

121 FERC ¶ 61,110
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 30, 2007

In Reply Refer To:
Transwestern Pipeline Company, LLC
Docket No. RP07-697-000

Transwestern Pipeline Company, LLC
5444 Westheimer Rd.
Houston, TX 77056

Attention: Shelley A. Corman
Sr. Vice President

Reference: Order Rejecting Tariff Sheet and
Non-Conforming Operational Balancing Agreement

Dear Ms. Corman:

1. On September 14, 2007, Transwestern Pipeline Company, LLC (Transwestern) filed a non-conforming Operational Balancing Agreement between Transwestern and Southwest Gas Transmission Company (Southwest) dated November 1, 2007 (November 2007 OBA) and a revised tariff sheet proposed to be effective November 1, 2007, listing the November 2007 OBA as a non-conforming service agreement.¹ The Commission rejects the proposed section 22 non-conforming provision of the November 2007 OBA as an impermissible material deviation from the currently effective Operator Balancing Agreement Form of Service Agreement (OBA Form of Service Agreement) in Transwestern's Tariff, and the proposed tariff sheet, as discussed below.
2. Transwestern states that it and Southwest have agreed to amend section 22 of the non-conforming Operational Balancing Agreement between Transwestern and Southwest dated September 1, 2006 (September 2006 OBA). The new amended section 22 included

¹ Third Revised Sheet No. 15 to Transwestern's FERC Gas Tariff, Third Revised Volume No. 1 (Tariff).

in the November 2007 OBA states that: “The Parties recognize that there may be variances in the hourly flows at the Interconnect Point above or below 1/24th of the daily scheduled volumes. Subject to the other provisions of this OBA regarding Scheduled Quantities, the Parties agree that the Company may receive volumes at hourly rates up to 6.25% of the MAXDTQ [Maximum Daily Transportation Quantity] of shippers’ primary firm transportation service contracted with Transporter to the Interconnect Point.”² Transwestern states that this provision is intended to clarify the respective receipt and delivery obligations of Transwestern and Southwest and to establish the necessary parameters for operation of the point of interconnection between Transwestern and Southwest.

3. Public notice of Transwestern’s filing was issued on September 17, 2007, with comments, protests or interventions to be filed in accordance with section 154.210 of the Commission’s regulations.³ All timely motions to intervene and all motions to intervene out of time filed before the issuance of this order are granted pursuant to Rule 214 of the Commission’s rules of practice and procedure, 18 C.F.R. § 385.214 (2007). Granting late intervention at this early stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

4. On September 26, 2007, Southern California Gas Company and San Diego Gas & Electric Company (SoCalGas/SDG&E) filed a joint motion to intervene and comment. On October 5, 2007, Transwestern filed an answer to SoCalGas/SDG&E. Rule 213(a)(2) of the Commission’s rules of practice and procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Transwestern’s answer because it has provided information that assisted us in our decision-making process.

5. SoCalGas/SDG&E assert that the primary purpose of the amendment is Transwestern’s guarantee that Southwest’s contracted daily capacity can be utilized in a 16 hour period. SoCalGas/SDG&E argue that Transwestern should be required to: (1) address and identify the system resources that will be utilized to provide this flexibility to Southwest, (2) address whether the flexibility guaranteed to Southwest will have any impacts on fuel consumption, and (3) assure customers that the additional flexibility guaranteed Southwest will not negatively impact other shippers or interconnects on Transwestern’s system, or Transwestern’s ability to market unsubscribed capacity.

² Hourly flow rates at 6.25 percent equate to taking the MAXDTQ over a 16 hour period.

³ 18 C.F.R. § 154.210 (2007).

6. Transwestern states in its answer that it does not prescribe hourly or daily balancing or scheduling penalties, and that it operates its system on a no-harm, no-foul approach wherein it balances the differing load characteristics of its customers consistent with meeting the MAXDTQ levels of service to all shippers. Transwestern notes that this approach was recently reviewed by all participating shippers as part of the settlement of its most recent rate case and that it received no objections to this approach from shippers, including SoCalGas and SDG&E.⁴

7. In response to the concerns of SoCalGas/SDG&E, Transwestern answers that the system resources it intends will be utilized to provide the flexibility to Southwest are Transwestern's existing facilities and line pack, the same resources utilized to accommodate all of its shippers' and operators' various operating characteristics. Transwestern states that no new mainline facilities were put in place to guarantee this flexibility to Southwest. In response to SoCalGas/SDG&E's fuel consumption concern, Transwestern states that its fuel retention percentages agreed to in the rate case settlement are fixed until its next rate case, which it cannot file prior to March 2010.

8. Transwestern further explains that it began providing the current service to Southwest at the interconnect point on September 1, 2006, and now has operating experience at the interconnect point. Transwestern states that its system was fully subscribed on a firm basis during the summer of 2007 and, during that period, experienced high load factors, at times approaching 100 percent utilization of its capacity to the California border, but it still did not experience difficulty in meeting its MAXDTQ commitments to all of its customers.

9. In summary, Transwestern avers that there will be no change from an operational standpoint in the service provided to SoCalGas/SDG&E, the additional flexibility guaranteed to Southwest will not negatively impact other shippers interconnecting on its system, and finally, its ability to market unsubscribed capacity will not be negatively impacted by the November 2007 OBA.

10. The Commission finds that the November 2007 OBA contains an impermissible material deviation from Transwestern's OBA Form of Service Agreement, because section 22 contains an hourly flow rate service provision that is currently not available to all of Transwestern's customers.

11. Under section 4(c) of the Natural Gas Act (NGA), pipelines must file "all contracts which in any manner affect or relate to" the pipeline's rates and services. Section 154.1(b) of the Commission's regulations implements this provision and provides

⁴ See *Transwestern Pipeline Company*, 119 FERC ¶ 61,323 (2007).

that pipelines must file all contracts related to their services.⁵ Section 154.1(d) provides that any contract that conforms to the form of service agreement provided in the pipeline's tariff need not be filed, but that any contract that deviates in any material aspect from the form of service agreement provided in the pipeline's tariff must be filed.⁶

12. The Commission has defined a material deviation as "any provision of a service agreement which goes beyond the filling in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties." Once a service agreement has been found to deviate materially from the form of service agreement in the tariff, the Commission must then determine whether to approve the non-conforming agreement. The Commission bases this determination upon whether the material deviation presents a significant potential for undue discrimination among customers.

13. Although Transwestern avers that there will be no change to the service provided to SoCalGas/SDG&E, and that there will not be negative impacts on other shippers interconnecting to its system or to its ability to market unsubscribed capacity, the Commission finds that Transwestern's proposed November 2007 OBA is an impermissible material deviation from Transwestern's OBA Form of Service Agreement, because section 22 contains an hourly flow rate service provision that is currently not available to all of Transwestern's customers. Therefore, we reject the revised tariff sheet proposed by Transwestern and the section 22 provision because it may affect the substantive rights of other shippers and presents the potential for a significant risk of undue discrimination among customers. Transwestern may file revised tariff sheets to revise its OBA Form of Service Agreement or the General Terms and Conditions of its Tariff to include the hourly flow rate service provision on a generally applicable basis to all shippers and operators.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

⁵ 18 C.F.R. § 154.1(b) (2007).

⁶ 18 C.F.R. § 154.1(d) (2007).