

110 FERC ¶ 61,390
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Williston Basin Interstate Pipeline Company

Docket No. RP05-199-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO
REFUND AND CONDITIONS

(Issued March 30, 2005)

1. On February 28, 2005, Williston Basin Interstate Pipeline Company (Williston) filed revised tariff sheets¹ pursuant to Amendment No. 1 to the Rate Schedule X-13 Service Agreement (Service Agreement) between Williston and Northern States Power Company (NSP). The revised tariff sheets reflect Williston's sixth biennial restatement of rates as required by the Service Agreement. Williston proposes the revised tariff sheets become effective March 1, 2005. As more fully discussed below, the Commission will accept and suspend the proposed tariff sheets subject to refund and certain conditions. We also grant waiver of the Commission's notice requirements to permit the subject tariff sheets to become effective March 1, 2005.

I. Background

2. On March 30, 1992, the Commission issued an order in Docket No. CP91-1897-000 which authorized Williston to construct new facilities (the Mapleton Extension) for NSP and to provide 8,000 Mcf per day of firm transportation service to NSP under Rate Schedule X-13 for a twenty-year term.² In that proceeding, the Commission approved an incremental rate under Rate Schedule X-13.³

¹ 102nd Revised Sheet No. 11B and Sixth Revised Sheet Nos. 366, 367, 368, 369, and 370 to FERC Gas Tariff, Original Volume No. 2.

² *Williston Basin Interstate Pipeline Co.*, 58 FERC ¶ 61,344 (1992).

³ *Id.* at p. 62,120.

3. Article V of Amendment No. 1 to the Service Agreement directs Williston to restate the incremental rate to become effective on March 1 every two years. Article V further requires Williston to calculate the restated rate using the applicable total cost of service until the rate becomes equal to or less than the effective maximum rate, including all surcharges, under Williston's Rate Schedule FT-1.⁴ At such time, pursuant to this article, the rate restatement will cease and the rate in effect for Rate Schedule X-13 will be equivalent to the effective maximum rate under Rate Schedule FT-1.

II. The Filing

4. The February 28, 2005, filing reflects an increase in the X-13 base reservation charge, from \$15.43543 per Mcf per month established in the last biennial rate restatement to \$15.85042 per Mcf per month. In addition, pursuant to Article V of the Service Agreement, Williston includes an Appendix C with its filing which compares the revenues resulting from the rates proposed under Rate Schedule X-13 with the revenues which would result from applying the current rates for Rate Schedule FT-1.⁵ The attachment shows that the revenue produced by the proposed rates under Rate Schedule X-13 is \$525,685 greater than the revenue that would be produced under the current Rate Schedule FT-1 rates. Therefore, as required by Article V, Williston must continue incremental rate treatment for Rate Schedule X-13.

5. Williston requests that the Commission grant a waiver of the 30-day notice requirement in order to allow the rate to become effective March 1, 2005.

III. Notice, Intervention, and Protest

6. Public notice of Williston's filing was issued on March 2, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motions 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.

7. NSP filed a protest, requesting that the Commission suspend the restated rate, allow it to become effective March 1, 2005 subject to refund and subject to (i) Williston refiling the restated X-13 rate based either on the Commission's cost of service

⁴ Revised Schedule A, included with the filing, shows the specific accounts necessary to compute the proposed reservation rate for Rate Schedule X-13.

⁵ The proposed restatement only affects the base reservation rate.

determinations in Docket No. RP00-107 or the outcome of that proceeding, and (ii) NSP's opportunity to verify the cost components of Williston's filing, including review of Williston's upcoming FERC Form No. 2 for 2004.

IV. Discussion

8. This sixth biennial restatement of the incremental rate that Williston charges NSP under Rate Schedule X-13 is made pursuant to Article V of Amendment No. 1 of the Service Agreement between the parties. Sixth Revised Sheet Nos. 366-370 detail the specific calculations and figures Williston has used to determine the total cost of service of \$1,527,188, which when coupled with an overall rate of return of 13.75 percent and monthly reservation volumes of 8,000 Mcf, results in a proposed reservation rate of \$15.85042 per Mcf per month of contract demand. This proposed rate would be an increase of \$0.41499 per Mcf from the existing rate. Williston has calculated the incremental rate for Rate Schedule X-13 consistent with the formula set forth in Amendment No. 1 of its Service Agreement.

9. The filing is protested by NSP. NSP notes that the total cost of service shown by Williston on proposed Sheet No. 366 reflects a depreciation expense and a return on net investment derived from the depreciation rates and return on common equity underlying Williston's Rate Schedule FT-1 rates filed on December 1, 1999 in Docket No. RP00-107-000. Williston is currently collecting Rate Schedule FT-1 rates subject to refund.

10. NSP also notes that certain components of the restatement total cost of service exceed the levels authorized by the Commission in Docket No. RP00-107-000.⁶ NSP claims that since the restated X-13 total cost of service is excessive, the Commission should direct Williston to immediately refile the restated X-13 rate using relevant cost of service components approved in Docket No. RP00-107-000.

11. NSP further notes that the Rate Schedule X-13 cost of service study that underlies the proposed restated rate uses certain year-end actual data. In this proceeding, the actual data are for 2004, but because Williston does not file its FERC Form No. 2, which contains this information, until April 30 of each year, NSP requests an opportunity to review the 2004 FERC Form No. 2 data and the cost of service study provided in this filing and informally question Williston about this data, if necessary.

⁶ *Williston Basin Interstate Pipeline Co.*, 104 FERC ¶ 61,036 at P 11 (2003) (approving a rate of return on equity of 12.48 percent).

12. NSP asks that the Commission adopt the same review process it required in its last restatement order.⁷ In that proceeding, first, NSP and Williston were given 30 days from the date of the order to address any questions that NSP may have with respect to the cost of service study included in the filing. Second, Williston was directed to serve NSP with a copy of its FERC Form No. 2 when it files the form with the Commission, and NSP was directed to advise the Commission within a month of receiving the form if NSP had any continuing concerns.

13. The Commission finds that the cost components need to be verified and that Williston should address NSP's concerns within 30 days of the date that this order is issued. Williston should serve NSP with a copy of its FERC Form No. 2 when it files the form with the Commission and should work informally with NSP in an attempt to resolve NSP's concerns. NSP must then advise the Commission of any continuing concerns it has within 30 days of receiving the Form No. 2 from Williston.

14. We shall not require Williston to immediately refile its Rate Schedule X-13, as NSP requests, as we are still reviewing Williston's filing to comply with our most recent order in Docket No. RP00-107-000. As a consequence, however, we further condition our acceptance upon the outcome of Williston's Docket No. RP00-107-000 proceeding. Consistent with the procedures required in previous biennial restatement proceedings, once the Commission has designated rates in compliance with our orders in Williston's Docket No. RP00-107-000, Williston must, within 60 days, recalculate the cost of service applicable to the Rate Schedule X-13 rate for the restatement period, refile revised rates, and make refunds, if appropriate.⁸

15. The Commission finds good cause to waive the 30-day notice requirement of the Commission's regulations and, therefore, accepts the proposed tariff sheets, to be effective March 1, 2005.

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

⁷ *Williston Basin Interstate Pipeline Co.*, 102 FERC ¶ 61,327 (2003).

⁸ *See Williston Basin Interstate Pipeline Co.*, 81 FERC ¶ 61,318 (1997), *order on reh'g*, 85 FERC ¶ 61,103 (1998), *aff'd*, *Williston Basin Interstate Pipeline Co. v. FERC*, 215 F.3d 875 (8th Cir. 2000).

17. The Commission's policy regarding rate suspensions is that rate 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 that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). 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. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances exist here where Williston is filing in accordance with an accepted tracking mechanism. Therefore, the Commission will exercise its discretion and suspend the proposed tariff sheets for a nominal period to take effect March 1, 2005, subject to refund and conditions.

The Commission orders:

(A) The proposed tariff sheets listed in footnote 1 are accepted and suspended, to be effective March 1, 2005, subject to refund, the outcome of the proceedings in Docket No. RP00-107-000, and the conditions of this order.

(B) Williston is directed to recalculate the cost of service underlying the X-13 Rate Schedule and file revised rates to reflect the Commission action in the compliance filing in Docket No. RP00-107-000 and make refunds as more fully described in the body of this order.

(C) Williston is directed to respond to NSP's concerns as discussed in the body of this order and to provide NSP with a copy of Williston's 2004 FERC Form No. 2.

(D) NSP must advise the Commission of any continuing concerns it may have with Williston's filing within 30 days after receipt of the FERC Form No. 2.

(E) Waiver of the 30-day notice requirement of section 4(d) of the NGA and 18 C.F.R. § 154.22 is granted.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.