126 FERC ¶ 61,011
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 9, 2009

In Reply Refer To:
Wyoming Interstate Company, Ltd.
Docket No. RP09-148-000

Wyoming Interstate Company, Ltd.
PO Box 1087
Colorado Springs, CO 80944

Attention: Catherine E. Palazzari
Vice President

Reference: Third-Party Charges Filing

Dear Ms. Palazzari:

1. On December 9, 2008, Wyoming Interstate Company, Ltd., (WIC) filed revised tariff sheets[1] modifying WIC's application and allocation of third-party charges. WIC requests that its proposed tariff sheets become effective January 12, 2009. The Commission accepts and suspends WIC's proposed tariff sheets, to be effective June 12, 2009 (or some earlier date if directed in a subsequent order), subject to further review and order of the Commission.

2. WIC states that Article 6 of its General Terms and Conditions of its tariff currently permits WIC to contract for transportation capacity with upstream and downstream providers (off-system capacity) for operational purposes or to render services using such off-system capacity for the benefit of its shippers pursuant to the terms of WIC's tariff and subject to its currently effective rates. WIC notes that it recently made a filing with the Commission to propose a mechanism to fully recover the costs WIC incurs by contracting for off-system capacity when the capacity is acquired at the specific request

[1] Fifth Revised Sheet No. 63A, Original Sheet No. 63B, Original Sheet No. 63C, Eighth Revised Sheet No. 91, Fourth Revised Sheet No. 92, and Eighth Revised Sheet No. 97 to its FERC Gas Tariff, Second Revised Volume No. 2.

of a shipper.[2] WIC also proposed to make any unused off-system capacity available on a secondary firm and interruptible basis. The Commission accepted WIC's proposal subject to WIC filing revised tariff sheets clarifying that the charges that WIC passes on to customers for off-system capacity cannot exceed the amount incurred by WIC.[3]

3. WIC states that although its tariff fully addresses its ability to pass on charges for the use of off-system capacity, it does not address some complicated scenarios WIC currently faces, such as (1) the allocation of third-party charges when WIC holds more than one off-system contract and the off-system capacity is used on a secondary firm or interruptible basis, and (2) the assessment of third-party charges when WIC incurs miscellaneous costs. WIC states that the instant filing addresses these scenarios by clarifying WIC's application and allocation of third-party charges.

4. WIC states that in cases where it holds off-system capacity under more than one contract with varying contracted rates, its tariff is not clear how secondary firm or interruptible shippers who use that capacity should be charged. WIC explains that when such capacity is sold on a secondary firm or interruptible basis, there is no way to distinguish one portion of contracted capacity from another. WIC argues that there must be an allocation of third-party costs to the different third-party contracts to account for the different rates. Because its tariff does not explicitly address this scenario, WIC proposes to allocate of third-party costs on a weighted average basis for its off-system capacity on a pipeline-by-pipeline basis for each shipper who uses the capacity on a secondary firm or interruptible basis. WIC contends that this weighted average formula provides a non-discriminatory method for assigning costs among all shippers utilizing idle off-system capacity on a secondary firm and interruptible basis.

5. WIC notes that the weighted average off-system capacity cost would be charged in addition to WIC's transportation costs to shippers utilizing the idle off-system capacity on a secondary firm or interruptible basis, and the costs would not exceed the amount WIC is actually charged by the third party for use of the capacity. Additionally, WIC explains that the weighted average rate would be calculated separately for each off-system pipeline. WIC states that it will post weighted average rate information for all

[2] WIC, July 17, 2007 Filing, Docket No. RP07-529-000.

[3] *Wyoming Interstate Co., Ltd.*, 120 FERC ¶ 61,162 (2007).

off-system locations where WIC holds off-system capacity on its electronic bulletin board.[4]

6. WIC next states that its proposal would clarify provisions related to the Commission's rules requiring WIC to make all idle off-system capacity available for use by other shippers on a secondary firm and interruptible basis.[5] WIC states that under its proposal, revenue WIC receives from marketing the idle capacity will be treated in the same manner as it treats other interruptible revenue. WIC also states that its proposal specifies the calculation of a daily rate for a shipper who uses either secondary points or interruptible transportation service on off-system capacity. WIC notes that the calculation of these rates is not currently defined.

7. With respect to miscellaneous fees, WIC states that its proposal clarifies that a shipper is responsible for all costs associated with acquiring capacity on behalf of a shipper, which costs may or may not be assessed by the third-party pipeline. WIC notes that its current tariff does not specifically provide for costs assessed by a party other than the third-party pipeline, such as the costs of obtaining a letter of credit to acquire capacity on behalf of a shipper. WIC contends that even though this cost is not directly invoiced by the third-party pipeline, it is nonetheless a cost of acquiring the capacity and should be passed on to the shipper(s) requesting the capacity.[6]

8. Finally, WIC states that its proposal clarifies that WIC may negotiate with a shipper to recover costs other than on a monthly invoice. WIC explains that fuel gas retention charges are most commonly retained in-kind as the difference between the nominated receipt and delivery volumes and that with respect to third-party capacity, WIC's tariff only allows it to recover these charges on a monthly basis as a monetary value on an invoice. WIC argues that monthly billing does not make sense because fuel

[4] WIC notes that if the shipper's scheduled point selection requires WIC to pay alternate point charges above the third-party contract rate, the weighted average rate will not apply and the shipper will instead be billed the actual rate the third-party pipeline charges WIC for the alternate point use of that capacity.

[5] WIC states that Commission policy allows WIC to retain any increased revenues from the sale of off-system capacity on a secondary firm or interruptible basis. Citing *Wyoming Interstate Co., Ltd.*, 120 FERC ¶ 61,162 at P 8, *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 25 (2005), *Canyon Creek Compression Co.*, 99 FERC ¶ 61,351, at P 14 (2002).

[6] WIC states that to the extent that it acquires off-system capacity on behalf of multiple shippers, the associated costs will be allocated pro rata based on the contract quantity of each shipper.

charges are normally retained on a daily basis at the time the nomination service is provided. Moreover, WIC notes that secondary firm and interruptible shippers often deliver sporadically on a daily basis, not regularly over the course of a month. Therefore, WIC states that its proposal is intended to provide it with the ability to, among other things, negotiate with a shipper the reimbursement of fuel charges as a daily in-kind gas retention, rather than on a monthly invoice.

9. Notice of WIC's filing was issued on December 16, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. 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. Indicated Shippers[7] filed a protest.

10. In their protest, Indicated Shippers raise a number of issues. Indicated Shippers argue that WIC should only be allowed to impose third-party charges on a shipper for whom WIC acquires or otherwise reserves third-party pipeline capacity (primary third-party pipeline shipper) if that shipper's contract expressly authorizes the charges. Indicated Shippers contend that a situation could arise in which a shipper is not aware that WIC would use third-party capacity to support a transaction, such as when the third-party pipeline is essentially a loop of the pertinent portion of WIC's system. Therefore, Indicated Shippers argue that to avoid any such misunderstanding, the applicability of third-party charges should be expressly stated in the shipper's transportation contract.

11. Indicated Shippers next contend that the Commission should clarify that if WIC executes different contracts at different times for different capacity on a single third-party pipeline, the third-party charge that WIC will flow through to a primary third-party pipeline shipper will be the cost of the specific third-party capacity that WIC acquired from that shipper. Indicated Shippers also urge the Commission to clarify that when WIC and a shipper enter into a new firm service agreement that is supported by third-party capacity that WIC already holds, WIC may flow through to the new firm shipper the charge of that third-party capacity. However to the extent WIC is unable to re-market

[7] The Indicated Shippers are BP America Production Company and BP Energy Company.

idle third-party capacity, Indicated Shippers contend that WIC must absorb the cost of that capacity.[8]

12. Indicated Shippers next contend that third-party charges should be flowed through to shippers on the basis of the factors that underlie WIC's incurrence of the charges. Indicated Shippers note that WIC's proposal would allocate to shippers, pro rata based on contract quantity, any fees or charges not directly attributable to reservation and/or usage charges. Indicated Shippers express concern about the possibility of a situation in which a third-party charge is not formally labeled by the third-party pipeline as a reservation or usage charge. Indicated Shippers contend that the Commission should require WIC to look at the factors that underlie the third-party pipeline's allocation of costs to WIC to determine how to properly flow the costs through to shippers. For example, Indicated Shippers explain that surcharges imposed by the third-party pipeline based on throughput should be flowed through in the same manner, rather than being based on contract quantity. Indicated Shippers argue that this would ensure that those who cause costs to be incurred are responsible for those costs.

13. Indicated Shippers next argue that the Commission should interpret proposed language basing third-party charges on the third-party pipeline's "applicable" reservation rates as permitting WIC to flow through only the actual costs WIC incurs from the third-party pipeline. WIC contends that this understanding is consistent with the Commission's prior order addressing WIC's third-party charges,[9] and it will prevent WIC from reaping a windfall on third-party charges. Moreover, Indicated Shippers contend that the Commission should clarify that WIC will flow through any revenue credits or refunds to third-party shippers that WIC receives from a third-party pipeline. Indicated Shippers next suggest that the Commission require WIC to adopt tariff language to reflect the policy that third-party pipeline shippers can release their third-party capacity and the release would be governed by WIC's tariff.

14. Finally, Indicated Shippers request that the Commission require WIC to incorporate new provisions into its tariff that would provide a reservation charge credit when the pipeline curtails firm service.

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[8] Indicated Shippers contend that this understanding reflects the Commission policy that a pipeline that acquires third-party capacity must bear the risk of any unrecovered costs associated with that capacity. Citing *Tennessee Gas Pipeline Co.*, 115 FERC ¶ 61,120, at P 11 (2006).

[9] *Wyoming Interstate Co., Ltd.*, 120 FERC ¶ 61,162 at P 7.

15. Indicated Shippers state that they believe WIC's proposal may be reasonable in concept.[10] However, in their protest, Indicated Shippers raise a number of concerns and seek clarifications of WIC's proposal with respect to certain situations that may arise involving third-party charges. We believe that further information would be useful in determining whether WIC's proposal is just and reasonable. Therefore, we accept and suspend WIC's proposed tariff sheets, subject to further review and order of the Commission. We will allow the parties to file additional comments up to 15 days from the date of this order.

16. Based upon a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept such tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

17. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on June 12, 2009 (or some earlier date if directed in a subsequent order), subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[10] Indicated Shippers, December 22, 2008 Protest, at 2.