

126 FERC ¶ 61,305
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 31, 2009

In Reply Refer To:
MarkWest Pioneer, L.L.C.
Docket No. RP09-367-000

MarkWest Pioneer, L.L.C.
1515 Arapahoe Street
Tower 2, Suite 700
Denver, CO 80202-2126

Attention: David Williams, Esq.
Senior Attorney

Dear Mr. Williams:

1. On February 13, 2009, MarkWest Pioneer, L.L.C. (MarkWest) filed three negotiated rate agreements with non-conforming provisions for service on the Arkoma Connector Pipeline. MarkWest is a new 50-mile interstate pipeline that will transport newly developed gas supplies in southeastern Oklahoma to two recently certificated projects, Midcontinent Express Pipeline LLC and Gulf Crossing Pipeline Company, LP. MarkWest states that the agreements should be approved as nondiscriminatory and are necessary to obtain the commitments necessary to make the pipeline economically viable. Additionally, MarkWest submitted revised tariff sheets to its proposed FERC Gas Tariff, Original Volume No. 1.¹ The tariff sheets reflect the listing of the non-conforming service agreements as well as minor corrections to the form of service agreements.

2. Public notice of MarkWest's filing was issued on February 18, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.² Pursuant to Rule 214³, all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting

¹ See Appendix.

² 18 C.F.R. §154.210 (2008).

³ 18 C.F.R. § 385.214 (2008).

late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

3. We will accept the changes to MarkWest's FERC Gas Tariff, Original Volume No. 1 and the negotiated rate agreements, to be effective the later of April 1, 2009, or the date MarkWest's facilities go into service, subject to the following conditions discussed below.

4. The Commission has accepted non-conforming provisions where it has found the provisions necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of the project.⁴ MarkWest's agreements, however, contain several non-conforming provisions that do not appear to be necessary to ensure the viability of the project and may be unduly discriminatory. The negotiated rate agreements with BP America Production Company (BP) and XTO Energy Inc. (XTO) both contain provisions in Exhibit A of the Rate Schedule FT-2 service agreement that would allow MarkWest to increase their Maximum Daily Quantity (MDQ) upward to no more than 110 percent of the then current MDQ if, during a three month period, the daily average volume of the shipper's gas is greater than 110 percent of the current MDQ. This provision is not included in Rate Schedule FT-2 and is not available to other shippers. Such a non-conforming provision presents a substantial risk of discrimination and, therefore, the Commission will not allow it as a non-conforming contract term. Accordingly, MarkWest must either remove this provision from its negotiated rate agreements, or offer it to all shippers in a manner that is not unduly discriminatory as part of its generally applicable tariff. In addition, Article 1.1.1 of the Production Commitment Agreement under Rate Schedule FT-2 between MarkWest and BP and MarkWest and XTO changes the minimum net acres to be eligible for Option 1 from 160,000 acres to 225,000 acres. MarkWest's January 30, 2009 filing in RP09-321-000 revised the minimum net acreage in Rate Schedule FT-2 from 225,000 acres to 160,000 acres. Therefore, MarkWest must either revise the negotiated rate agreements to be in accordance with the service agreement in the tariff or revise the tariff accordingly.

5. MarkWest's negotiated rate agreements with all three shippers also contain a provision that allows the agreement to be assigned by shipper or transporter to affiliated parties. The Commission does not approve this provision as being necessary for the construction of new pipeline facilities and believes it may be unduly discriminatory. Therefore, MarkWest is directed to either remove this provision from its negotiated rate

⁴ See, e.g., *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008); *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

agreements, or else offer it to all shippers in a manner that is not unduly discriminatory as part of its generally applicable tariff.

6. The Commission accepts MarkWest Pioneer, L.L.C.'s tariff sheets listed in the Appendix and the negotiated rate agreements, to be effective the later of April 1, 2009, or the date MarkWest's facilities go into service, subject to MarkWest filing revised tariff sheets or revised agreements, within 30 days of the date of this order, consistent with the discussion in the body of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties

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Appendix

**MarkWest Pioneer, L.L.C.
FERC Gas Tariff, Original Volume No. 1**

Tariff Sheets Effective the later of April 1, 2009, or the date MarkWest's facilities go into service, Subject to Conditions.

Substitute Original Sheet No. 1
Original Sheet No. 7
Original Sheet Nos. 8 through 9
Substitute Original Sheet No. 152
Substitute Original Sheet No. 157
Substitute Original Sheet No. 158
Substitute Original Sheet No. 163
Substitute Original Sheet No. 165
Substitute Original Sheet No. 166
Substitute Original Sheet No. 169
Substitute Original Sheet No. 174
Substitute Original Sheet No. 175