

138 FERC ¶ 61,023
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 13, 2012

In Reply Refer To:
TransColorado Gas Transmission
Company, LLC
Docket No. RP12-245-000

TransColorado Gas Transmission Company, LLC
370 Van Gordon Street
Lakewood, Colorado 80228

Attention: Robert F. Harrington
Vice President, Regulatory Affairs

Reference: Proposed Revision to Reservation Charge Credits Tariff Provisions

Dear Mr. Harrington:

1. On December 16, 2011, TransColorado Gas Transmission Company, LLC (TransColorado) filed certain tariff records¹ to revise its tariff provisions pertaining to reservation charge credits to be consistent with Commission policy. TransColorado's filing was protested, and TransColorado filed an answer. As discussed below, the Commission accepts and suspends the referenced tariff records, subject to refund and further Commission action, effective June 16, 2012, or some earlier date set forth in a subsequent order.
2. TransColorado states it has undertaken a review of the reservation charge credits provision contained in its tariff, and is submitting the instant filing to update its tariff to be consistent with Commission policy as set forth in several recent

¹ GEN TERMS & CONDITIONS, GT&C Section 1 - Definitions, 3.0.0; NOMS/SCHEDULING, GT&C Section 8 - Noms and Scheduling, 1.0.0; and SYSTEM OPERATION, GT&C Section 20 - System Operation, 1.0.0 to Tariffs, FERC NGA Gas Tariff.

Commission orders.² Specifically, TransColorado states it has made the following revisions to section 8.4 of the General Terms and Conditions (GT&C) of its tariff:

- A. Removing all references to not providing reservation charge credits when confirmed nominations on any day are equal to or at least 98% of the Firm Daily Quantity.
- B. Adding language to clarify that reservation charge credits shall be limited to instances in which TransColorado fails to provide firm service to nominated quantities at Primary Point(s).
- C. Adding language to clarify that Shippers must nominate at Primary Point(s) through the Evening Nomination Cycle in order to receive reservation charge credits, except that Shippers that have nominated on another pipeline after being curtailed in the Timely Nomination Cycle on TransColorado do not have to re-submit their nomination to receive reservation charge credits but shall be required to provide written documentation that gas supplies were diverted to another pipeline.
- D. Adding tariff language to describe the calculation of reservation charge credits during non-*force majeure* and *force majeure* events extending beyond 10 calendar days. A reservation charge credit will be granted under a firm agreement based on the lesser of Shipper's (i) Maximum Daily Quantity (MDQ); (ii) nominated Primary Point(s) service which TransColorado is not able to schedule; or (iii) the average of the daily usage by Shipper at Primary Point(s) in a 7-day period, the start date of which shall depend on whether the service curtailment is due to a non-*force majeure* or *force majeure* event.

TransColorado explains that where *force majeure* events extend beyond the 10-day Safe Harbor, to prevent gaming it will calculate reservation charge credits based on an appropriate historical average of usage – the 7-days prior to the *force majeure* event – as a substitute for the use of nominated but not scheduled quantities during the extended *force majeure* outage.

² *Natural Gas Supply Association, order on petition*, 135 FERC ¶ 61,055 (2011); *Southern Natural Gas Co.*, 135 FERC ¶ 61,056 (2011); *Kern River Gas Transmission Co.*, 135 FERC ¶ 61,050 (2011) and *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 (2006).

- E. Adding language to state that any adjustment will be credited against transportation charges for a future month or refunded if the firm agreement has terminated.

3. TransColorado states that the revisions to the reservation charge credit provision require it to file revisions to two additional provisions of its tariff to define Monthly Maintenance Schedule (section 1.22.1) and to describe when TransColorado will make the posting (section 20.1 C). Additionally, TransColorado states it has made certain capitalization and/or punctuation changes in sections 1.26, 8.1(a)(i) and (c), 8.2(c)(iii), 8.2(i) and 8.7(b)(1) of its tariff.

4. Public notice of the filing was issued on December 19, 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 motion 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. BP Energy Company (BP) and Indicated Shippers³ protested TransColorado's filing. Encana Marketing, Inc. (Encana) filed a protest out of time. On January 4, 2012, TransColorado filed a motion to answer and an answer to the protests.⁴ As discussed below, the protesters shall be afforded an opportunity to respond to TransColorado's answer before the Commission makes a final disposition of the filing.

5. BP requests that the Commission direct TransColorado to clarify that its existing tariff requires the pipeline to grant curtailment credit to a shipper who qualifies for the credit, even if (a) the actions of third parties contributed to the curtailment, as long as the pipeline's conduct is the primary cause of the curtailment; or (b) the curtailment is due solely to the actions of a third party operator.

6. BP also requests that the Commission direct TransColorado to clarify that the proposed tariff language restricts to ten days the period during which TransColorado need

³ The Indicated Shippers are Chevron U.S.A. Inc., ConocoPhillips Company, and Occidental Energy Marketing, Inc.

⁴ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213(a)(2) (2011)) prohibits answers to protests otherwise ordered by the decisional authority. In this case, the Commission will accept TransColorado's answer because it may assist the Commission in its decision-making process.

not grant a credit in connection with a *force majeure* event, i.e. that the Safe Harbor period cannot exceed ten days. Encana also asserts that TransColorado should provide full reservation charge credits to firm shippers for *force majeure* events after the ten day Safe Harbor period expires.

7. Indicated Shippers protest that TransColorado's proposal to use the seven-day average usage preceding the posting of its monthly maintenance schedule is unreasonable. Indicated Shippers protest that Commission policy is that the use of an historical period (i.e., seven days) prior to the outage itself is reasonable, but not prior to the posting of a monthly maintenance schedule. Indicated Shippers urge the Commission to reject this aspect of TransColorado's proposal.

8. Indicated Shippers protest that TransColorado's proposed tariff language would limit reservation charge credits in *force majeure* situations to the quantity that is nominated and confirmed. Indicated Shippers aver that this violates Commission policy which provides that reservation charge credits during *force majeure* curtailments must be based on the amount a shipper nominates, not on the amount that is confirmed. Similarly, Encana contends that TransColorado should be required to calculate reservation charge credits during a *force majeure* event based on the amount that a shipper has scheduled, but which TransColorado has failed to deliver.

9. Finally, Indicated Shippers request that the Commission direct TransColorado to clarify what documentation will be required of a shipper that schedules curtailed quantities on an alternate pipeline.

10. Encana also protests TransColorado's proposal to use the seven-day average usage, but for a different reason from that cited by Indicated Shippers. Instead, Encana asserts that in light of certain characteristics on the TransColorado system, a reasonable way of determining the value of the lost capacity to the shipper, TransColorado should compare prevailing pricing for hubs it serves because that determines the flow on TransColorado.

11. TransColorado answers that its proposal for calculating the amount of reservation charge credits beginning the eleventh day following an outage resulting from a *force majeure* event is consistent with the Commission's recent decision in *Midwestern Gas Transmission Co.*⁵

12. TransColorado also avers that its proposal to use the seven-day average quantity preceding the posting of its monthly maintenance schedule for non-*force majeure* outages

⁵ *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257 (2011) (*Midwestern*).

is consistent with Commission policy.⁶ Further, TransColorado contends that the Commission has elected not to mandate a one-size-fits-all approach to the calculation of reservation charge credits and allows pipelines to use different methodologies,⁷ and that its proposed use of the seven-day average quantity preceding the posting of its Monthly Maintenance Schedule is a reasonable appropriate historical average of usage.

13. TransColorado asserts that Indicated Shippers' argument that reservation charge credits during *force majeure* curtailments must be based on the amount a shipper nominates, not the amount that is confirmed is without merit. TransColorado acknowledges that Indicated Shippers filed its protest before the Commission issued the Midwestern order, accepting a proposal to use the seven-day average usage during the period before the *force majeure* event to calculate the amount of reservation charge credits due beginning the eleventh day of the outage where there is advance notice that service will not be available after the tenth day of a *force majeure* outage.⁸ TransColorado states that its filing contains the same proposal and should be accepted for the same reasons the Commission accepted Midwestern's proposal. Nevertheless, TransColorado states that to resolve any ambiguity, it will strike the words "and confirmed" from Section 8.4(e)(iii) in the instant filing in response to Encana's protest. TransColorado maintains that the language at Section 8.4(e)(ii), stating TransColorado will not grant reservation credits if the failure to schedule is the result of a failure to obtain confirmation, would continue to apply as this refers directly to the default of shipper or an upstream or downstream operator that may cause the gas that is nominated and scheduled not to be confirmed, but is outside of TransColorado's control.

14. TransColorado also agrees to clarify the meaning of the term "documentation," and will submit revised tariff language clarifying what documentation is required. Consistent with *Wyoming Interstate Co., Ltd.*,⁹ TransColorado clarifies that a shipper shall provide written evidence to TransColorado, but which shall not contain any commercially sensitive information.

⁶ TransColorado cites *Midwestern*, 137 FERC ¶ 61,257; *Southern Natural Gas Co.*, 135 FERC ¶ 61,056 at P 33, *order on reh'g*, 137 FERC ¶ 61,050 (2011); *Natural Gas Supply Assoc. et al.*, 135 FERC ¶ 61,055 at P 25, *order on reh'g*, 137 FERC ¶ 61,051 (2011). TransColorado also refers to *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208, at P 77 (2011).

⁷ TransColorado cites *Midwestern*, 137 FERC ¶ 61,257 at P 9, *citing North Baja Pipeline, LLC v. Federal Energy Regulatory Comm'n*, 483 F.3d 819, 821 (2007).

⁸ TransColorado cites *Midwestern*, 137 FERC ¶ 61,257 at P 19-22.

⁹ TransColorado cites *Wyoming Interstate Co., Ltd.*, 130 FERC ¶ 61,091 (2010).

15. In response to BP's request for clarification that TransColorado's existing tariff requires the pipeline to grant reservation charge credits when the curtailment occurs due to circumstances outside TransColorado's control, TransColorado contends that this request contravenes Commission policy and is outside the scope of the instant proceeding. However, in response to BP's assertion that the phrase "whichever occurs first" in section 8.4(e)(2)(iii) of the GT&C is ambiguous due to its placement at the end of the provision rather than the beginning, TransColorado states it has never interpreted this clause in a manner that is inconsistent with Commission policy, but agrees to modify its proposed tariff language accordingly to cure any perceived ambiguity. TransColorado agrees to clarify its tariff language to provide that the Safe Harbor Period for the *force majeure* credit cannot exceed ten days.

16. The protesters have raised issues that warrant further consideration. While TransColorado has filed a detailed answer to the protests filed in this proceeding, the Commission shall provide the protesters the opportunity to respond to TransColorado's answer before making a final determination in this proceeding.

17. Based upon a review of this filing, the Commission finds that the proposed tariff language has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts TransColorado's proposed tariff records for filing and suspends their effectiveness for the period set forth below.

18. The Commission's policy regarding suspensions is that filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.¹⁰ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹¹ Such circumstances do not exist here. Accordingly, the Commission shall suspend the effectiveness of the referenced tariff records for the full five months, until June 16, 2012, or an earlier date if set by a subsequent Commission order.

¹⁰ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹¹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

19. Consistent with the discussion above, the tariff records set forth in fn. 1 are accepted and suspended, subject to refund and further Commission action, to be effective June 16, 2012, or an earlier date established in a subsequent Commission order in this proceeding. Within 30 days of the date of this order, the protesters may file a response to the answer filed by TransColorado in response to their protests.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.