

138 FERC ¶ 61,014
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 10, 2012

In Reply Refer To:
Questar Southern Trails
Pipeline Co.
Docket No. RP11-1657-000

Questar Southern Trails Pipeline Co.
180 East 100 South
P.O. Box 45360
Salt Lake City, UT 84145-0360

Attention: L. Bradley Burton, General Manager
Federal Regulatory Affairs and Chief Compliance Officer

Reference: Revised Tariff Records

Ladies and Gentlemen:

1. On December 28, 2010, Questar Southern Trails Pipeline Company (Southern Trails) submitted revised tariff records¹ in compliance with the Commission's November 29, 2010 rehearing order issued in Docket No. RP10-388-000, *et al.*² As explained below, Southern Trails failed to fully comply with the Commission's November 2010 Rehearing Order, and the Commission accepts the filed tariff records subject to Southern Trails filing modified tariff records within 30 days consistent with the discussion in the body of this order.

¹ Section 8.1, Availability and Notice, 1.0.0; Section 34 Tab, Additional Contract Terms, 0.0.0; Section 34, Additional Contract Terms, 0.0.0; and Rate Schedule FT, Rate Schedule FT Form of Agreement, 2.0.0 to Tariffs, FERC NGA Gas Tariff.

² *Questar Southern Trails Pipeline Co.*, 133 FERC ¶ 61,180 (2010) (November 2010 Rehearing Order).

2. On February 22, 2010, in Docket No. RP10-388-000, Southern Trails filed tariff records and a Transportation Service Agreement (TSA).³ On March 24, 2010, the Commission determined that the TSA contained impermissible material deviations from Southern Trails' *pro forma* FT service agreement due to an evergreen provision.⁴ The March 24, 2010 order directed Southern Trails to either revise its *pro forma* FT service agreement to make the evergreen option available to all similarly situated shippers or to remove the evergreen provision from the TSA.⁵

3. On rehearing, Southern Trails explained that section 8.1 of its General Terms and Conditions (GT&C) authorized evergreen provisions like the one contained within the TSA and that Southern Trails' *pro forma* FT service agreement contained a blank space for such "Additional Terms." In the November 2010 Rehearing Order, the Commission granted Southern Trails' request for rehearing in part.⁶ However, the November 2010 Rehearing Order concluded that the undefined and open-ended blank space labeled "Additional Terms" in Southern Trails' *pro forma* FT service agreement failed to provide the specificity required by Commission policy.⁷ The Commission concluded that the type of analysis offered by Southern Trails on rehearing could make any contractual term conforming to a *pro forma* agreement.⁸ Thus, the November 2010 Rehearing Order directed Southern Trails to modify its *pro forma* service agreement to change the term "Additional Terms" to "Additional Terms Permitted by Tariff under the Applicable Rate Schedule."⁹ The November 2010 Rehearing Order also required Southern Trails to list the specific tariff provisions permitting such additional terms, including section 8.1 of its GT&C relating to the evergreen provision.¹⁰ Separately, the November 2010 Rehearing

³ Sempra Energy Trading LLC, FT Contract No. 4027.

⁴ The evergreen provision states, the "agreement shall continue from year-to-year unless Shipper gives written notice to terminate the agreement 90 days prior to the termination or renewal date."

⁵ *Questar Southern Trails Pipeline Co.*, 130 FERC ¶ 61,234, at P 6 (2010) (March 2010 Order).

⁶ November 2010 Rehearing Order, 133 FERC ¶ 61,180 at P 1.

⁷ *Id.* P 6-7 (citing *Northern Natural Gas Co.*, 102 FERC ¶ 61,171, at P 14-19 (2003)).

⁸ *Id.* P 6.

⁹ *Id.* P 7.

¹⁰ *Id.*

Order also required Southern Trails to revise section 8.1 of its GT&C to state expressly that any waiver of termination rights by Southern Trails will not be granted or withheld on an unduly discriminatory basis.¹¹ The Commission concluded that with these modifications, the TSA would be conforming and would not need to be renegotiated.

4. In its December 28, 2010 filing, Southern Trails modified its *pro forma* FT service agreement. In its *pro forma* FT service agreement, Southern Trails modified the blank for additional terms to state, “Additional Terms Permitted by Tariff Under the Applicable Rate Schedule and Section 34 of the General Terms and Conditions of Southern Trails’ FERC Gas Tariff.” In Section 34, Southern Trails added language stating:

Additional contract terms that are permitted by Southern Trails' tariff or by Commission acceptance of individual agreements filed by Southern Trails shall be set forth in the portion of the applicable service agreement entitled “Additional Terms Permitted by Tariff Under the Applicable Rate Schedule.” Tariff provisions permitting additional terms include discount rate details, negotiated rate details, capacity release details, preconditions to service (e.g., new facilities), commencement and termination provisions and right of first refusal.

5. Southern Trails also proposes adding language to section 8.1 of its GT&C stating that “Southern Trails’ waiver of its termination rights under this Section 8.1 shall not be granted or withheld on an unduly discriminatory basis.”

6. Public notice of Southern Trails’ filing was issued on December 29, 2010, with comments and protests due on or before January 10, 2011. No protests or adverse comments were filed.

7. The Commission accepts Southern Trails’ proposed tariff records subject to conditions. Southern Trails’ proposed modification to section 8.1 of its GT&C is consistent with the directives of the November 2010 Rehearing Order. However, Southern Trails’ proposed changes to the *pro forma* FT service agreement and section 34 of its GT&C do not fully address the concerns identified by the November 2010 Rehearing Order. The Commission has explained:

[t]he Commission requires pipelines to include *pro forma* service agreements in their tariffs in order to comply with NGA section 4(c)'s requirement that pipelines file all contracts which affect the pipeline's rates and services "in any manner." The filing of the *pro forma* service agreement gives the Commission and other interested parties an

¹¹ November 2010 Rehearing Order, 133 FERC ¶ 61,180 at P 9.

opportunity to review that service agreement in order to ensure that its provisions are just and reasonable and not unduly discriminatory. This enables the Commission to exempt pipelines from filing service agreements with individual customers that conform to the *pro forma* service agreement. For this procedure to satisfy the filing requirements of NGA section 4, the *pro forma* service agreement must define the information that may be included in its blanks with sufficient clarity for the Commission to understand the nature of the contractual provisions it is authorizing the pipeline to enter into.¹²

8. Southern Trails' proposed tariff records on compliance fail to comply with this Commission policy and the November 2010 Rehearing Order. First, Southern Trails' use of the phrase "additional terms include" in section 34 is ambiguous and leaves open the possibility that Southern Trails may seek to insert terms that are not expressly enumerated in section 34. This is inconsistent with the November 2010 Rehearing Order's requirement that Southern Trails identify all tariff authorized provisions which may be inserted into the additional blank space as conforming provisions.¹³ Second, the November 2010 Rehearing Order required Southern Trails to reference the *specific* section of Southern Trails' tariff authorizing each listed provision.¹⁴ Southern Trails has provided a description of the type of terms which may be included (i.e. "capacity release details"), but it has not identified specific tariff sections.

9. Finally, although not addressed directly by the November 2010 Rehearing Order, to the extent that similarly open-ended "Additional Terms" provisions exist in Southern Trails' other *pro forma* service agreements,¹⁵ Southern Trails should also modify those *pro forma* agreements to be consistent with Commission policy as described in this order. To the extent that Southern Trails includes such blanks on other *pro forma* service

¹² *Texas Gas Transmission, LLC*, 127 FERC ¶ 61,313, at P 19 (2009) (*Texas Gas*) (citations omitted).

¹³ November 2010 Rehearing Order, 133 FERC ¶ 61,180 at P 7.

¹⁴ *Id.* (requiring Southern Trails "to list the specific tariff provisions permitting such additional terms, including the one at issue here (GT&C § 8.1)."). *See also Texas Gas*, 127 FERC ¶ 61,313 at P 22; *Texas Gas Transmission, LLC*, Section 6.24.10, GT&C - Misc Provisions - Cross Reference for Provisions, 1.0.0 to Tariffs, FERC NGA Gas Tariff.

¹⁵ This includes the *pro forma* service agreements for other services (such as IT service) and any *pro forma* amendment forms.

agreements, section 34 should indicate to which rate schedule or schedules (FT or IT, for example) each enumerated provision applies.¹⁶

10. Southern Trails must file revised tariff records consistent with these requirements within 30 days.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁶ *Texas Gas*, 127 FERC ¶ 61,313 at P 22.