

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Trans-Union Interstate Pipeline, L.P.

Docket No. CP01-37-002

ORDER ON CLARIFICATION

(Issued June 22, 2004)

1. In this order the Commission clarifies conditions imposed on a Part 284, subpart G, blanket transportation certificate which was issued to Trans-Union Interstate Pipeline L.P. (Trans-Union) in Docket No. CP01-37-000 on October 23, 2003. The clarification is required by the public interest because it will assist Trans-Union to comply properly with the three-year rate review condition.

Background

2. On July 26, 2000, in Docket No. CP00-47-000, the Commission issued a certificate to Trans-Union, a new pipeline, to construct and operate a 41.7-mile, 30-inch diameter high pressure pipeline with a capacity of 440,000 MMBtu/d, extending from an interconnection with Texas Gas Transmission, LLC in Claiborne Parish, Louisiana, to an interconnection with a gas-fired 2,700 megawatt electric power generation facility located near El Dorado, Arkansas, that is owned by Union Power Partners (Union Power), an affiliate of Trans-Union.¹ Trans-Union anticipated placing the facilities into service in the Spring of 2002.

3. Among other things, the July 26, 2000 Order found that Trans-Union could not operate the pipeline on a “sole use” basis as proposed, but instead was required to file an application for a Part 284, subpart G, blanket certificate and establish Part 284 rates. The Commission noted that this approach was particularly appropriate for Trans-Union’s pipeline because a third-party had indicated an interest in connecting with the pipeline in order to take natural gas service. Further, because Trans-Union had a

¹ 92 FERC ¶ 61,066, Order on Clarification, 93 FERC ¶ 61,115 (2000).

precedent agreement with Union Power under which that company would underwrite the costs of the pipeline and make a fixed monthly payment to Trans-Union to cover cost-of-service, the Commission explained in the certificate order that Trans-Union could apply for authority to charge negotiated rates and treat the payments from Union Power as a negotiated rate.

4. On November 22, 2000, Trans-Union filed, in Docket No. CP01-37-000, an application for the Part 284 blanket transportation certificate and for authorization to charge negotiated rates.² On July 18, 2002, Trans-Union filed a supplement to its application for the Part 284 blanket certificate in which it noted that up until that point, it had not required the authority to provide Part 284 transportation service because no third-party customer had requested service. However, circumstances had changed and Trans-Union requested the Commission to take prompt action on its pending application for the blanket certificate.³

5. In the July 18, 2002 supplement, Trans-Union also proposed to modify its initial rate proposal because Union Power, originally the only customer, had determined that it required less capacity. Trans-Union, therefore, proposed to base its initial rates on billing determinants that were less than the certificated capacity of the pipeline. The potential customer that had expressed interest in a delivery point off of the pipeline in the certificate proceeding protested the supplement, arguing that the Part 284 recourse rates would be higher if the billing determinants were lowered and that other shippers besides Union Power should not have to pay for capacity Union Power no longer needed. Also, Trans-Union had proposed in its supplement two new tariff provisions that were not in its pro forma tariff filed with its application for the Part 284 certificate.

² Also, on November 22, 2000, Trans-Union filed an application for a Part 157, subpart F, blanket construction certificate. That certificate was issued in Docket No. CP01-38-000 on January 30, 2001. See 94 FERC ¶ 62,076 (2001).

³ Specifically, Trans-Union explained that Union Power had decided to utilize a portion of its overall electric generating capacity for third-party tolling arrangements under which power would be generated for the accounts of third parties. These third-party generators would contract for their own gas supply and enter into transportation agreements with Trans-Union to have the gas transported to Union Power's generating plant.

6. On September 23, 2003, the Commission issued an order granting Trans-Union's request for the Part 284 certificate and for authority to charge negotiated rates.⁴ The order directed Trans-Union to make a filing to justify its initial recourse rates at the end of its first three years of actual service. This is a standard condition imposed on certificates in which initial rates are established. The order also noted that the projected units of service in that filing should be no lower than those upon which Trans-Unions approved initial rates are based.

7. On October 23, 2003, Trans-Union filed a request for clarification of the September 23, 2003 Certificate Order. In its pleading, Trans-Union contended that the three-year rate review filing should occur three years after Trans-Union began providing open-access transportation to third-parties. The request for clarification also questioned the requirement that any rates proposed in the three-year rate review should be based on the certificated capacity of the facilities. Regarding the latter, Trans-Union argued that this billing determination requirement is tantamount to placing it "at-risk," without giving it the opportunity to accept that condition. Trans-Union argues that in the rate review filing, it should be permitted to propose rates based on lower billing determinants if, for example, the operational history reveals that the pipeline cannot operate at the capacity level on which the initial rates are based.

Discussion

8. The July 23, 2000 Order contemplated that Trans-Union would provide all service over its pipeline on an open-access basis under Part 284.⁵ To the extent Trans-Union misinterpreted the July 23, 2000 Order to mean that the certificate authorization to "construct and operate" the pipeline facilities authorized it to provide service on any other basis, Trans-Union is incorrect in its view. Therefore, the three-year rate review should occur three years after the commencement of any service on the pipeline.

9. Trans-Union contends that it should not be required to use only the certificated capacity of the facilities to justify the existing rates or propose new ones in the three-year review. The Commission clarifies that a pipeline's cost and revenue study is for the purpose of supporting its currently effective initial rates. If Trans-Union believes that it can support a changed rate that reflects changed circumstances, it may propose to do so in a separate filing pursuant to part 154, subpart D, for prospective application.

⁴ 104 FERC ¶ 61,315 (2003).

⁵ 92 FERC ¶ 61,066 at 61,220 (2000).

The Commission orders:

The September 23, 2003 Order issuing a blanket certificate in Docket Nos. CP01-37-000 and CP01-37-001 is clarified to the extent discussed herein.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.