

121 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rockies Express Pipeline LLC

Docket No. CP06-354-002

ORDER ON COMPLIANCE TARIFF FILING

(Issued November 5, 2007)

1. In this order the Commission addresses the August 1, 2007 filing by Rockies Express Pipeline LLC (Rockies Express)¹ consisting of its proposed FERC Gas Tariff, Second Revised Volume No. 1 (REX Tariff) to comply with the Commission's certificate orders of September 21, 2006² and April 19, 2007³ in Docket No. CP06-354-000 (collectively, the Certificate Orders). The Rockies Express system is being constructed and authorized in phases. The proposed tariff is intended to supersede in its entirety the Rockies Express FERC Gas Tariff Revised Volume No. 1 (Entrega Tariff) which sets forth the rates and terms of service on the previously certificated facilities (REX Entrega Facilities, Zone 1),⁴ and also sets forth the rates and terms of service for the facilities approved in the September 2006 and April 2007 orders (REX-West Facilities, Zone 2). A rate sheet is not provided for the final phase, the REX-East Facilities, since those facilities are pending approval in Docket No. CP07-208-000, but attached as an exhibit

¹ Rockies Express was formerly known as Entrega Gas Pipeline LLC (Entrega). Rockies Express and Entrega merged into a single entity on April 11, 2006. Pursuant to the merger agreement, Entrega continues to exist after the merger as the surviving entity, under the name "Rockies Express Pipeline LLC."

² *Rockies Express Pipeline, LLC*, 116 FERC ¶ 61,272 (2006) (September 2006 Order).

³ *Rockies Express Pipeline, LLC*, 119 FERC ¶ 61,069 (2007) (April 2007 Order).

⁴ *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 (2005), *Order on Rehearing*, 113 FERC ¶ 61,327 (2005).

are the maximum recourse rates as filed in the REX-East certificate application in Docket No. CP07-208-000.

2. As discussed below, we accept the revised tariff to be effective September 1, 2007, as proposed.

3. The September 2006 Order addressed non-environmental issues raised by Rockies Express' application for construction of the REX-West facilities, with a January 1, 2008 projected in-service date, and additions to its certificated REX-Entegra facilities. In that proceeding Rockies Express submitted a *pro forma* tariff in Exhibit P, and requested that it be treated as a replacement tariff and supersedes in its entirety, on the in-service date of REX-West, the then-effective Rockies Express tariff.

4. The September 2006 Order required Rockies Express to revise the *pro forma* tariff provisions relating to curtailment priorities, reservation charge credits, the order of blending of non-conforming gas, and the proposal to eliminate interruptible transportation revenue crediting in Zone 1. Rehearing was requested by one party on the gas blending issue.

5. The April 2007 Order granted final authorization to the application, and denied rehearing on the gas blending issue. The April 2007 Order also addressed two related applications for the construction of facilities that will interconnect with REX-West. The Certificate Orders required Rockies Express to file its actual tariff sheets no earlier than 60 days, and no later than 30 days, prior to the in-service date of the facilities.

6. In the instant filing, Rockies Express has added language in its General Terms and Conditions (GT&C) section 3.5 reflecting Commission policy that once scheduled, all firm service is assigned the same priority for curtailment purposes, irrespective of whether capacity is utilized on a primary or secondary basis. The proposal to provide reservation credits when the pipeline failed to deliver at least 98 percent of a shipper's scheduled deliveries in non-*force majeure* situations, has been removed from section 7.14A of the GT&C. With regard to blending of non-conforming gas, section 20.4(C) of the GT&C now provides that Rockies Express will blend, to the extent operationally feasible, to accommodate the gas of all shippers who have firm service agreements. Rockies Express has added section 10 of the GT&C which addresses the Commission's concerns relating to the pipeline providing a revenue sharing mechanism for interruptible transportation shippers in Zone 1. The compliance filing also includes changes required for administrative reasons.

7. Rockies Express is also seeking a waiver of the requirement that the tariff be filed no earlier than 60 days before the REX-West facilities are placed in service, which it projects as January 1, 2008, and proposes that the filed tariff be effective September 1, 2007. Rockies Express states that it is requesting the waiver to enable its shippers to use

the capacity release provision of the tariff to market and release capacity prior to the in-service date for the REX-West and REX-East facilities.

Notice, Interventions, Comments, and Protest

8. Notice of Rockies Express' filing was published in the *Federal Register* on August 10, 2007 (81 Fed. Reg. 45,029). Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁵ Sempra Rockies Marketing, LLC (SRM) filed comments and EnCana Marketing (USA) Inc. (EnCana) filed a protest.

9. SRM states that it has entered into a Precedent Agreement which allows SRM to permanently assign its rights to receive transportation services from Rockies Express up until the time that the facilities are placed in service. SRM's concern is the effect of the instant filing on its ability to exercise the assignment rights under the Precedent Agreement. It states that it is not seeking clarification from the Commission regarding the interpretation or scope of those rights. Rather, SRM requests clarification that the Rockies Express compliance filing will not impair the ability of SRM to exercise the rights under the Precedent Agreement to permanently assign some or all of its capacity on the system prior to the date that the facilities are placed in service.

10. EnCana's protest asserts that the Rockies Express proposed tariff contains two provisions that should be modified. The first provision concerns Rockies Express' proposal to restrict capacity release credits to temporary releases, and the second is Rockies Express' proposal to revise its currently effective hydrocarbon dew point (HDP) standard.

11. EnCana claims that a firm shipper's right to release capacity and to receive a credit from the pipeline for any difference between its contracted-for rate and the replacement shipper's rate, for either temporary or permanent releases of capacity, is a cornerstone of the Commission's open-access transportation program. EnCana requests the Commission to reject Rockies Express' proposed tariff which only allows capacity release credits for temporary capacity releases. This provision, EnCana contends, changes Rockies Express' currently effective tariff which allows credit for both temporary and permanent releases. EnCana asserts that, "[e]ven though a releasing shipper may be released from liability in a permanent release, this fact has no bearing on the Commission's policy goals that form the basis of the Capacity Release Credits policy."⁶

⁵ 18 C.F.R. § 385.214 (2007).

⁶ Protest at 3.

12. EnCana also requests the Commission to reject Rockies Express' proposal to implement a less stringent maximum hydrocarbon dew point standard (HDP) from 15 to 20 degrees Fahrenheit. EnCana claims that no support or justification is supplied to demonstrate the need for the change. EnCana states that the pipeline has not shown that the new HDP standard will not degrade its ability to deliver gas to pipelines that currently have a maximum dew point of 15 degrees. Moreover, EnCana contends that the change is unnecessary because Rockies Express presently has ample flexibility and tools to manage its system to accommodate non-conforming gas.

13. On August 27, 2007, Rockies Express filed a motion for leave to answer and answer. Thereafter, on September 11, 2007, EnCana filed an answer to Rockies Express' answer. We will accept both answers under Commission Rule 213(a) because they assist in our decision-making process.

Rockies Express' Answer

14. Rockies Express states that the Certificate Orders accepted the *pro forma* tariff sheets and required revision as to only certain specific provisions. Rockies Express asserts that the issues raised by EnCana relate to provisions which were not required to be revised in the compliance filing.

15. Rockies Express states that EnCana is protesting alleged changes from Rockies Express' existing tariff, the changes being the addition of the word "temporary" in GT&C section 15.1(A), and the change in the HDP standard in GT&C section 20.2(G) from 15 degrees to 20 degrees. Rockies Express states that these two sections in the compliance filing are the same as they were in the *pro forma* tariff sheets in Exhibit P of its certificate application in this docket as a replacement in the entirety for Rockies Express' then-effective tariff. Rockies Express states that EnCana participated in the proceedings and did not object to these provisions, nor did it seek rehearing of the order accepting them.

16. The Certificate Orders found, subject to modification unrelated to these two provisions, that the *pro forma* replacement tariff complied with the Commission's regulations and current policy. The order required certain revisions in the *pro forma* tariff sheet, but not as to these two provisions. The order directed Rockies Express to make a compliance filing of actual tariff sheets consistent with the *pro forma* tariff sheet within a specified time prior to commencement of service.

17. Rockies Express states that the August 1 compliance filing did not change the two provisions which are the subject of EnCana's protest. Accordingly, it urges the Commission to summarily reject EnCana's protest because the only issue in a compliance filing is whether the filing complies with the Commission's prior order.

18. With respect to the substance of the protest, Rockies Express asserts that there is no merit to EnCana's position, as is more fully set forth below.

19. Rockies Express states that it supports SRM's request that the compliance filing not impair SRM's right, under the Precedent Agreement, to assign capacity.

EnCana's Answer to Rockies Express' Answer

20. EnCana asserts that after Rockies Express filed its certificate application, it notified Rockies Express that it objected to Rockies Express' proposal to limit reservation charge credits only to temporary releases because EnCana believed the proposal was inconsistent with the Commission's policy that releasing shippers are entitled to capacity release credits for any capacity release transaction – whether it be temporary or permanent. EnCana's answer states that after its negotiations with Rockies Express to resolve the issue failed, Rockies Express suggested to it that it should file a formal protest with the Commission, which it did. EnCana asserts that the Commission should address the merits of the protest even if this is a compliance filing proceeding, since they relate to tariff provisions which, in EnCana's view, are inconsistent with Commission policy. It cites to *East Tennessee Natural Gas Co.*, 108 FERC ¶ 61,135, at P 9 (2004) where the Commission considered an unrelated protest in a compliance filing.

21. In short, it argues that Rockies Express' position is based on the premise that in a permanent release situation the releasing shipper is no longer liable. EnCana asserts this is irrelevant to the issue presented because the Commission's capacity release credits policy is intended to promote competition in the secondary market for capacity, and there is no connection between whether the releasing shipper remains liable on its contract and the releasing shipper's eligibility for capacity release credits.

22. As to the HDP standard, EnCana states that Rockies Express' justification for changing the existing 15 degrees standard to 20 degrees “in order to strike a balance between its own operational needs and the expectations at upstream and downstream points,”⁷ finds no support in the record of this proceeding. EnCana contends that Rockies Express offered no discussion or data to show that the “operational needs” of its system requires a less stringent maximum HDP, nor has Rockies Express made any effort to show that a less stringent standard is needed to meet “expectations at upstream and downstream points.”

Discussion

23. First, we note that it is unusual for parties to raise issues in a compliance filing that were not raised in the underlying proceeding. Rockies Express is correct that the compliance filing did not change these GT&C sections, as these sections were proposed in conjunction with its certificate application, in Exhibit P. Nevertheless, while we would

⁷ Rockies Express' Answer at 9.

ordinarily not consider a protest in a compliance filing that is directed at matters which were not the subject of the revisions in the compliance filing, here EnCana asserts that these provisions are contrary to Commission policy. If EnCana were correct, it would be inappropriate to accept such a provision. EnCana also explains in its answer that while it did not protest the *pro forma* tariff, it raised its objection to Rockies Express concerning the proposed capacity release credit provision in the course of the certificate proceeding, and in fact negotiated with Rockies Express to resolve the dispute even after Rockies Express made the compliance filing. As a result, it asserts that it should not be penalized for following this route. Moreover, we do not see any prejudice to Rockies Express if the issues are addressed now rather than if they had been addressed in the certificate proceedings. Accordingly, we will consider the merits of the protest.

A. Revenue Crediting

24. When a releasing shipper releases its capacity it is entitled to receive a credit against its bill for the capacity resold (the “capacity release credit”). Commission regulation section 284.8(f) provides:

Unless otherwise agreed by the pipeline, the contract of the shipper releasing capacity will remain in full force and effect, with the net proceeds from any resale to a replacement shipper credited to the releasing shipper’s reservation charge.

25. This also applies when the releasing shippers’ contract is at a discounted rate, so the pipeline will receive more revenue from the new shipper than it received under the releasing shipper’s contract.

26. In its filing, Rockies Express proposed the following, GT&C section 15.1(A):

Subject to the terms, conditions and limitations set forth in this section 15, a Shipper shall have the right to release all or a portion of Capacity held under an eligible firm Transportation Agreement and, if a temporary Capacity release is effectuated under this section 15, to receive a credit for reservation charge revenues received by Transporter from that other Shipper for such released Capacity.

27. EnCana argues this limitation of the capacity release credit to temporary releases is contrary to Commission policy. In fact, it contends that it changes Rockies Express’ effective tariff which granted the credit for permanent, as well as temporary releases. EnCana cites to Rockies Express’ existing tariff which provides as follows:

Subject to the terms, conditions and limitations set forth in this section 28, a Shipper shall have the right to release all

or a portion of Capacity held under an eligible firm Transportation Agreement and, if a Capacity release is effectuated under this section 28, to receive a credit for reservation charge revenues received by Transporter from that other Shipper for such released Capacity.

28. EnCana asserts that consistent with Commission policy, under this tariff provision, a releasing shipper would be entitled to capacity release credits for any release under section 28, without regard to whether the release is temporary or permanent.

29. EnCana concedes that Rockies Express did not agree with EnCana's view, and that Rockies Express "had taken the position that, under its Effective Tariff, it is not obligated to provide capacity release credits for permanent releases."⁸ EnCana requests the Commission clarify that Rockies Express' Effective Tariff requires Rockies Express to provide capacity release credits for temporary releases and permanent releases, regardless of whether or not the releasing shipper has been released from liability, and reject the proposed tariff provision.

30. In its answer, Rockies Express argues, and we agree, that Commission policy is that capacity release credits apply to temporary releases, and not to permanent releases.⁹ When a releasing shipper permanently releases any portion of its capacity, the pipeline agrees to relieve the releasing shipper of any further liability under its contract, and "the replacement shipper then effectively has replaced the releasing shipper as the shipper under the contract."¹⁰ A permanent release thus "severs the contractual relationship between the pipeline and the releasing shipper."¹¹ Since there is no longer any contractual relationship between the pipeline and the releasing shipper, there is no basis under which to require that the pipeline give any credits to the releasing shipper of amounts collected from the replacement shipper.

⁸ EnCana Protest at 7.

⁹ See *Pacific Gas Transmission Co.*, 76 FERC ¶ 61,246 at 62,270 (1996), *reh'g denied*, 82 FERC ¶ 61,289 at 62,135 (1998), stating that the Commission's general policy is that there are no credits to the releasing shipper after a permanent release, but approving a settlement provision allowing a particular shipper such credits for permanent releases in the unique circumstances of that case.

¹⁰ *Transwestern Pipeline Co.*, 61 FERC ¶ 61,332 at 62,253 (1992) (*Transwestern*); *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333 at 62,312 (1992).

¹¹ *Pacific Gas Transmission Co.*, 82 FERC at 62,135.

31. In support of its position, EnCana cites to certain language in *Transwestern*, a 1992 pipeline restructuring case. There the pipeline had proposed that when the negotiated reservation charge exceeds the releasing shipper's applicable rate, it would have the option to either refund or credit the shipper for the difference in the rates. A shipper objected arguing that the shipper should have the option. The Commission agreed with the shipper positing that:

there could be instances where the releasing shipper would prefer a refund to a credit (e.g., when the shipper has no other transportation agreement with the pipeline).¹²

32. EnCana seizes on the parenthetical phrase "when the shipper has no other transportation agreement with the pipeline" as an indication that the Commission contemplated revenue crediting for permanent capacity releases. On the contrary, the phrase does not address the permanent release situation. It merely explains that when the releasing shipper only has one contract with the pipeline, *i.e.*, the contract under which the temporary release is taking place, it would want a refund since there is no other contract where a credit could apply to. However, where the releasing shipper has a second contract with the pipeline in addition to the one under which the release is taking place, the releasing shipper might prefer to have a credit against its payment obligation under the second contract. There is nothing that indicates that the Commission was discussing a permanent release under which the releasing shipper would no longer have any contract with the pipeline. Thus, it does not support EnCana's position. None of the other cases cited by EnCana¹³ are on point with respect to the issue of whether the Commission regulation on capacity release, section 294.8(f), applies to a permanent capacity release. Accordingly, we accept GT&C section 15 as filed.

B. Gas Quality

33. The September 21 Order rejected Rockies Express' proposal to include a new section 20.4(C) to the proposed GT&C that provided that the pipeline will blend gas, to the extent feasible, to accommodate the gas of those original shippers with firm service agreements finding that the proposed provision "is unjustified and unduly discriminatory because it results in original shippers receiving a higher quality of firm service than other shippers based solely on the date a shipper contracts for service."¹⁴ The Commission

¹² 61 FERC ¶ 61,332 at 62,253.

¹³ *Southern Natural Gas Co.*, 62 FERC ¶ 61,136 at p. 61,690 (1993); *Mississippi River Transmission Corp.*, 95 FERC ¶ 61,460 at p. 62,661 (2001); and *Transwestern Pipeline Co.*, 102 FERC ¶ 61,183 P 10 (2003).

¹⁴ 116 FERC ¶ 61,272 P 64, *rehearing denied*, 119 FERC ¶ 61,069 PP 51-56.

directed that the tariff treat all shippers on the system in a non-discriminating manner. The instant filing complies since Original Sheet No. 236 provides that the pipeline will blend gas, to the extent operationally feasible, to accommodate the gas of all shippers who have firm service agreements.

34. However, EnCana objects to Rockies Express' proposal in the pro forma filing that adopted, in GT&C section 20.2(G), Original Sheet No. 234, an HDP of 20 degrees Fahrenheit for its replacement tariff from the 15 degrees Fahrenheit HDP in the pre-existing tariff.

35. In its certificate application for its restructured pipeline, Rockies Express stated that it made certain changes in gas quality specifications in the *pro forma* tariff. The certificate application at p. 39 specifically noted the change in the "hydrocarbon dewpoint." Rockies Express points out that in the certificate orders the Commission did not require Rockies Express to revise that provision.

36. EnCana argues that Rockies Express offered no scientific support as a justification for the change, only offering that it was the result of discussion with shippers and the result of considering both upstream and downstream interconnecting pipeline gas quality specifications. EnCana contends that this does not meet Commission policy that to change existing tariff gas quality specifications, a pipeline must offer "adequate technical, engineering and operational data to support its claim that without revision, its current tariff provisions will hinder its ability to make deliveries to downstream interconnects."¹⁵

37. The Commission's Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs (Policy Statement)¹⁶ does not establish or impose an industry-wide fixed level or percentage for HDP. Rather it allows pipelines to establish reasonable operating limits to protect service reliability and safety, while maximizing the introduction of new supply into the grid. Allowing flexibility in establishing HDP limits is particularly important with respect to newly-authorized pipelines where historical data does not exist.¹⁷

¹⁵ *Gulf South Pipeline Co.*, 120 FERC ¶ 61,076, at P 32 (2007); *see also*, *Columbia Gas Transmission Corp.*, 118 FERC ¶ 61,221, at P 33 (2007) (rejecting as "unsupported" Columbia's proposal to adopt a 15 degrees HDP).

¹⁶ 115 FERC ¶ 61,325 (2006).

¹⁷ We note that Rockies Express filed its certificate application under NGA section 7 on May 31, 2006, prior to issuance of the Policy Statement. We remind future applicants that they must show how they derived the gas quality and interchangeability
(continued...)

38. While a small pipeline segment pre-existed, the newly authorized pipeline extends from various points in western and eastern Wyoming to central Missouri. Rockies Express' proposed 20 degree HDP limit maximizes supply by providing all shippers additional flexibility to deliver Wyoming basin production into the major new pipeline system. Further, there is no indication in this record that downstream deliveries will not or cannot be accomplished at the planned interconnects with downstream pipelines or that gas meeting the proposed HDP limit will cause operational problems on the Rockies Express system.¹⁸

39. Accordingly, we will accept Rockies Express' filing.

C. SRM's Request for Clarification

40. As a result of the open season that Rockies Express conducted for REX-West, Rockies Express entered into precedent agreements with a number of shippers, including SRM. SRM states that Rockies Express has taken the position that the Precedent Agreement does not give SRM, or other shippers, the right to make temporary assignments of capacity, and SRM understands that the purpose of the compliance filing is to address that specific situation by giving shippers, such as SRM, additional rights to market and release their capacity on a temporary basis prior to the in-service date of the REX-West Facilities. SRM adds that it also understands that shippers with effective precedent agreements may also use the capacity release provisions in the Rockies Express tariff to release their capacity on a permanent basis.

41. SRM requests that the Commission clarify that the compliance filing will not impair any of its rights under the Precedent Agreement with Rockies Express. Since Rockies Express supports SRM's request, and nothing in the capacity release provision in GT&C section 15(A), quoted above, is to the contrary, the Commission will clarify that the compliance filing will not impair the ability of SRM to exercise its rights under the

specifications stated in their *pro forma* tariffs, including providing relevant information about the gas quality and interchangeability specifications of interconnecting pipelines, and of competing pipelines serving customers to be served directly by the new entrant, as well as the relevant information about the gas supplies to be received by the new entrant for transportation or storage. See Policy Statement at P 45.

¹⁸ Should shippers on Rockies Express find that they are experiencing difficulties in making deliveries to downstream pipelines because of gas quality issues, they should bring this matter to the attention of Rockies Express and the downstream pipelines as soon as possible so that the entities can resolve the issue. If that is unavailing, the matter should be brought to the attention of the Commission for appropriate resolution.

Precedent Agreement to make temporary or permanent assignments of some or all of its capacity on Rockies Express prior to the in-service date of the applicable facilities.

42. In conclusion, the Commission finds that the compliance filing satisfactorily includes the required revisions to the previously submitted *pro forma* tariff sheets.

The Commission orders:

(A) For good cause shown, waiver of the requirement that the tariff be filed no earlier than 60 days before the REX-West facilities are placed in service is granted.

(B) Rockies Express' tariff sheets are accepted, effective September 1, 2007.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.