125 FERC ¶ 61,113
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ozark Gas Transmission, LLC Docket No. RP08-617-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued October 29, 2008)

1. On September 11, 2008, Ozark Gas Transmission, LLC (Ozark) filed Original Sheet Nos. 0 through 237 to its FERC Gas Tariff, First Revised Volume No. 1, to modify certain provisions and to effect a general reorganization of its tariff. For the reasons discussed below, the Commission accepts the revised tariff sheets to be effective November 1, 2008, subject to conditions.

Details of the Filing

2. Ozark proposes to replace duplicative Rate Schedule provisions with new language in the tariff's General Terms and Conditions (GT&C), which Ozark states will be common and applicable to all services Ozark provides. Moreover, Ozark is proposing a number of changes to its tariff, which according to Ozark, reflects current Commission policies and allows it to better serve its customers.

Public Notice, Intervention and Comments

3. Notice of Ozark's filing was issued on September 16, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), 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. BP America Production Company and BP Energy Company (BP) filed a protest.

4. On October 8, 2008, Ozark filed an answer to the protest. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[1] answers to protests are not accepted unless otherwise ordered by the decisional authority. In this case, the Commission will accept Ozark's answer because it provides information helpful to the resolution of issues in this case.

5. In its protest, BP argues that the Commission should require Ozark to revise its tariff to state that (1) Ozark will provide a full reservation charge credit when Ozark curtails firm transportation service (Rate Schedule FTS); (2) secondary delivery point service that is within a firm shipper's primary flowpath (within-the-path service) will have the same mainline scheduling priority as primary firm service, or, in the alternative, within-the-path service will have the second scheduling priority, with a lower priority than primary firm service but a higher priority than secondary service that is outside the primary flowpath; and (3) if Ozark wants to reserve capacity for an upcoming expansion, Ozark will first post capacity for bidding for five business days, and will file with the Commission (within one year of the commencement of the capacity reservation) its certificate application to construct the expansion.

6. In response to BP's protest, Ozark states that it is willing to make minor modifications to its proposed tariff to respond to certain issues raised by BP. However, Ozark submits that other aspects of BP's protest are without merit.

Discussion

7. We accept Ozark's revised tariff sheets to become effective on November 1, 2008, subject to conditions, as discussed below. Ozark is directed to file revised tariff sheets consistent with the discussion in the body of this order within thirty days of the date this order issues.

A. Creditworthiness

8. Ozark proposes to modify section 30 of the GT&C of its tariff by eliminating the credit-related provisions in each Rate Schedule and consolidating these provisions in a single creditworthiness section of its GT&C. In this section, Ozark provides a detailed description of the credit evaluation process, stated objective criteria for determining whether a customer is creditworthy, and outlines the forms of credit support that a noncreditworthy customer may provide to receive service. The Commission finds that

[1] 18 C.F.R. § 385.213(a)(2) (2008).

Ozark's proposal is consistent with the Commission's *Policy Statement on Creditworthiness*,[2] which describes credit standards that may be included in jurisdictional natural gas pipeline tariffs.

B. **Right of First Refusal**

9. Ozark proposes to remove the right of first refusal (ROFR) process from its *pro forma* firm service agreements and replace it with a more detailed process set forth in its GT&C. Specifically, Ozark proposes to modify Original Sheet Nos. 146 and 202 to limit the applicability of ROFR to a firm customer under a long-term service agreement that provides for service at maximum rates. We find that Ozark's action is consistent with Order No. 637,[3] where the Commission explained that limiting the "regulatory ROFR" only to customers paying the maximum rate is consistent with the original purpose of the ROFR to "protect long-term captive customers from the pipeline's monopoly power." Moreover, the Commission has previously permitted pipelines to modify their tariffs to conform to the new regulatory ROFR.[4]

10. In addition, Ozark proposes to modify section 15.1 of the GT&C of its tariff and section 5.2 of its form of service agreement under Rate Schedule Firm Transportation Service (FTS) to allow it and a customer to negotiate, on a not unduly discriminatory basis, the inclusion of a ROFR in a contract with a term of one year or more that does not qualify for the regulatory ROFR as a "check the blank" option. This action is consistent with Commission precedent. In *Monroe Gas Storage Co., LLC,* the Commission authorized the pipeline to include a similar optional ROFR provision in its tariff.[5]

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[2] *Policy Statement on Creditworthiness Issues for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005) (*Policy Statement on Creditworthiness*).

[3] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of Am. v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom*. *American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[4] *See, e.g., Algonquin Gas Transmission, LLC,* 109 FERC ¶ 61,371 (2004).

[5] *See, e.g., Monroe Gas Storage Co., LLC*, 121 FERC ¶ 61,285, at P 62-64 (2007).

11. Proposed section 15.3(b) provides the customer the option to initiate the ROFR process by making an offer for the capacity, after which Ozark shall post the capacity for bidding. In addition, the customer is afforded an opportunity to match the highest competing bid. Ozark's proposed ROFR process is similar to provisions in other pipeline tariffs which the Commission has accepted.[6]

12. Proposed section 15.3(c) permits Ozark to establish a minimum bid (not to exceed the maximum applicable rate) and provides that Ozark is not required to disclose the minimum rate in posting the capacity. Ozark's proposal is consistent with *Kern River Gas Transmission Co.*, where the Commission found that pipelines could use a reserve price as one of the bidding criteria, but are under no obligation to disclose the reserve price at the time the capacity is posted.[7] Moreover, Ozark's proposed tariff language is similar to previously approved tariff language.[8]

13. In section 15.3(h), Ozark proposes that customers that have executed firm service agreements will maintain their rollover rights and ROFR under those agreements. Moreover, when an existing customer exercises a ROFR and retains its rights to capacity by matching the highest competing bid, Ozark and customer will execute a new service agreement. Under Ozark's tariff, the new service agreement will only provide for ROFR if it is a long-term service agreement at maximum rates, unless the customer agrees with Ozark to include the ROFR provision pursuant to section 15.1. Ozark's proposed tariff language is similar to previously approved tariff language.[9]

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[6] *See, e.g.*, Tennessee Gas Pipeline Company, FERC Gas Tariff, Fifth Revised Vol. No. 1, GT&C, section 10.4, Seventh Revised Sheet No. 323 and 2nd Sub Ninth Revised Sheet No. 324.

[7] *See Kern River Gas Transmission Co.*, 99 FERC ¶ 61,233, at P 12 (2002); *see also Natural Gas Pipeline Co. of America*, 82 FERC ¶ 61,036 (1998) (accepting the pipeline's proposal to keep its reserved price secret for auction procedures); and *Northwest Pipeline Corp.*, 85 FERC ¶ 61,335 (1998) (stating that [the pipeline] … need not disclose [its] reserve price at the time the capacity is posted).

[8] *See* Kern River Gas Transmission Co., FERC Gas Tariff, Second Revised Vol. No. 1, GT&C, section 27.2(f), First Revised Sheet No. 207-A.

[9] *See* Texas Gas Transmission, LLC, FERC Gas Tariff, Second Revised Vol. No. 1, GT&C, section 32.4, Second Revised Sheet No. 280.

C. Capacity Release

14. As to capacity release provisions, Ozark proposes to modify sections 14.1(b) and 14.2 to comply with the Commission's directive in Order No. 712.[10] In Order No. 712, the Commission amended its regulations applicable to capacity releases and removed the maximum rate ceiling on short-term capacity releases, exempted Asset Management Arrangements from generally applicable bidding requirements, and provided an exemption from the prohibition against tying for releases of storage capacity that include transfers of natural gas storage inventory. Upon review, we accept Ozark's tariff modifications in accordance with Order No. 712.

D. Demand Charge Credits

15. In Original Sheet No. 126, Ozark proposes to include full demand charge credits for curtailments other than those resulting from *force majeure* events.

16. BP argues that Ozark's suggested proposal in Original Sheet No. 126 of a two percent tolerance in connection with the reservation charge credit violates Commission policy. In particular, BP contends that the shipper should not be required to pay the portion of its reservation charge that is associated with the curtailed gas quantities.

17. In response to BP's protest, Ozark agrees to remove, as part of a compliance filing, the phrase "such that Transporter fails to deliver on any Day at least 98 percent of Shipper's Nominated quantity" from section 11.4 of the GT&C of its proposed tariff.

18. In *SG Resources Mississippi, L.L.C.*, the Commission directed the pipeline to modify its tariff to comply with Commission policy by providing reservation credit when it does not provide 100 percent of its scheduled service, thereby rejecting a reservation charge provision that incorporated a two percent tolerance.[11] Moreover, in *Rockies Express Pipeline LLC*, the Commission rejected a similar two percent tolerance, finding the pipeline's proposal unjust and unreasonable because it required its customers to bear the risk associated with interruption of service within the pipeline's control.[12] Therefore, we will accept Ozark's proposal to include full demand charge credits for *non-force majeure* curtailments of firm service, subject to Ozark revising its tariff by removing the

[10] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008).

[11] *See SG Resources Mississippi, L.L.C.*, 122 FERC ¶ 61,180, at P 6 (2008).

[12] *See Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006).

phrase "such that Transporter fails to deliver on any Day at least 98 percent of Shipper's Nominated quantity" from section 11.4 of the GT&C of its proposed tariff.

E. Priorities of Service

19. Proposed section 10 replaces the priorities of service provisions in each Rate Schedule with a single priorities of service provision in the GT&C of its tariff. Ozark states that this provision addresses priorities of each service Ozark offers and establishes priorities among such services. Moreover, Ozark notes that, with one exception, it does not intend to change its priorities of service through its reorganization of tariff provisions. Specifically, in section 10.2(b), Ozark proposes to perform all interruptible service allocations on the basis of the rate each customer has contracted to pay, with pro rata allocation to be applied among customers paying the same rate.[13] Ozark proposes to eliminate the priorities of service feature under its existing tariff because, according to Ozark, it has proved difficult to administer and allows customers to retain service rights through the maintenance of inactive service agreements.

20. We find that Ozark's proposed section 10.2(b) is consistent with the Commission's stated preference for the use of economic scheduling to allocate interruptible services. In *Windy Hill Gas Storage, LLC*, the Commission found the method, by which economic scheduling provides capacity to those who value it the most, to be a more equitable process.[14]

21. BP argues that the Commission should exercise its section 5 authority under the Natural Gas Act to require Ozark to revise section 10.2 of its existing tariff language so that within-the-path service has the same mainline capacity priority as primary firm service. It contends that parity for primary firm service and within-the-path service is necessary because they both rely on the firm mainline capacity that the shipper has reserved and is paying for in its reservation charge. BP maintains that there is no reason to give a higher mainline capacity priority to the primary firm service.

22. Second, BP asserts that parity for primary firm and within-the-path service is needed to ensure that a primary point shipper and a within-the-path shipper can compete

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[13] Under Ozark's existing tariff, services among customers paying the same rate are allocated on the basis of customer's service application date. *See, e.g.*, Ozark Gas Transmission, L.L.C., FERC Gas Tariff, Original Vol. No. 1, Rate Schedule ITS, section 2.3, Substitute Original Sheet No. 40.

[14] *See, e.g.*, *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at P 78-80 (2007).

on an equal footing to serve the market. BP states that in *Tennessee Gas Pipeline Co.*, the Commission approved a proposal to establish scheduling parity for primary firm and within-the-path service, pointing to the way parity enhances competition.[15] BP further states that, in addition to *Tennessee*, other pipelines grant mainline scheduling parity to within-the-path and primary service.[16]

23. Third, BP contends that scheduling parity enhances capacity segmentation. Specifically, BP maintains that a shipper would be reluctant to segment its capacity if the resulting within-the-path flowpath would have a lower priority than primary flowpaths utilized by other shippers.

24. BP argues that in the event the Commission rejects parity for primary firm and within-the-path service, the Commission should require that within-the-path service have the second scheduling priority, with a lower priority than primary firm service but a higher priority than secondary service that is outside the primary flowpath. BP posits that, while within-the-path service relies entirely on the mainline capacity that the shipper has reserved and is paying for, secondary receipt/primary delivery point service could go outside the primary flowpath.

25. In its answer, Ozark clarifies that secondary receipt/primary delivery point service addresses "in the path" secondary movements. Specifically, Ozark states that other than backhauls, secondary receipt/primary delivery point service uses the shipper's primary path. Nevertheless, Ozark admits that BP's protest raises an issue, not expressly addressed under Ozark's current or proposed tariff, of how mainline capacity should be allocated in the event of a mainline (as opposed to receipt or delivery point capacity) curtailment. Specifically, Ozark explains that the tiers do not expressly provide for the allocation of service if a mainline segment must be curtailed due to a *force majeure* event

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[15] *Citing Tennessee Gas Pipeline Co.*, 71 FERC ¶ 61,102, at 61,347 (1995). (*Tennessee*) ("If the constraint is on the mainline, firm shippers using primary or secondary points (within the contract path) and supply aggregation service using Rate Schedule SA will have the same priority for service on the mainline.").

[16] *Citing* Panhandle Eastern Pipeline Co., LP, FERC Gas Tariff, Third Revised Vol. No. 1, GT&C, section 8.8(c), Original Sheet No. 240; ANR Pipeline Company, FERC Gas Tariff, Second Revised Vol. No. 1, GT&C, section 10.1(b), Seventeenth Revised Sheet No. 120; Stingray Pipeline Co., FERC Gas Tariff, Third Revised Vol. No. 1, GT&C, section 3.3(c), First Revised Sheet No. 108; and Colorado Interstate Gas Co., FERC Gas Tariff, First Revised Vol. No. 1, GT&C, section 1.75, Twelfth Revised Sheet No. 234A and GT&C, section 5.10(b)(i), Fifteenth Revised Sheet No. 283.

or *non-force majeure* maintenance situation. Accordingly, if deemed necessary to comport with the Commission's within-the-path policy, Ozark would agree to amend its proposed tariff to provide that if Rate Schedule FTS service must be curtailed due to an event of *force majeure* or other circumstances affecting mainline capacity (as opposed to capacity limitations at receipt points and/or delivery points) all shipper nominations under the relevant sections for which the affected mainline segment is within shipper's primary path shall receive equal priority.

26. In the subject filing, Ozark merely proposes to replace the priorities of service provision in each Rate Schedule with a single priorities of service section in the GT&C of its tariff. With one exception, it does not intend to change the four tiers of firm transportation priority through its reorganization of tariff provisions. We reject BP's contention that secondary firm service that is within-the path should have the same mainline capacity priority as primary firm service. All secondary service has a lower priority than primary service. On the other hand, secondary service within-the-path should have a higher priority than secondary service outside the path. While Ozark's answer indicates that secondary receipt/primary delivery point service addresses "in the path" secondary movements, Ozark's proposed tariff does not explicitly state that secondary receipt/primary delivery point service addresses "in the path" secondary movements. Therefore, we will require Ozark to revise its tariff to explicitly state that secondary receipt/primary delivery point service addresses "in the path" secondary movements.

27. We share BP's concerns regarding allocation of service when a mainline segment must be curtailed due to a maintenance situation, or to a *force majeure* event. In *Tennessee*, the Commission discussed how mainline capacity should be allocated in the event of a mainline (as opposed to receipt or delivery point capacity) curtailment.[17] Ozark's tiers do not expressly provide for the allocation of service if a mainline segment must be curtailed due to *force majeure*, or to a maintenance situation. Therefore, we will require Ozark to revise its proposed tariff to add the provision that if Rate Schedule FTS service must be curtailed due to an event of *force majeure* or other circumstances affecting mainline capacity (as opposed to capacity limitations at receipt points and/or delivery points) all shipper nominations under the relevant sections for which the affected mainline segment is within shipper's primary path shall receive equal priority.

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[17] *Tennessee*, 71 FERC ¶ 61,102, at 61,347, *order on reh'g*, 73 FERC ¶ 61,278 (1995) ("If the constraint is on the mainline, firm shippers using primary or secondary points (within the path contract) . . . will have the same priority for service on the mainline.").

F. Reservation of Capacity for Expansion/Extension Projects

28. Proposed section 17.5 permits Ozark, under appropriate conditions, to reserve unsubscribed or unallocated capacity for future expansion or extension projects. Ozark explains that this proposal is intended to allow it to combine existing capacity with expansion capacity to meet the needs of its expansion project customers. Ozark maintains that its proposal would also allow it to contract with customers using the reserved capacity on a limited term basis, prior to an expansion project's in-service date, subject to the restrictions on the customer's right to extend its contract term.

29. The Commission will accept Ozark's proposal to reserve unsubscribed or unallocated capacity for future expansion or extension projects. The Commission has previously permitted pipelines to modify their tariffs to reserve unsubscribed or unallocated capacity for future expansion or extension projects, under appropriate conditions.[18]

30. In section 17.5(c), Ozark proposes that before reserving the capacity, Ozark will post the capacity for bidding. BP challenges this proposed language by arguing that the Commission should require Ozark to post the capacity for bidding for five business days. BP contends that a five business day period is needed to ensure that shippers have adequate time to (1) evaluate whether to bid for capacity and, if so, how much capacity, at what price, and for what term; (2) secure management approval for bidding for the capacity; and (3) negotiate hedges with financial institutions to reduce the risks associated with purchasing capacity. To satisfy BP's request regarding the timing for posting of available capacity prior to reserving capacity for an expansion project, Ozark agrees to modify its tariff as part of a compliance filing to specify that the time period for posting of capacity prior to an expansion project capacity reservation shall be at least five business days. The Commission has required that before a pipeline can reserve capacity, the pipeline must post the capacity for competitive bidding for at least five business days.[19] Therefore, we will accept Ozark's proposal to post the capacity for bidding before reserving the capacity, subject to Ozark revising this language to state that the posting will be for at least five business days.

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[18] *See, e.g., Texas Gas Transmission, LLC*, 111 FERC ¶ 61,480, at P 2 (2005); *see also Northern Border Pipeline Co.*, 103 FERC ¶ 61,390, at 15 (2003); *Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,304, at 62,397 (1998).

[19] *See Petal Gas Storage, LLC*, 120 FERC ¶ 61,109, at P 4 (2007) (accepting tariff sheets in which pipeline proposes to post available capacity for a minimum of five business days); *see also ANR Pipeline Co.*, 107 FERC ¶ 61,187, at P 11 (2004) (directing the pipeline to file revised tariff sheets clarifying that the posting period will be for at

(continued…)

31. BP further argues that the Commission should require Ozark to reflect a one year deadline for filing for Commission authorization to construct the expansion. In its answer, Ozark states that BP's concern regarding the timing of the certificate application is moot because Ozark's proposed tariff incorporates the twelve month deadline for filing for Commission authorization to construct the expansion. The Commission has previously required a twelve month deadline for filing an application for certificate approval for the construction of the expansion facilities;[20] however, contrary to BP's statement that Ozark's tariff does not address the timing of the certificate application, proposed section 17.5(b) states that "capacity may be reserved for expansion/extension projects only for a 12-month period prior to [Ozark] filing for certificate approval for construction or acquisition of proposed expansion/extension facilities . . . ." Therefore, we reject BP's protest regarding the timing of the certificate application.

G. <u>Operational Flow Orders</u>

32. Proposed section 16.5 governs Operational Flow Order (OFO) procedures, and permits Ozark to provide timely notice to its customers of the issuance of an Action Alert or OFO so that the customers may have an opportunity to comply as directed and thereby avoid penalties. Ozark's proposal is consistent with provisions the Commission has accepted in other natural gas companies' tariffs.[21]

33. Proposed section 16.2 permits Ozark to issue an OFO in circumstances that threaten to impair system operational integrity or reliable service. Proposed section 16.3 further provides for an intermediate step of issuing an Action Alert, prior to invoking an OFO, which Ozark contends allows Ozark and its customers to work together to address operational issues in a more collaborative, less prescriptive manner. The Commission

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least five business days); *Northern Natural Gas Co.*, 105 FERC ¶ 61,057, at P 13 (2003) (requiring the pipeline to expressly state that the capacity will be posted for bidding for at least five business days before it can be reserved).

[20] *See Kern River Gas Transmission Co.*, 119 FERC ¶ 61,210, at P 7 (2007); *see also Algonquin Gas Transmission, LLC*, 120 FERC ¶ 61,072, at P 63 (2007); *ANR Pipeline Co.*, 107 FERC ¶ 61,187, at P 12 (2004); *Petal Gas Storage, L.L.C.*, 120 FERC ¶ 61,109, at P 5 (2007); and *Northern Natural Gas Co.*, 109 FERC ¶ 61,388, P 17 (2004).

[21] *See, e.g.*, Gulfstream Natural Gas System, L.L.C. FERC Gas Tariff, Original Volume No. 1, GT&C, section 13.5, Original Sheet No. 152.

finds that Ozark's proposed OFO procedures are consistent with procedures the Commission has accepted in other natural gas companies' tariffs.[22]

34. In addition, proposed section 16.8 permits Ozark to institute new penalties for failure to comply with an Action Alert or an OFO. Under its proposal, the penalties are set at 200 percent and 500 percent, respectively, of the index price Ozark uses for cashouts. Moreover, Ozark proposes to credit all net Action Alert and OFO penalty revenues to its customers. Ozark's proposal is consistent with previously accepted penalty levels and penalty revenue crediting proposals in other natural gas companies' tariffs.[23]

35. Ozark's proposed OFO procedures are consistent with the Commission's regulations.[24] Under section 284.12(b)(2)(v), a pipeline with penalty provisions in its tariff must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system. Further, a pipeline may include transportation penalties in its tariff only to the extent necessary to prevent the impairment of reliable service. In addition, pipelines may not retain net penalty revenues, but must credit them to shippers in a manner to be prescribed in the pipeline's tariff. Ozark's provisions conform to these requirements.

The Commission orders:

(A) The revised tariff sheets are accepted, effective November 1, 2008, subject to the conditions set forth in this order.

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[22] *See, e.g.*, Gulfstream Natural Gas System, L.L.C. FERC Gas Tariff, Original Volume No. 1, GT&C, sections 13.2 and 13.3, First Revised Sheet No. 150 and Original Sheet No. 151.

[23] *See, e.g.*, Gulfstream Natural Gas System, L.L.C. FERC Gas Tariff, Original Volume No. 1, GT&C, section 13.8, Original Sheet No. 154.

[24] *See* 18 C.F.R. § 284.12(b)(2)(v) (2008).

(B) Ozark is directed, within thirty days of the date this order issues, to file revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.