137 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Bison Pipeline LLC Docket No. RP11-76-001

ORDER DENYING REHEARING

(Issued December 16, 2011)

1. Bison Pipeline LLC (Bison), a new interstate natural gas pipeline, filed marked versions of its executed service agreements highlighting the non-conforming language contained in the agreements. The non-conforming service agreements are with each of the four shippers that signed precedent agreements for the project.[1] On December 29, 2010, the Commission issued an order accepting the filing subject to conditions.[2] Bison requests rehearing of the directive in the Letter Order that required Bison to modify section 10.2(c) of the service agreements to provide the Commission with at least 30 days notice prior to the effective date of Bison's termination of a service agreement.[3] For the reasons set forth below the Commission denies rehearing.[4]

2. Each of the service agreements contains non-conforming provisions that allow Bison to terminate the service agreement upon written notice to the shipper upon the

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[1] The four customers are Anadarko Energy Service Company (Anadarko), MidAmerican Energy Company (MidAmerican), Minnesota Energy Resources Corporation (Minnesota), and Williams Gas Marketing, Inc. (Williams).

[2] *Bison Pipeline LLC*, 133 FERC ¶ 61,256 (2010) (Letter Order).

[3] Bison states that the identified termination effective date provision appears in section 10.2(c) of the Anadarko, MidAmerican and, Minnesota service agreements, and in section 10.2(f) of the Williams' service agreement.

[4] The Letter Order required Bison to remove another section in the service agreements, and make other modifications. On June 7, 2011, in Docket No. RP11-76-002, the Commission accepted Bison's compliance filing reflecting those requirements, but that compliance filing did not modify the section addressed in this order.

occurrence of certain specified events.[5] The agreements further provided that "[a]ny termination pursuant to section 10.2 … shall be effective upon Shipper's receipt of Company's termination notice." The Letter Order stated that the termination of a shipper's contract is an abandonment of service and the Commission's regulations and policy require the pipeline to provide the Commission with at least 30 days notice of termination to ensure that the shipper has the opportunity to raise questions about its termination before abandonment occurs.[6] The regulation also requires that the notice must be "duly posted" by the pipeline. Moreover, such notice also provides the Commission with the ability to ensure that the termination is in the public convenience and necessity. Accordingly the Letter Order found that Bison's non-conforming provisions that provide that termination is effective upon the customer's receipt of the termination notice are inconsistent with the Commission's regulations and policy since they do not provide the 30-day notice to the Commission, and directed Bison to modify the non-conforming agreements to comply with the Commission's regulations.

Bison's Request for Rehearing

3. Bison contends that the Letter Order is not consistent with Commission precedent, and erred in relying upon the *Northern Natural* case. Bison argues that Commission precedent after the *Northern Natural* case demonstrates that a 30-day notice period is not required prior to the effective date of termination issued by the pipeline, citing *Monroe Gas*.[7] Bison contends that the Letter Order also failed to mention the *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines,*[8] which also supports its position.

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[5] The events are if: (i) "Shipper or any Guarantor of its obligations fails to provide Credit Support or replacement Credit Support within ten days of notice by Company to Shipper"; (ii) "a petition is filed, under any Chapter of the United States Bankruptcy Code, by or against Shipper, any affiliate of Shipper or any Guarantor of shipper's obligations hereunder"; or (iii) "Shipper fails to pay when due any sum for which it is obligated under this Service Agreement, or Shipper fails to comply with any other obligation under this Service Agreement, Rate Schedule FT-1 or Company's FERC Gas Tariff." Bison states that subsections (ii) and (iii) of the Williams' agreement expired when service commenced.

[6] 18 C.F.R. § 154.602, and *Northern Natural Gas Co.,* 103 FERC ¶ 61,276, at P 51-56 (2003) (*Northern Natural).*

[7] *Monroe Gas Storage Co*., *LLC,* 130 FERC ¶ 61,113 at P 49, 54 (2010) (*Monroe Gas*).

[8] FERC Stats. & Regs. ¶ 31,191 at P 19 (2005) (*Policy Statement*).

4. Bison argues that in *Monroe Gas*, the Commission approved a non-conforming creditworthiness provision that allowed the company to serve notice of termination of a service agreement which would become effective 15 days from the date of such notice.[9] Bison notes that *Monroe Gas* also permitted the termination effective date provision in question to survive expiration of the precedent agreement, regardless of the fact that the company's tariff provided for a 30-day notice period.

5. Bison asserts that in *Monroe Gas* the company urged that while the provision in question related to timing, rather than collateral, the *Policy Statement* still applies because matters of timing and collateral both seek to provide the company with the greater fiscal protections necessary to ensure development of a new project.[10]

6. Bison states that the Commission agreed with the company's argument in *Monroe Gas* that the timing provision fell within the scope of the *Policy Statement*, which "permits pipelines to include the higher security requirements in the service agreements of the initial shippers on a project."[11] Accordingly, Bison argues, the Commission accepted the non-conforming timing provision in *Monroe Gas*, as "not resulting in undue discrimination to any other shippers."[12]

7. Bison asserts that the provisions here are similar to the provisions in *Monroe Gas*. According to Bison, the provision for a shorter-than-traditional notice period is an example of a higher security requirement implemented in the service agreements of the initial Project shippers. It argues the provision does not present a risk of undue discrimination. Moreover, it contends that the termination effective date provision, similar to that in *Monroe Gas*, aligns the security requirement with project risk as permitted under, and fully consistent with, the *Policy Statement*.

8. Bison argues that the termination effective date provision attempts to reduce the risks associated with default with respect to key initial shippers and to provide the certainty needed to justify construction of the pipeline. While the provision relates to timing, rather than to collateral, Bison asserts such an argument was nevertheless upheld in *Monroe Gas*. Bison contends that the triggering events set forth in sections 10.2(a)(i)-(iii) do not contain any element of surprise for a shipper and thus termination upon receipt of the notice does not prejudice the shipper.

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[9] *Monroe Gas*, 130 FERC ¶ 61,113 at P 49-54.

[10] *Id.* at 53.

[11] *Id.* at 56.

[12] *Id.*

Discussion

9. The Commission will deny rehearing since Bison did not show why the non-conforming provision, which is contrary to the Commission's regulations, should be permitted. The Commission's regulations in section 154.602, unequivocally state that when a pipeline intends to terminate a service agreement it "must notify the Commission of the proposed cancellation or termination, at least 30 days prior to the effective date of such cancellation or termination." The Letter Order explained this is required "to ensure that the shipper has the opportunity to raise questions about its termination before abandonment occurs. This also provides the Commission with the ability to ensure that their termination is in the public convenience and necessity."[13] The Policy Statement similarly states that the notice period is required to ensure that the Commission "has the opportunity to determine if termination is in the public convenience and necessity."[14]

10. Bison's rehearing request does not respond to this explanation except to argue that "the triggering provisions set forth in sections 10.2(a)(i)-(iii) also do not unduly prejudice the shippers given that a shipper will have advance knowledge that it would run afoul of a triggering event."[15] This contention does not address the issue addressed by section 154.602. This section is designed to ensure that before abandonment can occur, the pipeline must give the Commission, as well as the shipper, 30 days advance notice. This provides the shipper, even if it is aware of the triggering event, the opportunity to request Commission review of the abandonment, and provides the Commission with sufficient time to undertake that review.

11. Bison's rehearing request is based primarily on its contention that current Commission precedent, as expressed in *Monroe Gas*, permits an immediate effective termination notice without any notification to the Commission. We find no merit in this contention. We do not find that *Monroe Gas* establishes a Commission policy that pipelines and shippers can agree to dispense with the advance notification required by section 154.602.

12. In the first place, *Monroe* Gas accepted a 15-day notification period, rather than eliminating all advance notification as Bison proposed. Moreover, the *Monroe Gas* order did not discuss the notice due the Commission pursuant to 18 C.F.R. section 154.602. Although the Commission approved the 15 day notice period in *Monroe Gas*, we are no longer convinced that such shortened notice periods afford the

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[13] Letter Order, 133 FERC ¶ 61,256 at P 5.

[14] *Policy Statement*, FERC Stats. & Regs. ¶ 31,191 at P 23.

[15] Rehearing Request at 8.

shipper or the Commission sufficient time to review abandonments and we therefore do not find *Monroe Gas* establishes Commission policy in this area.

13. As the Letter Order stated, termination of a shipper's contract is not only extinguishment of party's service agreement, it is also an abandonment of service under the Natural Gas Act and subject to the Commission's regulations governing such actions. The *Policy Statement* recognizes that agreements relating to construction projects may include creditworthiness provisions that differ from the provisions in the pipeline's tariff. For example, pipelines may require larger or more exacting collateral requirements from initial shippers on construction projects than they can from other shippers in order to gain financial backing for construction projects. But Bison has not demonstrated, and we do not find, that the reasons justifying such larger collateral requirements justify dispensing with the requirements of the Commission's regulations to provide advance notice prior to cancellation of service. The Policy Statement recognizes that pipelines may suspend service immediately upon failure to satisfy collateral requirements,[16] and we find that such suspension of service provides adequate protection for pipelines, without the need for immediate termination prior to filing with the Commission. Thus, the requirement in section 154.602 that the Commission must be given 30 days notice of any service termination cannot be eliminated, or shortened, by the parties' agreement to allow a shorter notice between themselves in a precedent agreement. For these reasons, we decline to follow or expand *Monroe Gas* as Bison requests.

14. Accordingly, the Commission denies rehearing and Bison is directed to modify the non-conforming service agreements consistent with this order within 60 days of the date of this order.

<u>The Commission orders:</u>

Bison's request for rehearing is denied, and Bison is directed to modify the non-conforming service agreements consistent with this order within 60 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[16] *Policy Statement*, FERC Stats. & Regs. ¶ 31,191 at P 24.