

121 FERC ¶ 61,309
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 31, 2007

In Reply Refer To:
Alliance Pipeline L.P.
Docket No. RP00-445-020

Alliance Pipeline L.P.
6385 Old Shady Oak Road
Suite 150
Eden Prairie, MN 55344

Attention: Jim Goldman, Vice President
Transportation Services and Development

Reference: Negotiated Rate Filing

Ladies and Gentlemen:

1. On November 30, 2007, Alliance Pipeline L.P. (Alliance) filed revised tariff sheets¹ to update its list of negotiated rate contracts set forth in its tariff. Alliance offers firm service to shippers under Rate Schedule FT-1. All of Alliance's FT-1 shippers pay the same negotiated rate for service, with the currently effective rate being \$15.4864 per Dt per month. This negotiated rate is calculated from a formula that includes a series of cost-based negotiated rate principles, including but not limited to taxes, operation and maintenance (O&M) expenses, return, and depreciation. Under the negotiated rate agreements, Alliance may revise its negotiated rate from time to time to incorporate changes in its costs of service. Since Alliance commenced operation under these agreements, it has filed annually to adjust its negotiated rate.² In the instant filing, Alliance's revised tariff sheets reflect a new negotiated rate under the FT-1 agreements of

¹ Fourteenth Revised Sheet No. 11, Eighth Revised Sheet No. 12, Seventh Revised Sheet No. 13, and Seventh Revised Sheet No. 14 to its FERC Gas Tariff, Original Volume No. 1.

² Alliance's previous filing to revise its FT-1 negotiated rate was accepted on December 27, 2006, by unpublished Director's letter order in Docket No. RP00-445-017.

\$16.3914 per Dth per month. Alliance also updated the corporate names of certain shippers on its tariff sheets. Alliance requests a January 1, 2008, effective date for its tariff sheets.

2. The Commission noticed Alliance's filing on December 4, 2007, allowing for protests as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), 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 this proceeding or place additional burdens on existing parties. PPM Energy, Inc. (PPM Energy), filed a protest, request for summary rejection or maximum suspension period and full evidentiary hearing, which we discuss below. ConocoPhillips Company and the Canadian Association of Petroleum Producers filed comments urging the Commission to give due and deliberate consideration to the protest and that the issues be resolved in accordance with the governing provisions of the Natural Gas Act (NGA). On December 17, 2007, Alliance filed an answer to PPM Energy's protest. 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 Alliance's answer because it provides information that assisted us in our decision-making process.

3. PPM Energy asks that the Commission summarily reject Alliance's filing as patently deficient. PPM Energy asserts that, pursuant to the certificate application under which Alliance is operating, the Commission is required to approve any increased O&M expenses and certain other costs that Alliance includes as part of its negotiated rate formula. As such, PPM Energy asserts that, when filing for rate increases, Alliance is required to comply with the regulatory requirements set forth in Part 154 of the Commission's regulations. In its protest, PPM Energy delineates the specific requirements under Part 154 that it argues Alliance failed to comply with. PPM Energy asserts that, since Alliance failed to include the required supporting documents with its filing, the Commission should reject the filing as patently deficient.

4. Absent rejection, PPM Energy recommends that the Commission suspend Alliance's proposed negotiated rates for five months and initiate an evidentiary hearing to review the cost levels underlying the proposed increased rates. PPM Energy argues that Alliance's filing raises material issues of fact that need to be investigated and resolved before the Commission can approve the proposed negotiated rates as just and reasonable. PPM Energy acknowledges that negotiated rate filings are not typically subject to suspension or evidentiary hearing, but contends that two unique factors warrant suspension and hearing in this case. First, it challenges Alliance's implementation of its contractual obligations to PPM Energy under the negotiated rate agreement, particularly the element requiring Commission approval. It asserts that, pursuant to the underlying certificate application, the negotiated rate formula includes actual cost of debt and O&M

expenses and that “revised negotiated rates using updated operation and maintenance costs, gross plant, and actual debt costs must be approved by the Commission.”³ PPM Energy argues that similar language was included in the *pro forma* tariff sheets included with that certificate filing. Second, PPM Energy argues that the negotiated rate formula itself requires that the Commission approve certain proposed cost revisions pursuant to section 4 of the NGA.

5. PPM Energy also argues that any negotiated rate formula must be stated with sufficient specificity to permit the Commission to evaluate whether the formula will result in just and reasonable rates (i.e., it must be known and determinable). PPM Energy asserts that the rate principles on which the rate adjustments are based do not satisfy this requirement. It further argues that shippers would not have agreed to pay a rate that is wholly within the control and discretion of the interstate pipeline, with no ability to review, scrutinize, or challenge whatever costs Alliance may include in its rates. PPM Energy contends that Alliance could, in the future, unilaterally declare that its O&M costs have increased exponentially, thereby doubling or even tripling the negotiated rates.

6. In its answer, Alliance argues that neither facts nor law supports PPM Energy’s recommendation that the Commission reject its filing as patently deficient, or in the alternative, suspend it for five months and commence an evidentiary hearing. Alliance argues that shippers who entered into the negotiated rate agreements were well aware of the negotiated rate arrangement involved, and what rate principles Alliance would use to adjust its rates periodically to reflect changes in its costs of service. Alliance argues that any shipper could have chosen the tariff recourse rate had it not agreed to the negotiated rate. Alliance adds that this is the seventh annual filing it has made to adjust its negotiated rates, and the Commission has approved all preceding rate adjustments without reviewing the underlying cost data to the rate adjustment.

7. Alliance does not dispute that the *pro forma* tariff sheets it included in its certificate application included language providing that its negotiated rates may include O&M costs that the Commission may approve from time to time. However, Alliance points out that in the Commission’s August 1, 1997, certificate order,⁴ the Commission approved Alliance’s overall negotiated rate arrangement with shippers, but rejected the approach that would have involved the Commission’s periodic review of the negotiated rates. Alliance states that the Commission found that since Alliance properly offered the recourse rate option to all shippers in the open season, it would “dispense with cost of service regulation” for the Alliance negotiated rate shippers and not undertake a review of “the level of Alliance’s proposed negotiated rates nor the method by which they were

³ Certificate Application in Docket No. CP97-168-000, pp. 21-22.

⁴ Alliance Pipeline L.P., 80 FERC ¶ 61,149 (1997).

calculated.”⁵ Alliance states that the order also found that the negotiated rate structure agreed to by Alliance and its shippers constituted a “private contractual matter between Alliance and its shippers” which the Commission would not review absent evidence of unfairness not present in the record of that proceeding.⁶ Alliance also states that, in the certificate order, the Commission directed Alliance to remove the negotiated rate formula and levelized depreciation schedule from its tariff, noting that “these items are more appropriately included in service agreements.” Alliance states that its negotiated rate agreements in question all have provisions allowing for the periodic adjustment of rates to reflect changing operating costs, and do not include language requiring Commission review of these rates. Alliance asserts that the rate principles it uses to adjust its negotiated rates are consistent with those that the Commission directed it to use, and it has been making the negotiated rate adjustments consistently over the past seven years in keeping with the established rate principles.

8. Alliance further states that dismissal of PPM Energy’s protest should be made without prejudice to the filing of a section 5 complaint. Alliance states that in the Commission’s 1996 Policy Statement,⁷ the Commission recognized that shippers who wish to assert a discrimination claim with regard to a negotiated rate may file a complaint with the Commission at any time, and that the Commission would use its authority under section 5 of the NGA to investigate the complaint. Alliance notes, however, that pursuant to its tariff, certain steps would have to be taken before a shipper could file a formal section 5 complaint with the Commission. According to Alliance, section 31 of its General Terms and Conditions requires that complaints by shippers must first be addressed on an informal basis, and then submitted to an Alliance officer for a formal complaint procedure, which PPM Energy has not pursued. Alliance notes that, in the instant proceeding, PPM Energy did not request any additional information or take advantage of any complaint procedures set forth in its tariff. In addition, Alliance cites several cases supporting its argument that summary rejection of its filing or suspension of its rates is an inappropriate course of action in this case.

9. We will accept Alliance’s revised tariff sheets to become effective January 1, 2008, as proposed. We thus reject PPM Energy’s request for rejection of Alliance’s filing, and its alternative request for suspension of the tariff sheets and an evidentiary hearing. Alliance and its FT-1 shippers entered into negotiated rate agreements with full understanding of the negotiated rate arrangement and the fact that Alliance may adjust

⁵ *Id.* at 61,597.

⁶ *Id.* at 61,599.

⁷ *Alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996).

the negotiated rate periodically to reflect changes in Alliance's operating costs. Additionally, the rate principles that Alliance would use to make any negotiated rate adjustments are well-delineated in the agreements. Any shippers not choosing to enter into the negotiated rate agreement with Alliance could have opted to contract for service under Alliance's cost-based recourse rate. Alliance's certificate application did provide that any cost adjustment incorporating O&M costs, gross plant, or actual debt costs must be approved by the Commission, but the Commission did not incorporate this provision in its certificate order. In fact, as we discuss above, the Commission specifically stated in its certificate order that it would not review the level of Alliance's negotiated rates nor the method by which they were calculated, and would not review the negotiated rate formula absent evidence of unfairness. Accordingly, we conclude that Alliance's filing to adjust its negotiated rates fully complies with the certificate order, its established rate principles, and the Commission's policy on negotiated rates. If PPM Energy continues to object to the revised negotiated rates, it should follow the procedures set forth in Alliance's tariff. If this does not resolve the issues raised by PPM Energy, it may then consider whether to file a complaint pursuant to section 5 of the NGA.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

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