UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Transwestern Pipeline Company, LLC — Docket No. RP06-614-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND AND ESTABLISHING A HEARING AND TECHNICAL CONFERENCE

(Issued October 31, 2006)

1. On September 29, 2006, Transwestern Pipeline Company, LLC (Transwestern) filed revised tariff sheets under section 4(e) of the Natural Gas Act (NGA) proposing a general rate increase to be effective on November 1, 2006.[1] The Commission accepts and suspends the revised tariff sheets for the maximum five-month statutory period to be effective April 1, 2007, subject to refund, and subject to the outcome of a hearing established by this order, and pending the outcome of a technical conference and further Commission orders, as discussed herein.

Background

2. Transwestern's pipeline system consists of approximately 2,500 miles of transmission lines that transport natural gas from the San Juan, Anadarko, and Permian Basins to markets in the Midwest, Texas, Arizona, New Mexico, Nevada, and California. Transwestern also indirectly accesses the Rockies' supplies on its San Juan lateral via pipeline interconnections. Transwestern does not own or operate gathering or storage facilities, and does not offer these services on its system, but does connect to third party owned gathering and storage facilities. Historically, gas entering the system from the producing basins generally flowed west to the California border, but with several system expansions, including the San Juan lateral and the mainline, Transwestern indicates that gas that enters its system in the San Juan Basin moves to the mainline at Thoreau, New Mexico, and can move both east and west depending on the demand on the system.

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[1] The proposed tariff sheets are listed on Appendix A and Appendix B to this order.

3. Transwestern's currently effective rates were established in its Docket No. RP93-34-000 rate proceeding.[2] Transwestern subsequently entered into a Stipulation & Agreement in the Docket No. RP95-271-000, *et al*. (Global Settlement) that addressed the turnback of capacity by Southern California Gas Company (SoCalGas) and locked-in Transwestern's rates and fuel reimbursement percentages for ten years.[3]

4. Transwestern is a limited liability company which is owned 100 percent by Transwestern Holding Company, LLC. This entity is in turn owned 100 percent by CrossCountry Energy, LLC, which is owned 100 percent by CCE Holdings, LLC (CCEH). CCEH is in turn ultimately owned 50 percent by Southern Union Company, a Delaware corporation, approximately 30 percent by EFS-PA, LLC, a wholly-owned indirect subsidiary of General Electric Company, and the remaining approximately 20 percent by four other entities. Transwestern states that on September 15, 2006, there was an announcement of a series of proposed transactions whereby the 50 percent interest of CCEH currently owned by the subsidiary of General Electric Company and four other entities will be sold to Energy Transfer Partners (ETP). ETP and Southern Union Company have entered into an agreement whereby ETP will transfer its interest in CCEH to Southern Union in exchange for full ownership of Transwestern.

<u>Details of the Filing</u>

5. Transwestern states that this rate case is being filed pursuant to the Stipulation & Agreement in its Global Settlement, and that the proposed cost of service, rate and billing determinants, and rates are based on a test period consisting of a 12-month base period ending May 31, 2006, adjusted for known and measurable changes anticipated to occur during the 9-month adjustment period ending February 28, 2007.

6. Transwestern's proposed rates are designed to recover transportation revenues of $181.8 million annually, or an annual increase of approximately $3.2 million as compared to revenues generated by currently effective rates. Transwestern proposes an annual cost of service of $210.8 million, an increase of $41 million annually, when compared to the $169.8 million cost of service underlying its currently effective rates.

7. Transwestern states that the principal factors supporting its proposed increase in rates are major plant additions in rate base, and an increase in rate of return and associated taxes. Transwestern proposes a $792.2 million rate base due to a number of capital expansions, which reflects an increase of $372.2 million or 70.4 percent over the

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[2] *See Transwestern Pipeline Co.*, 72 FERC ¶ 61,085 (1995), *reh'g denied*, 73 FERC ¶ 61,089 (1995).

[3] *Id.*

rate base underlying the currently effective rates. These plant additions which Transwestern now proposes to roll-in to its system-wide rates include the: (1) San Juan 2005 Expansion; (2) San Juan – Phase I and II Expansions; (3) Gallup Expansion; and (4) Red Rock Expansion.

8. Transwestern proposes a 13.50 percent rate of return on equity (ROE) based on its stand-alone capital structure consisting of 41.45 percent debt and 58.55 percent equity, a 5.80 percent cost of debt, and an overall cost of capital of 10.30 percent.

9. Transwestern also proposes to change the annual depreciation accrual rate certificated for its San Juan 2005 Expansion facilities from 2.86 percent to 1.20 percent to be consistent with the depreciation rate used for other rolled-in transmission facilities in this filing. Transwestern states that it has complied with section 154.315 of the Commission's regulations, and has reflected asset retirement obligations (ARO) depreciation expenses and accretion expenses for its transmission facilities.

10. Transwestern indicates that its proposed rates generally retain the methods of cost classification and rate design that underlie its currently effective rates, including the straight fixed variable (SFV) rate design, matrix of rates, use of a discount adjustment, and 100 percent load factor equivalent interruptible rates. Further, Transwestern states that the throughput underlying the proposed rates includes 700,000 MMBtu per day West of Thoreau, 810,000 MMBtu per day East of Thoreau, and 1,235,000 MMBtu per day in the San Juan Area.

11. Transwestern proposes to make revisions to various fuel retention rates in its tariff. Transwestern states that it has adjusted the fuel retention rates for its three transportation rate areas: East of Thoreau, West of Thoreau, and San Juan. Transwestern states that the fuel rates have been revised based on fuel usage experienced on the system and changes in system flow characteristics, and expected flows based on contract volumes and capacity.

12. Transwestern also proposes to institute several tariff changes. Transwestern proposes to modify reservation charge credit provisions in Rate Schedules FTS-1 and FTS-2 consistent with a commitment it claims that it made in Docket No. RP04-214. Transwestern's proposed revisions to Rate Schedules FTS-1 and FTS-2 provide that: (1) in the event that Transwestern provides advanced notice of scheduled maintenance which result in an inability to deliver all scheduled volumes after 10 days in any calendar quarter, a shipper's reservation charges will be credited when deliveries to a shipper fall below 75 percent in any month; and (2) Transwestern will credit shippers' reservation charges if scheduled volumes are not delivered during December, January, February, July and August.

13. Transwestern also proposes to modify section 22.4 of the General Terms and Conditions (GT&C) to provide for a reduction in the minimum notice for an alert day from 24 hours to 2 hours and change the penalty for non-compliance. Additionally, Transwestern proposes changes to priority of scheduling, operational day procedures, and the methods of allocating unsubscribed capacity.

14. Transwestern proposes revisions to certain gas quality standards in section 2 of its GT&C, which include: (1) reducing the oxygen specification from its current limit of 0.20 percent to 0.01 percent; (2) a hydrocarbon dew point (HDP) safe harbor provision with a standard of 15 degrees; (3) a maximum Btu limit at receipt points of 1200 Btu per cubic foot; (4) implementation of a receipt point Wobbe range of 1250-1400; (5) delivery standards that are established pursuant to the Commission's *Policy Statement on Gas Quality*;[4] and (6) eliminating specific gas quality specifications for the La Plata facilities.

15. Furthermore, Transwestern proposes revisions to its creditworthiness requirements in section 13 of its GT&C, and states that a shipper's creditworthiness will be based upon the level of service requested by the shipper and the shipper satisfying on an ongoing basis a credit appraisal by Transwestern. Transwestern also proposes to revise the creditworthiness provisions to state that the shipper shall provide financial statements, annual reports, filings with regulatory agencies, and various other financial documents listed in the tariff.

16. Transwestern also proposes to eliminate Rate Schedules EFBH and FTS-3, as well as the associated Forms of Service Agreements. Transwestern claims that no customers have ever utilized these services nor is future demand for these services anticipated.

Notice of Filing, Interventions, Protests and Answer

17. Notice of Transwestern's filing was issued on October 3, 2006, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2006)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

18. Protests or comments were filed by: Sempra Energy Trading Corp. and Sempra LNG; Tenaska Marketing Ventures (Tenaska); Southwest Gas Corporation (Southwest);

[4] *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs,* 115 FERC ¶ 61,325 (2006).

Public Utilities Commission of the State of California; Southern California Gas Company and San Diego Gas and Electric Company; Pacific Gas and Electric Company; Agave Energy Corporation (Agave); Mewbourne Oil Company; Public Service Company of New Mexico (PNM); UNS Gas, Inc. (UNS); and Indicated Shippers.[5]

19. In general, the protestors argue that Transwestern has not justified its proposed rates. Some protestors request that the Commission suspend Transwestern's filing under section 4 of the NGA for the full five-month period and establish a hearing. Protestors generally raise issues regarding Transwestern's proposed cost of service, depreciation rates, ROE, cost allocation, administrative and general costs, operational costs, and rolled-in costs, among other things. Specifically, Indicated Shippers argue that the proposed ROE is calculated in a manner inconsistent with the Commission's policies, because five of the six companies in the proxy group include master limited partnerships (MLP).

20. Furthermore, protestors raise issues regarding the proposed changes to gas quality standards. Several protestors request that the gas quality issues be discussed at a technical conference, because Transwestern has not provided support or justification for the changes. Particularly, protestors argue that Transwestern has not provided support for its HDP safe harbor standard of 15 degrees. Additionally, PNM is concerned about the apparent lack of accountability on Transwestern's part if it delivers non-conforming gas to its customers.

21. Indicated Shippers argue that the Commission should reject the proposed reservation charge credit language and that Transwestern should be required to clarify its proposed creditworthiness provisions. Indicated Shippers and UNS also raise issues concerning Transwestern's proposed change to the notice period for an alert day from 24-hours notice to 2-hours notice.

22. Agave and Tenaska contend that all issues arising from the announced change in ownership of Transwestern[6] that may adversely impact the interests of customers should be included in the hearing. In particular, Agave is concerned with the entitlement of Transwestern to a full income tax component as part of the cost of service, if and when the change in ownership takes place.

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[5] The Indicated Shippers consist of BP America Production Company, Chevron Natural Gas, a division of Chevron, U.S.A. Inc., ConocoPhillips Company, and Coral Energy Resources, L.P.

[6] Transwestern states changes in ownership of Transwestern have been announced involving Energy Transfer Partners, L.P.

23. On October 19, 2006, Transwestern filed an answer[7] to the protests and states that it anticipated and supports a full five month suspension and believes that a five month suspension of the proposed rates and tariff modifications will provide the parties with the opportunity to settle all issues before any of the rates or tariff modifications become effective.

Discussion

24. The Commission finds that the instant filing raises issues that need to be explored further. Accordingly, the Commission will establish a hearing to explore issues set forth on the tariff sheets included in Appendix A to this order, including, but not limited to, cost allocation; cost of service; rate design; depreciation; capital structure and ROE; rolled-in costs associated with various expansion projects; and fuel reimbursement charges. These issues should be examined in the context of a hearing where a factual record can be developed.

25. In addition, the Commission will establish a technical conference to further review issues set forth on the tariff sheets included in Appendix B to this order. These tariff issues include all proposed changes to the provisions of the GT&C, including, but not limited to, gas quality standards, reservation charge credits, creditworthiness provisions, and alert day provisions.

Technical Conference

26. The Commission will direct the Staff to convene a technical conference to address certain proposed tariff sheets, as discussed above. Transwestern must be prepared at the technical conference to address the issues raised by the protests and to fully support its position on each issue. A technical conference is an informal, off-the-record conference at which the parties and the Staff can explore the issues raised by the proposed tariff sheets, gain an understanding of the facts, and obtain additional information regarding the positions of the parties in order to facilitate a more prompt resolution of the issues. Following the conference, the parties will have an opportunity to file written comments that will be included in the formal record of the proceeding and, together with the record developed to date, will form the basis for further Commission action on the proposed tariff sheets.

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[7] Transwestern requests waiver of the Commission's regulation, 18 C.F.R. § 385.213 (2006), for leave to file its answer. As the answer aids the Commission in resolving issues pending, we will grant the waiver requested.

Suspension

27. Based upon review of the filing, the Commission finds that the proposed tariff sheets set for hearing and set for technical conference have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept the tariff sheets in the Appendices for filing and suspend their effectiveness for the period as set forth below, subject to the conditions set forth in this order.

28. The Commission's policy regarding rate suspensions is that a rate filing 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 that it may be inconsistent with statutory standards.[8] 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.[9] Such circumstances do not exist here. Therefore, the Commission will accept and suspend the proposed tariff sheets listed in the Appendices, to be effective April 1, 2007, subject to refund and the outcome of the hearing and technical conference established herein.

The Commission orders:

(A) As reflected in Appendix A, certain tariff sheets are accepted and suspended for five months to be effective April 1, 2007, subject to refund, and subject to the outcome of the hearing, as discussed in the body of this order.

(B) As reflected in Appendix B, certain tariff sheets are accepted and suspended for five months to be effective April 1, 2007, subject to refund, subject to the outcome of the technical conference, and subsequent Commission order, as discussed in the body of this order.

(C) Pursuant to the Commission's authority under the NGA, particularly sections 4, 5, 9, and 15, and the Commission's rules and regulations, a public hearing is to be held in this proceeding concerning the lawfulness of Transwestern's proposed rates and fuel reimbursement charges.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304 (2006), must

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

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

convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

(E) The Commission Staff is directed to convene a technical conference to explore issues relating to the proposed tariff changes that are set for technical conference, as discussed in the body of this order. The Staff must report the results of the technical conference to the Commission within 120 days of the issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX A

Transwestern Pipeline Company, LLC
Docket No. RP06-614-000

Tariff Sheets Accepted for Filing, Suspended, Subject to Refund and Set for Hearing to Be Effective April 1, 2007

FERC Gas Tariff, Third Revised Volume No. 1:

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 5A
Fifth Revised Sheet No. 5B
First Revised Sheet No. 5C
First Revised Sheet No. 5D
Original Sheet No. 5D.01
First Revised Sheet No. 5E
First Revised Sheet No. 5F

APPENDIX B

Transwestern Pipeline Company, LLC
Docket No. RP06-614-000

Tariff Sheets Accepted for Filing, Suspended, Subject to Refund and Subject to Technical Conference, and Subsequent Commission Order to Be Effective on April 1, 2007

FERC Gas Tariff, Third Revised Volume No. 1:

Third Revised Sheet No. 1
Second Revised Sheet No. 39
Second Revised Sheet No. 40
Third Revised Sheet No. 41
Second Revised Sheet No. 54
Second Revised Sheet No. 55
Second Revised Sheet No. 66
Third Revised Sheet No. 94
Third Revised Sheet No. 95
Third Revised Sheet No. 97
Second Revised Sheet No. 98
First Revised Sheet No. 99
First Revised Sheet No. 100
Second Revised Sheet No. 101
Second Revised Sheet No. 102
Second Revised Sheet No. 117
Second Revised Sheet No. 122
Third Revised Sheet No. 138
First Revised Sheet No. 141
Third Revised Sheet No. 142
Second Revised Sheet No. 143
First Revised Sheet No. 145
Second Revised Sheet No. 146
Third Revised Sheet No. 147
First Revised Sheet No. 150
Second Revised Sheet No. 151
First Revised Sheet No. 151A
Third Revised Sheet No. 167
Second Revised Sheet No. 176
Third Revised Sheet No. 177
Second Revised Sheet No. 202
Second Revised Sheet No. 203
Second Revised Sheet No. 207
Third Revised Sheet No. 215