

123 FERC ¶ 61,081  
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.

Bridger Pipeline, LLC

Docket Nos. IS08-164-000  
IS08-164-001

ORDER ACCEPTING TARIFF FILING  
AND DENYING PROTEST

(Issued April 25, 2008)

1. On March 14, 2008, Bridger Pipeline LLC (Bridger) filed Supplement No. 9 to its FERC Tariff No. 2, to become effective April 1, 2008. Supplement No. 9 cancelled Supplement No. 8 to FERC No. 2 to make a change in Bridger's prorationing policies. On March 28, 2008, Bridger filed Supplement No. 10 to its FERC Tariff No. 2, to correct Supplement No. 9, also to become effective April 1, 2008. The Commission accepts Bridger's corrected March 28, 2008 filing, effective April 1, 2008, and denies the protest.

**The Tariff Filing and the Related Protest**

2. Bridger's new prorationing policy establishes a new twelve-month base period for measuring its shippers' relative rights to capacity when Bridger cannot transport all nominations and is required to prorate capacity among its shippers. The effective date of the new base period would be April 1, 2008, but the actual date of Bridger's new prorationing policies would not begin until June 1, 2008, to be phased in over a twelve-month period. In this regard, the purpose of the correction supplement was to correctly state that (1) the phase-in of the twelve-month base period for the new prorationing policy will be completed by May 1, 2009, rather than June 1, 2009, and (2) that after June 1, 2009, the base period will constitute the period of twelve months beginning fourteen months prior to the month of allocation, thus excluding the month preceding the month of allocation.

3. On April 11, 2008, Enserco Energy Inc. (Enserco) filed a protest to the proposed new prorationing policy. Enserco states it had no pre-filing notice of the proposed change in policy from Bridger, was not one of the customers who is said to have requested the change, and that critical decision makers were unavailable at the time of the filing. Enserco states the new policy *may* (emphasis added) in fact restrict access and detrimentally impact Enserco as a shipper on the pipeline. Enserco requests the

Commission grant Enserco's motion to intervene out-of-time, suspend Bridger's tariff filing for the maximum seven-month statutory period, and initiate an investigation and set up a technical conference to review the proposed policy changes.

4. In its answer to the protest, Bridger states it proposed to phase-in its new prorationing policy to provide all shippers ample notice and opportunity to become an existing shipper pursuant to the proposed rules, as required by the Commission policy announced in *Platte Pipe Line Co.*<sup>1</sup> Bridger states that Enserco filed its protest on April 11, 2008, or thirteen days after the date for a timely protest to the initial filing, and that such untimely protests must have good cause for filing late or be rejected.<sup>2</sup> Bridger also asserts that Enserco had a full 28 days to review the change in policy before its protest was filed and did not include a reasonably detailed description of the nature and substance of [their] substantial economic interest in the tariff filing as required by the Commission's regulations.<sup>3</sup> Bridger further argues that Enserco's protest must allege reasonable grounds for asserting that the operations or practices violate a provision of the Interstate Commerce Act (ICA), or the Commission's regulations.<sup>4</sup> Bridger contends that consistent with the Commission's regulations, any protest that does not meet this requirement must be dismissed.<sup>5</sup>

5. Bridger further asserts that its prorationing rules comply with the ICA as the new rules will not subject any shipper to an undue or unreasonable prejudice or disadvantage, and also conform with Commission's policy as they will be based on historic shipments. Bridger asserts that the phase-in it has proposed complies with *Platte*, which requires oil pipelines to provide "all shippers, both existing and prospective, an equal, nondiscriminatory opportunity to establish a pattern of historical shipments before the historical shipment based proration policy takes effect."<sup>6</sup>

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<sup>1</sup> *Platte Pipe Line Co.*, 115 FERC ¶ 61,215, at P 30 (2006) (*Platte*).

<sup>2</sup> *Citing Niagara Mohawk Holdings, Inc.*, 95 FERC ¶ 61,381, at 62,411 (2001) (the Commission rejected the untimely protests because the protestors did not persuade the Commission that they had good cause for filing their protests after the expiration of the due date for protests, and the pleadings were devoid of any explanation as to why the entities could not have raised their concerns in a timely manner).

<sup>3</sup> 18 C.F.R. § 343.3(a) (2007).

<sup>4</sup> 18 C.F.R. § 343.2(c)(3) (2007).

<sup>5</sup> 18 C.F.R. § 343.2(c)(4) (2007).

<sup>6</sup> *Platte*, 115 FERC ¶ 61,215 at P 30.

6. Enserco filed an answer to Bridger adding that in its view, the largest shipper on Bridger and the only party likely to benefit is Bridger's affiliated shipper.

### **Discussion**

7. The Commission concludes that Enserco's protest lacks the specificity required by the cited regulations and does not show any definitive harm to shippers under Bridger's new prorationing policy. The protest only asserts that such harm *may* occur and provides no analytical or quantified reasoning to support an assertion that Enserco has grounds to believe that it will be injured. Under the Commission's oil pipeline regulations, protests are shipper-specific and may not rely on general assertions of injury.

8. The Commission's regulations specify that protests to a tariff filing must be filed no later than 15 days after the tariff is filed.<sup>7</sup> Protests to Bridger's proposed change in its prorationing policy were initially due on, or before, March 30, 2008. Enserco's protest was filed on April 11, 2008, and thus was out-of-time to a considerable extent. Given that Enserco made a corrected tariff filing on March 28, 2008, the protest was timely with respect to the corrected filing. Accordingly, the circumstances warrant the Commission's finding that Enserco's protest was timely filed with respect to the corrected filing, even though the Commission rejects the protest as discussed above.

9. Given that the revised prorationing methodology is consistent with *Platte*, and given the absence of specific support for the relief requested in the protest, Bridger's tariff revisions may become effective as proposed. Accordingly, the Commission is accepting Bridger's Supplement No. 10, to be effective April 1, 2008.

### **The Commission orders:**

- (A) Bridger's Supplement No. 10 is accepted, to be effective April 1, 2008.
- (B) Enserco's protest is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>7</sup> 18 C.F.R. § 343.3(a) (2007).