Shippers.<sup>12</sup> Second, although Article 4 discusses fuel costs related to “firm” service, the 2010 Settlement establishes interruptible shippers rates based upon 100 percent load factor of Existing Shipper rates, which include fuel costs.<sup>13</sup> Third, Rate Schedule FTS backhaul shippers, which are using secondary points to achieve forward-haul service, are subject to the Existing System firm recourse rate under the 2010 Settlement that already incorporates fuel costs. Under its filing, Trailblazer proposes to recover fuel costs twice, once through the base rates established by the 2010 Settlement and a second time through the proposed fuel tracker. It is contrary to Commission policy for pipelines under cost-based rates to double recover costs. As for Trailblazer’s assertion that the fuel cost embedded in interruptible, authorized overrun, and reverse firm backhaul service is minimal, the size of the allocation is irrelevant – insofar as that was the allocation made by the 2010 Settlement, the parties are bound by it.

24. Under other circumstances, Trailblazer could file a general section 4 rate case to remove the fuel costs from the base rates and to establish a fuel tracker for these additional shippers. However, the rate moratorium contained within Article 7 of the 2010 Settlement currently bars Trailblazer from seeking to change these settlement base rates or the fuel cost allocation:

Neither Trailblazer, pursuant to NGA Section 4, nor any other party to this proceeding or Trailblazer customer, pursuant to NGA Section 5, will seek to increase or decrease the Settlement Rates or change the fuel cost allocation methodology contained in this Settlement prior to the filing required by Article 7.4.<sup>14</sup>

Article 7.4 of the 2010 Settlement requires Trailblazer to make a section 4 rate case to be effective January 1, 2014. Until that time, Trailblazer is prohibited by the settlement

---

<sup>12</sup> 2010 Settlement, Appendix A.

<sup>13</sup> *Id.*

<sup>14</sup> Article 4.2 of the 2010 Settlement describing the fuel cost allocation also provides:

The settlement rates set forth in Appendix A applicable to Existing system firm shippers shall not be adjusted in any fuel tracking filings under Section 41, except as provided in accordance with Section 4 rate case filed pursuant to Article VII below.

from changing the settlement rates or the settlement's fuel allocation methodology. Thus, the Commission rejects the instant proposal as contrary to the 2010 Settlement.

25. Trailblazer's proposal is fundamentally flawed for a second reason: it violates the prohibition against retroactive ratemaking. Trailblazer seeks to recover accumulated under-recoveries in its existing deferred account from shippers that were not subject to the prior mechanism. Under the retroactive ratemaking doctrine, "the Commission is prohibited from adjusting current rates to make up for previous over- or under-collections of costs in prior periods."<sup>15</sup> The prohibition against retroactive ratemaking is satisfied "when parties have notice that a rate is tentative and may be later adjusted with retroactive effect..."<sup>16</sup> A true-up in a fuel tracker mechanism provides notice to affected shippers insofar as it describes how over- or under-collections of costs occurring after its effective date will be carried forward for inclusion in future rates.<sup>17</sup> However, when a pipeline proposes to change its fuel tracker to include shippers not previously subject to the charge, it may not include in the initial true-up any under-recoveries that occurred prior to the effective date of the tariff provision.

26. Under Trailblazer's current tariff, the EFAP only applies to volumes transported under "Rate Schedule FTS to which the Expansion 2002 Recourse Rates are applicable..."<sup>18</sup> Consequently, the fuel tracker in Trailblazer's current tariff does not apply to interruptible, authorized overrun, or reverse firm backhaul service because none of these services are subject to the Expansion 2002 Recourse Rate, and Trailblazer's ongoing practice has been not to assess an EFAP for these services. Given the tariff language and Trailblazer's longstanding application of the tariff language, interruptible,

---

<sup>15</sup> *Associated Gas Distributors v. FERC*, 898 F.2d 809, 810 (D.C. Cir. 1990) (J. Williams, *concurring*).

<sup>16</sup> *Consolidated Edison Co. of New York v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003)).

<sup>17</sup> *E.g.*, *Sabine Pipe Line LLC*, 127 FERC ¶ 61,267, at P 15-16 (2009) (*Sabine*); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,280, at P 18 (2005) (*HIOS*). Commission regulations governing fuel trackers incorporate this principle. 18 C.F.R. § 154.403(d)(4) ("The natural gas company must not recover costs and is not obligated to return revenues which are applicable to the period pre-dating the effectiveness of the tariff language setting forth the periodic rate change mechanism, unless permitted or required to do so by the Commission.").

<sup>18</sup> Trailblazer's FERC NGA Gas Tariff, Fifth Revised Volume No. 1, Sheet No. 7, Expansion Fuel Reimbursement Percentage, 2.0.0.

authorized overrun, or reverse firm backhaul service shippers were not provided notice that they would be subject to a true-up for the fuel under-recoveries currently accumulated in Trailblazer's deferred account. Although Trailblazer's tariff allows for the collection of a deferred account, it does not provide that the deferred account is recoverable from interruptible, authorized overrun, or reverse firm backhaul service shippers.

27. Because the Commission is rejecting the filing as inconsistent with the 2010 Settlement and retroactive ratemaking principles, the Commission need not reach the other particular issues regarding Trailblazer's calculation of the proposed EFAP in this filing or the accumulations in the deferred account.

**b. Trailblazer's Treatment of Asset Managers**

28. Indicated Shippers allege that Trailblazer's decision to deny the application of the 3.2 percent rate cap to replacement shippers is contrary to the Commission's "similarly situated test." Regarding asset managers, Indicated Shippers contend that there is at least a rebuttable presumption that an asset manager is similarly situated to the releasing shipper.<sup>19</sup> Indicated Shippers discuss various criteria that they claim relate to whether a replacement shipper is similarly situated and attempts to apply them to the facts in this proceeding.

29. In its supplemental answer, Trailblazer argues that Indicated Shippers' arguments are beyond the scope of this filing and that Commission precedent supports its refusal to apply the 3.2 percent rate cap to replacement shippers, including asset managers.

30. Trailblazer's treatment of replacement shippers, including asset managers, is beyond the scope of the section 4 filing made by Trailblazer to broaden the applicability of its fuel tracker rates to additional shippers. Consistent with Commission regulations, Indicated Shippers have the option to file a complaint in a separate proceeding, but the Commission will not address these issues here.

---

<sup>19</sup> Indicated Shippers Protest at 6-7 (citing *Texas Eastern Transmission LP*, 129 FERC ¶ 61,031 (2009)).

The Commission orders:

The tariff records as listed in the Appendix of this order are rejected.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Appendix**

Trailblazer Pipeline Company LLC  
Fifth Revised Volume No. 1  
FERC NGA Gas Tariff

Rejected Tariff Records

Sheet No. 7, Expansion Fuel Reimbursement Percentage, 3.0.0

Sheet No. 261, General Terms and Conditions - Sections 41.3 and 41.4, 1.0.0