

136 FERC ¶ 61,227  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

September 29, 2011

In Reply Refer To:  
Trailblazer Pipeline Company  
LLC  
Docket No. RP11-2510-000

Trailblazer Pipeline Company LLC  
3250 Lacey Road, Suite 700  
Downers Grove, IL 60515-7918

Attention: Bruce H. Newsome  
Vice President

Reference: Amended Negotiated Rate Agreement with J.M. Huber Corporation

Ladies and Gentlemen:

1. On August 31, 2011, Trailblazer Pipeline Company LLC (Trailblazer) filed revised tariff records<sup>1</sup> to amend the existing negotiated rate FTS Agreement with J.M. Huber Corporation (Huber) (Contract No. 919361). Trailblazer requested any and all waivers necessary to make the proposed tariff records effective September 1, 2011. The Commission grants waiver of the 30-day notice requirement and accepts and suspends the amended negotiated rate agreement and tariff records subject to the conditions discussed herein, effective September 1, 2011.

2. The currently effective service agreement between Trailblazer and Huber grants Huber a 3.2 percent cap on fuel retention over the terms of the contract. Huber has released a portion of its capacity under the agreement to Shell Energy North America (US), L.P. (Shell Energy), under an Asset Management Agreement. To address a dispute

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<sup>1</sup> Trailblazer FERC NGA Gas Tariff, *Fifth Revised Volume No. 1*, Sheet No. 9, Statement of Negotiated Rate Transactions (Footnotes), 3.0.0 and Part 4.4, Contract No. 919361, 1.0.0.

that arose between Trailblazer and Huber regarding the applicability and recovery of the fuel adjustment percentage, Trailblazer and Huber modified Article 2.5 in Exhibit C of the contract to provide that the negotiated fuel adjustment percentage capped at 3.2 percent applies on a daily basis. The agreement also provides that the 3.2 percent cap on fuel rates extends to replacement shippers acquiring capacity under the FTS Agreement via a temporary capacity release or a permanent capacity release if Huber is exiting from the natural gas trading and transportation activities. In addition, Trailblazer revises footnote 3 on tariff record Sheet No. 9 to reflect the terms of the modified agreement. Trailblazer contends that the modifications are permissible non-conforming terms because they do not affect the substantive rights of the parties or result in any undue discrimination.

3. Trailblazer also attached for informational purposes a settlement agreement that it entered into with Huber and Shell Energy.<sup>2</sup> The settlement addresses Huber and Shell Energy's participation in the ongoing proceedings under Docket Nos. RP11-2168, RP11-1939, and RP11-2295. The amended negotiated rate agreement was an outgrowth of the settlement.

4. In the event of minimal suspension, Trailblazer reserves its right to motion the tariff records into effect "[i]f the Commission directs Trailblazer to change any aspect of Trailblazer's proposed changes."

5. Public notice of the filing issued on September 1, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulation (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 motion to intervene out of time filed before the date this order issues are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Shell filed comments supporting the proposed agreement. No party filed adverse comments or protests.

6. The Commission accepts and suspends the amended negotiated rate agreement and tariff records subject to an additional filing by Trailblazer to address an impermissible

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<sup>2</sup> Although Trailblazer submitted the settlement for "informational purposes," the Commission reminds Trailblazer that all natural gas companies are required by section 4 of the Natural Gas Act to submit all contracts that affect or relate to the rates, charges, classifications and services. 15 U.S.C. § 717c; *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082, at P 6 (2008). Having reviewed the document, the Commission will treat this filing as satisfying the requirement that pipelines submit these types of agreements for review.

material deviation in the filed agreement.<sup>3</sup> As discussed above, Trailblazer seeks to modify the original negotiated rate agreements to include a provision that it will give the 3.2 percent fuel rate cap (a) to a permanent replacement shipper if Huber is exiting from natural gas trading and transportation activities or (b) to any current or future temporary replacement shipper. Trailblazer's tariff contains no provision offering to include in a shipper's service agreement a clause guaranteeing a particular usage or fuel charge to that shipper's replacement shipper, nor does its form of service agreement include a blank for such a clause.<sup>4</sup> The Commission addressed a similar non-conforming provision in *Texas Eastern*.<sup>5</sup> As the Commission explained in that proceeding, such a deviation is material because it “goes beyond filling in the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties.”<sup>6</sup> Thus, the provision in Huber's service agreements concerning negotiated fuel rates for its replacement shippers goes beyond filling in the spaces of Trailblazer's form of service agreement with the information provided for in the tariff.

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<sup>3</sup> As Trailblazer reserved its right to motion into effect the proposed tariff records in the event the Commission directs Trailblazer to change any aspect of its proposal, the Commission finds that Trailblazer's conditions to its motion have not been satisfied. Thus, until Trailblazer files a motion to move these records into effect pursuant to section 154.206 of the Commission's regulation, these records will remain in suspended status.

<sup>4</sup> A pipeline's negotiated fuel rate with the releasing shipper is not necessarily determinative of the fuel rate that will be offered to the replacement shipper. Unlike the process for determining a replacement shipper's reservation rate, the replacement shipper's fuel charge is a matter solely between the replacement shipper and the pipeline, and the pipeline is not subject to a blanket requirement to give replacement shippers the same negotiated fuel rate given to the releasing shipper. *Questar Pipeline Co.*, 128 FERC ¶ 61,003, at P 13-14 (2009) (citing *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,309 (1992)). However, while there is no such blanket requirement to offer the same negotiated fuel rate, under Commission policy, if a replacement shipper is similarly situated to the releasing shipper, then the pipeline must pass through the negotiated rate to the replacement shipper. *Id.*; *Texas Eastern Transmission, L.P.*, 129 FERC ¶ 61,031, at P 20 (2009). Thus, notwithstanding any language in the agreement between Huber and Trailblazer, any replacement shipper that can demonstrate that it is “similarly situated” to Huber would be entitled under Commission policy to the 3.2 percent negotiated rate cap on fuel charges.

<sup>5</sup> *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,025 (2009), *order on reh'g*, 130 FERC ¶ 61,189 (2010) (*Texas Eastern*).

<sup>6</sup> *Texas Eastern*, 129 FERC ¶ 61,025 at P 17.

7. When presented with a non-conforming agreement with a material deviation, the Commission must determine whether the material deviation presents a significant risk of undue discrimination among shippers. If so, the pipeline may only apply the provision pursuant to a generally applicable tariff provision setting forth the conditions under which the provision will be offered. Consistent with the Commission's holding in *Texas Eastern*, the agreement by Trailblazer with Huber provides Huber with a valuable right in terms of a competitive advantage should it release that capacity. Thus, the pipeline may only offer this provision pursuant to a generally applicable tariff provision.

8. Consequently, the amended provision is an impermissible material deviation from Trailblazer's form of service agreement. Accordingly, the Commission requires that Trailblazer, within 30 days, either remove these provisions from Huber's service agreement or file generally applicable tariff provisions to offer a similar provision to other firm shippers on a not unduly discriminatory basis.<sup>7</sup>

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

cc: Public File  
All Parties

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<sup>7</sup> Even with a modification to its tariff, Trailblazer would still need to file any negotiated rate agreement with a replacement shipper receiving the 3.2 percent negotiated fuel rate cap. *Texas Eastern*, 129 FERC ¶ 61,025 at P 21, *order on reh'g*, 130 FERC ¶ 61,189 at P 25, 27.