

127 FERC ¶ 61,071  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Williston Basin Interstate Pipeline Company

Docket Nos. RP09-412-000  
RP09-412-001

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS, SUBJECT TO  
REFUND AND CONDITIONS

(Issued April 22, 2009)

1. On March 24, 2009, Williston Basin Interstate Pipeline Company (Williston) filed Substitute Fifteenth Revised Sheet No. 724 (to be effective March 1, 2009) and Substitute Sixteenth Revised Sheet No. 724 (to be effective April 1, 2009) to its FERC Gas Tariff, Second Revised Volume No. 1 and revised Schedule A of the non-conforming Rate Schedule FT-1 service agreement with Northern States Power Company (NSP). The proposed substitute tariff sheets revise Williston's February 27, 2009 filing in this proceeding.<sup>1</sup> Williston requests the Commission waive the 30-day notice requirement and permit the above-mentioned revised tariff sheets to become effective March 1, 2009 and April 1, 2009, respectively. As more fully discussed below, we grant waiver of the Commission's 30-day notice requirement, and accept and suspend the proposed substitute tariff sheets, to be effective March 1, 2009, and April 1, 2009, respectively, subject to refund and conditions. Accordingly, we reject Fifteenth Revised Sheet No. 724 filed in Docket No. RP09-412-000 as moot.

**I. Background**

2. NSP, a local distribution company serving natural gas retail customers in North Dakota and Minnesota, receives transportation services from Williston in and around Fargo, North Dakota, along a pipeline facility known as the Mapleton Extension. The Mapleton Extension facilities consist of a 49.3-mile extension of pipeline and appurtenant facilities from Valley City to Mapleton, North Dakota.

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<sup>1</sup> At that time, Williston filed Fifteenth Revised Sheet No. 724 to its FERC Gas Tariff, Second Revised Volume No. 1.

3. Prior to a November 22, 2005 Commission order in Docket Nos. RP00-107-003 and RP00-107-004,<sup>2</sup> NSP took the majority of its service from Williston on the Mapleton Extension under Rate Schedule X-13, an individually-certificated service agreement under Part 157 of the Commission's regulations. Williston and NSP agreed that the Rate Schedule X-13 rate would be restated biennially, until the incremental rate under the non-conforming service agreement was equal to or less than Williston's maximum FT-1 rate, including all surcharges. From that point forward, NSP's rate would equal the maximum FT-1 rate.<sup>3</sup> In its November 22, 2005 Order, the Commission directed Williston to convert Rate Schedule X-13 from Part 157 transportation service to open-access Part 284 transportation service under Rate Schedule FT-1. The Commission nonetheless determined that the biennial rate restatement process employed in Rate Schedule X-13 should be continued in NSP's newly converted Rate Schedule FT-1 service agreement.<sup>4</sup>

## **II. Williston's Initial Filing—Docket No. RP09-412-000**

### **A. Details of Filing**

4. In its initial filing, Williston submitted its second biennial cost-of-service review and proposed recalculation of NSP's reservation rate for firm transportation service pursuant to Article V of Amendment No. 1 of the Rate Schedule FT-1 service agreement. Williston proposed a new restated base tariff rate of \$13.20511 per Mcf/month, excluding applicable surcharges.<sup>5</sup> Williston also proposed a total cost of service underlying NSP's

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<sup>2</sup> *Williston Basin Interstate Pipeline Co.*, 113 FERC ¶ 61,201 (2005).

<sup>3</sup> *See id.* P 10. ("The X-13 formula rate, pursuant to its terms, is to be recalculated (using elements from Williston's cost of service) effective March 1 of each odd-numbered year, commencing March 1, 1995, until such time as the rate becomes equal to or less than Williston's maximum FT-1 rate, including surcharges.").

<sup>4</sup> *Id.* P 58. The Commission's determination to require Williston to convert Rate Schedule X-13 was ultimately appealed to the United States Court of Appeals for the District of Columbia Circuit, which remanded the proceeding back to the Commission for further explanation. *Williston Basin Interstate Pipeline Co. v. FERC*, 519 F.3d 497 (D.C. Cir. 2008). In response to this decision, the Commission, in Docket No. RP00-107-011, has sought further data and comment to update the record on the issues raised in the court's opinion before making a final decision on the merits. *Williston Basin Interstate Pipeline Co.*, 125 FERC ¶ 61,303 (2008) (December 18 Order).

<sup>5</sup> In its protest to Williston's initial filing, NSP noted that Williston's proposed base tariff rate represents an increase of \$0.56758 per Dkt/month from the previous rate of \$12.63753 per Dkt/month.

restated base tariff rate of \$1,272,655, an increase of \$54,780 from the previous cost of service of \$1,217,875. Williston stated that this filing is made without prejudice to its rights with respect to matters currently pending in Docket No. RP00-107-000, *et al.*, and it reserved its rights relative to any refunds and/or re-billing that may result from the instant proceeding. Williston requested that the Commission grant waiver of the 30-day notice requirement in order to allow the rate to become effective March 1, 2009.

**B. Notice, Intervention, and Protest**

5. Notice of Williston's filing was issued on March 3, 2009. 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. NSP filed a protest.

6. In its protest, NSP argued that while the biennial rate adjustments have generally led to a reduction in the incremental rate for the Mapleton Extension facilities, Williston's filing results in a higher rate. NSP stated that reductions in depreciation expense and income taxes have been more than offset by increases in operation expenses and fuel costs. NSP expressed particular concern that the restated rate reflects fuel costs that have increased by 54 percent and that may not be attributable to Williston's deliveries to NSP.<sup>6</sup>

7. NSP requested that the Commission suspend the restated rate, and allow it to become effective March 1, 2009, subject to refund. NSP further requested that the Commission provide NSP with an opportunity to seek additional information regarding the cost components of Williston's filing, including a review of Williston's soon-to-be-filed FERC Form No. 2. NSP stated that this request is consistent with the review procedures adopted by the Commission in previous biennial restatements.<sup>7</sup> NSP

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<sup>6</sup> NSP explained that preliminary discussions with Williston have led to concerns that the restated rate may include increased fuel costs that result, in part, from fuel consumed at Williston's Cleveland Compressor Station, which NSP asserts is used to deliver gas to shippers downstream of that station other than NSP. NSP also expressed concern that the restated rate may include fuel costs incurred for other shippers' deliveries in connection with a new ethanol plant, the Tharaldson Plant, which commenced service in 2008 and is located along the Mapleton Extension.

<sup>7</sup> See, e.g., *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,390 (2005); *Williston Basin Interstate Pipeline Co.*, 102 FERC ¶ 61,327 (2003).

explained that in those proceedings, NSP and Williston were given 30 days from the date of a Commission order to address any questions that NSP may have with respect to the cost-of-service study included in the filing. NSP further stated that Williston was also directed to serve NSP with a copy of its FERC Form No. 2 when Williston files the form with the Commission, and that NSP was thereafter directed to advise the Commission of any continuing concerns within a month of receiving the form.

### **III. Williston's Amended Filing—Docket No. RP09-412-001**

#### **A. Details of Filing**

8. On March 24, 2009, in Docket No. RP09-412-001, Williston amended its initial filing in order to correct an error contained in that filing. Williston states that it inadvertently incorporated fuel costs that were incurred to operate a line heater for a non-NSP delivery point in the restated FT-1 reservation rate. Williston's revised filing removes these fuel costs, and amends its proposed reservation rate from \$13.20511 per Mcf/month to \$13.17171 per Mcf/month. Williston submits Substitute Fifteenth Revised Sheet No. 724, to be effective March 1, 2009, to reflect this change. Additionally, Williston submits Substitute Sixteenth Revised Sheet No. 724, to be effective April 1, 2009, to reflect revised fuel reimbursement percentages that became effective April 1, 2009. Williston requests that the Commission grant waiver of the 30-day notice requirement in order to allow the rate to become effective March 1, 2009.

#### **B. Notice, Intervention, and Protest**

9. Notice of Williston's filing was issued on March 26, 2009. 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.

### **IV. Discussion**

10. Based upon a review of the filing, the Commission finds that the proposed substitute tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the substitute tariff sheets filed in Docket No. RP09-412-001, and suspend their effectiveness for the period set forth below, subject to the conditions in this order. The Commission finds that good cause exists to waive the 30-day notice

requirement<sup>8</sup> and will allow Substitute Fifteenth Revised Sheet No. 724 to become effective March 1, 2009, and Substitute Sixteenth Revised Sheet No. 724 to become effective April 1, 2009.

11. The Commission finds that the cost components contained in Williston's revised filing need to be verified and directs Williston to address NSP's concerns within 30 days of the date that this order issues. Williston must serve NSP a copy of its FERC Form No. 2 at that time and should work with NSP in an attempt to resolve NSP's concerns. NSP must then advise the Commission of any continuing concerns it has within 30 days of receiving the Form No. 2 from Williston.

12. 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 suspension 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 exist here where Williston is filing in accordance with a provision in an accepted service agreement. Therefore, the Commission will exercise its discretion and suspend the proposed tariff sheets for a nominal period to take effect on their respective effective dates (as discussed herein) subject to refund and conditions.

The Commission orders:

(A) Substitute Fifteenth Revised Sheet No. 724 is accepted and suspended, to be effective March 1, 2009, subject to refund and the conditions of this order.

(B) Substitute Sixteenth Revised Sheet No. 724 is accepted and suspended, to be effective April 1, 2009, subject to refund and the conditions of this order.

(C) Fifteenth Revised Sheet No. 724 is rejected as moot.

(D) Williston is directed to respond to NSP's concerns as discussed in the body of this order within 30 days of the date this order issues and provide NSP with a copy of Williston's 2008 FERC Form No. 2.

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<sup>8</sup> 18 C.F.R. § 154.207 (2008).

(E) NSP must advise the Commission of any continuing concerns it may have with Williston's proposed tariff filing within 30 days after receipt of the FERC Form No. 2.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.