

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeem G. Kelly.

Bridger Pipeline, LLC

Docket Nos. IS05-474-000,  
IS05-475-000, IS05-476-000,  
IS05-477-000 and IS05-478-000

ORDER ACCEPTING TARIFFS

(Issued September 30, 2005)

1. On September 2, 2005, Bridger Pipeline, LLC (Bridger) submitted five tariff filings with regard to the sulfur content of the crude oil transported on its pipeline system.<sup>1</sup> Bridger proposes a September 3, 2005, effective date. Continental Resources, Inc. (Continental), submitted a protest and complaint concerning Bridger's tariff filings.<sup>2</sup> As detailed below, the Commission accepts the tariff supplements<sup>3</sup> effective September 3, 2005, as proposed.

**Bridger's Filing**

2. In Supplement No. 5 to FERC No. 2, Bridger proposes to add to its rules and regulations tariff governing transportation on its system, a new qualifying crude oil stream designated as Mixed Sweet Stream and defined as "crude petroleum which is 0.50 percent sulfur by weight or less." Bridger also filed Supplement No. 6 to FERC No. 3 to

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<sup>1</sup> Bridger transports Canadian crude oil from the U.S./Canadian border near Raymond, Sheridan County, Montana (International Boundary) southward to Baker, Fallon County, Montana. Bridger also gathers crude from oil fields along its system.

<sup>2</sup> Continental's complaint has been assigned Docket No. OR05-11-000.

<sup>3</sup> Supplement No. 5 to FERC No. 2, Supplement No. 6 to FERC No. 3, Supplement No. 5 to FERC No. 9, Supplement No. 6 to FERC No. 10, and Supplement No. 5 to FERC No. 5.

resolve an issue settled in the protested Docket No. IS05-397-000 proceeding.<sup>4</sup> This proposed tariff removes the 0.20 percent sulfur restriction from Route No. 02, Poplar to Richey, and accepts the new qualifying crude Mixed Sweet Stream on this route.

3. To further resolve the issues in Docket No. IS05-397-000, Bridger filed Supplement No. 5 to FERC No. 5 to remove the 0.20 percent sulfur restriction from Route Nos. 01 (Poplar to Baker) and 04 (Glendive to Baker), and to accept Mixed Sweet Stream on these routes and on Route No. 5 (Cabin Creek to Baker).

4. In Supplement No. 5 to FERC No. 9, Bridger reduces its tariff rate for crude from 85.00 cents per barrel to 48.00 cents per barrel from the International Boundary to Poplar. Bridger states that all current shippers using the service agreed in writing to the revised rate and includes an affidavit attesting to that fact, pursuant to 18 C.F.R. § 342.4(c) of the Commission's regulations.

5. Finally, Bridger proposes Supplement No. 6 to FERC No.10 to remove the 0.20 percent sulfur restriction from Route No. 02 (Glendive to Alexander), and accept Mixed Sweet Stream on this route. This filing also implements the settlement resolving the issues in the Docket No. IS05-397-000 proceeding.

### **Intervention, Protest, and Complaint**

6. A motion to intervene and protest and complaint was submitted by Continental on September 19, 2005. Continental challenges the justness and reasonableness of Bridger's rates on the tariff supplements listed in footnote No. 3. Continental requests the Commission suspend, subject to refund, Bridger's proposed new rates, and set the instant dockets for hearing. In addition, Continental states that Bridger's sulfur restriction provisions are unduly preferential.

7. Continental states that Bridger's instant filings are the outgrowth of a prior Commission proceeding (Docket No. IS05-397-000) and apparently the result of an undisclosed agreement between Bridger and Nexen Marketing USA Inc. (Nexen). Nexen protested Bridger's rates and sulfur content restriction in that proceeding, and later withdrew its protest.

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<sup>4</sup> 112 FERC ¶ 61,151 (2005).

8. In particular, Continental states that Bridger's tariff supplements lack justification for their disparate treatment of the sulfur content restrictions at various origins and destinations, and claims the result is the devaluation of crude oil tendered by certain shippers at certain origin points, while at the same time protecting the quality and value of crude oil tendered by other shippers at other origin points. According to Continental, the practical result is that a select group of shippers transporting crude oil from Poplar and Glendive are no longer required to meet Bridger's 0.20 percent sulfur content restriction, whereas shippers whose tenders originate at South Poplar, Richey, and Cabin Creek must adhere to this restriction. Furthermore, Bridger never required shippers at the International Boundary to meet the 0.20 percent sulfur content restriction and only certain routes of the proposed tariff supplements accept Mixed Sweet Stream. Therefore, Continental submits that Bridger imposes different sulfur quality requirements, subject shippers such as Continental to experience degradation of the quality of their crude and will essentially "sweeten" the lower quality crude stream tendered at the International Boundary, Poplar, and Glendive. Meanwhile, Continental claims that shippers transporting crude oil from Alexander, Poplar, Richey, and Baker can protect the quality of their shipments and obtain the benefit of the higher quality crude entering the pipeline at South Poplar, Richey and Cabin Creek.

9. Continental cites *All American Pipeline Co.*,<sup>5</sup> regarding the Commission's recognition that sulfur content directly affects the value of crude oil. It opines that Bridger's implementation of a 0.20 percent sulfur requirement for only certain routes and its provision of a Mixed Sweet Stream service only to certain shippers at specified receipt points are discriminatory. Further, Continental notes the Commission has historically protected shippers against rates, terms and conditions applied in a discriminatory and preferential manner.<sup>6</sup>

10. Continental claims the tariff rate reduction in Supplement No. 5 to FERC No. 9 might be the result of improper cross-subsidization on Bridger's pipeline system, and notes the instant filings lack cost justification support required by 18 C.F.R. §342.4(a) and 346.2(a) of the Commission's regulations applicable to cost-based rates. Continental cites *Mid-America Pipeline Co.*,<sup>7</sup> where the Commission recognized that, when cost-of-

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<sup>5</sup> 66 FERC ¶ 61,030, at 61,025 (1994).

<sup>6</sup> *Mid-America Pipeline Co., LLC*, 111 FERC ¶ 61,483 at P15 (2005).

<sup>7</sup> 111 FERC ¶ 61,128, P 26 (2005).

service data is aggregated, calculation of a just and reasonable rate under one tariff or movement may be related to the calculation of a just and reasonable rate under other tariffs or movements. Continental states this rate reduction affects movements from the International Boundary to Poplar. Because Bridger proposes to reduce this rate by more than 40 percent, from 85.00 to 48.00 cents per barrel, Continental states Bridger may be providing shippers at the International Boundary a discriminatory rate preference. It urges the Commission to set the issue for hearing.

11. Continental submits the instant filing is the direct result of an undisclosed and preferential agreement with Nexen to resolve the issues in Docket No. IS05-397-000 and does not impute any presumption of reasonableness. Continental notes that while the Commission encourages the resolution of issues by settlement, rates must be just, reasonable and non-discriminatory. Continental states the Commission recently confirmed that it will not approve settlement agreements which are contrary to the plain dictates of its governing statutes and would result in the inequitable treatment of shippers.<sup>8</sup>

### **Nexen's Answer**

12. On September 26, 2005, Nexen, a shipper on Bridger, filed a motion to intervene and an answer to Continental's protest. Nexen claims Continental's protest is misdirected and its arguments should have been raised in the Docket No. IS05-397-000 proceeding or in a complaint. Nexen believes Continental's protest inappropriately challenges Bridger's pre-existing rates and terms and attempts to compel the pipeline to implement a new sulfur quality bank and disrupt Nexen's settlement with Bridger.

13. Nexen confirms Bridger's statement that, historically, Nexen is the only shipper that uses the U.S./Canadian border to Poplar portion of Bridger's system. Although the heavy sour crude oil shipped on this portion contains sulfur in excess of 0.50 percent by weight, Nexen states it removes all of this crude at Poplar and transports it by truck to other destinations, so it does not affect the sweet crude transported downstream of Poplar. Therefore, Nexen claims that Continental does not have standing or a legitimate basis to protest this movement, preventing Canadian supplies from reaching the United States.

14. Nexen emphasizes that the instant filings' tariffs propose no more than to restore the rates, terms and conditions of a portion of the pipeline system to the conditions that

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<sup>8</sup> *High Island Offshore System*, 112 FERC ¶ 61,050 at P7 (2005); and *Cranberry Pipeline Corp.*, 112 FERC ¶ 61,128 (2005).

existed prior the Docket No. IS05-397-000 proceeding. For example, Nexen states the settlement rate (reduced from 85.00 to 48.00 cents per barrel) for the International Boundary to Poplar movement restores a portion of the rate increase from the previous 26.73 cents per barrel rate. Nexen also states Continental's protest that the settlement rate is preferential and discriminatory is illogical because Continental's own analysis (44.99 cents per barrel) shows that it is not low enough.<sup>9</sup> Further, Nexen claims that Continental essentially directs its protest at the remaining rates in the instant filings which were not reduced.

15. Nexen states that Continental's contention that the restoration of a 0.50 percent sulfur requirement at Poplar and Glendive is discriminatory and preferential is without merit and cannot be properly raised in a protest of the instant tariff supplements. Nexen states the 0.50 percent sulfur requirement at Poplar and Glendive simply permits the historical shipment of sweet crude oil to resume and if Continental wishes to restore this sulfur requirement at Richey and Baker, it should have filed a timely protest in the Docket No. IS05-397-000 proceeding. Further, Nexen claims that Continental makes clear in its protest that it is not really concerned with the restoration of the 0.50 percent sulfur requirement at Poplar and Glendive, but wants a sulfur bank that would encompass all shipments made on Bridger's system.

16. Finally, Nexen claims Continental's request to impose the 0.50 percent sulfur requirement on Bridger's system would shut down the supply route of the Canadian crude and possibly shut-in 0.20 to 0.50 percent sweet crude oil historically shipped on Bridger at Poplar and Glendive. Moreover, Nexen cites Commission precedent indicating a 0.50 percent sulfur standard might well be required at Poplar and Glendive or be in violation of the anti-discrimination provisions of the Interstate Commerce Act if Bridger refused to accept crude oil that contained up to 0.50 percent sulfur by weight.<sup>10</sup>

### **Bridger's Response**

17. On September 26, 2005, Bridger responded to the protest by requesting the Commission to dismiss it because Continental does not meet the substantial economic interest test of the Commission's regulations (18 C.F.R. §343.3(a)(2005)) and, therefore,

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<sup>9</sup> Affidavit of Matthew P. O'Loughlin as Exhibit No.10 of Continental's Protest and Complaint, p. 15.

<sup>10</sup> *Bonito Pipe line Co*, 61 FERC ¶ 61,050 at 61,222 (1992).

does not have standing to protest the instant tariff supplements. Further, Bridger states its proposed rate reduction does not result in any cross-subsidization or preferential rate and the proposed sulfur requirements are not discriminatory or preferential.<sup>11</sup>

18. Bridger claims Continental last shipped on its system in February 2004, is not a current shipper, and therefore does not have standing to protest the instant tariff filings. Bridger states that in Order No. 561, the Commission adopted a “substantial economic interest” test for determining the standing of parties to file protests to ensure that only those who have a substantial economic stake in the rates could protest and trigger an investigation (only persons aggrieved may bring action).<sup>12</sup> Bridger continues that, “Persons wishing to protest a filing must plead their interest with specificity, not generally, in order to establish that they have a substantial economic interest in the tariff they are protesting.”<sup>13</sup> Bridger further states that, though Bridger had a few preliminary discussions regarding a potential interconnection with Continental, it is not currently engaged in negotiations. Also, because Continental could ship its crude production on the Plains or Tesoro pipeline systems, Bridger states any future volumes Continental plans to ship on Bridger’s system are purely speculative and labels Continental as a “potential future shipper,”<sup>14</sup> which again is not sufficient to confer standing to Continental.

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<sup>11</sup> In the sworn declaration by Henry A. True attached to the instant filing: “No shipper with crude oil which is 0.20 percent sulfur by weight or less will be required to commingle its production with crude oil which is transported in the mixed sweet stream.”

<sup>12</sup> Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Order No. 561, FERC Stats. & Regs., Regulations Preambles, 1991-1996 ¶ 30,985 at p. 30,964 (1993).

<sup>13</sup> *Equilon Pipeline Co. LLC*, 91 FERC ¶ 61,210 (2000); and *Shell Pipeline Co. LP*, 104 FERC ¶ 61,021 at P6 (2003).

<sup>14</sup> *Equilon Pipeline Co., LLC*, 91 FERC ¶ 61,210 at P 61,762 (2000); *see also*, *Rocky Mountain Pipeline System LLC*, 101 FERC ¶ 61,269 (2002)(an oil company and a refiner that were not shippers on Rocky Mountain’s system did not have standing to protest its proposed rate).

19. Bridger claims there is no merit to Continental's claims of improper cross-subsidization or discriminatory rate preference, and it has properly justified its rate reduction and fully complied with 18 C.F.R. § 342.4(c)(2005) of the Commission's regulations by including with the instant filing an affidavit attesting to the fact that the revised rate was agreed to in writing by all current shippers.<sup>15</sup>

20. Finally, Bridger states that Continental fails to demonstrate that the Commission should examine the settlement agreement between Bridger and Nexen. Bridger claims there is no requirement in the oil pipeline regulations that settling parties must disclose settlements or gain the Commission's approval. Moreover, Bridger states the cases cited by Continental, *HIOS* and *Cranberry*, involved natural gas pipeline rate settlements which the Commission requires parties to submit for approval.

### **Discussion**

21. The record demonstrates that Continental is not a current shipper under the proposed tariff supplements, and therefore does not have standing to protest the instant filings. The Commission can address the issues raised by Continental in the complaint proceeding in Docket No. OR05-11-000.

22. In any case, the Commission finds that Bridger has made an adequate showing that its filing to reduce its tariff rate in Supplement No. 5 to FERC No. 9 under 18 C.F.R. § 342.4(c) meets the requirements of the Commission's regulations based on the affidavit provided in its filing.

23. Furthermore, with regard to its tariff filings to replace the 0.20 percent sulfur restriction with a 0.50 percent sulfur by weight or less restriction, Bridger states that there will be no commingling of 0.20 percent crude, and that nominations of light sweet crude, such as that of Continental, will be delivered as light sweet crude. On this basis, the Commission finds that the proposed supplements are not discriminatory or preferential.

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<sup>15</sup> Section 342.4(c) of the Commission's rules states: "*Settlement rates.* A carrier may change a rate without regard to the ceiling level under § 342.3 if the proposed change has been agreed to, in writing, by each person who, on the day of the filing of the proposed rate change, is using the service covered by the rate. A filing pursuant to this section must contain a verified statement by the carrier that the proposed rate change has been agreed to by all current shippers."

Therefore, the Commission will accept the tariff supplements listed in footnote No. 2 for filing to be effective September 3, 2005, as set forth in the body of this order and in the ordering paragraph below.

24. The Commission for good cause shown grants waiver of the 30-day notice requirement to allow Bridger's proposed tariff supplements to become effective on less than 30-day notice.

**The Commission orders:**

Pursuant to the authority contained in the Interstate Commerce Act, particularly section 15(7) thereof, Bridger's instant tariff supplements listed in footnote No. 2 are accepted for filing, to become effective September 3, 2005.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.