127 FERC ¶ 61,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wyoming Interstate Company, Ltd. Docket No. RP09-148-000

ORDER ACCEPTING TARIFF SHEETS, SUBJECT TO CONDITIONS

(Issued June 11, 2009)

1. On December 9, 2008, Wyoming Interstate Company, Ltd. (WIC), filed tariff sheets[1] to modify WIC's application and allocation of third-party charges. On January 9, 2009, the Commission accepted and suspended WIC's proposed tariff sheets, to be effective June 12, 2009 (or some earlier date if directed in a subsequent order), subject to further order of the Commission.[2] In this order, we accept WIC's proposed tariff sheets, to be effective June 12, 2009, subject to the conditions discussed herein.

I. Background and Details of Filing

2. WIC asserts that Article 6 of its General Terms and Conditions (GT&C) 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 to shippers pursuant to the terms of WIC's tariff and subject to its currently effective rates. WIC notes that it previously proposed a mechanism to fully recover its costs for off-system capacity acquired at the request of a shipper.[3] 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

[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.

[2] *Wyoming Interstate Co., Ltd.*, 126 FERC ¶ 61,011 (2009).

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

sheets to clarify that the charges that WIC passes on to customers for off-system capacity may not exceed the charges incurred by WIC from the third-party.[4]

3. In the instant filing, WIC proposes (1) to allocate 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; (2) to treat revenue WIC receives from marketing the idle capacity in the same manner as it treats other interruptible revenue; (3) to specify a daily rate for shippers that use either secondary points or interruptible transportation service on off-system capacity; (4) to clarify 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; and (5) to clarify that WIC may negotiate with a shipper to recover costs other than on a monthly invoice (e.g., such as through a fuel reimbursement charge).

4. WIC proposed to allocate third-party costs on a weighted average basis for secondary firm or interruptible service when WIC holds more than one off-system contract on a specific pipeline. WIC asserts that when capacity held under more than one off-system contract is sold on a secondary firm or interruptible basis, there is no way to distinguish one portion of contracted capacity from another. WIC maintained that its proposed 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. WIC states that a weighted average rate will be calculated separately for each off-system pipeline and will be posted on WIC's electric bulletin board.

5. WIC argues that its proposal clarifies provisions that require 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 revenue WIC receives from marketing idle off-system 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 that uses either secondary points or interruptible transportation service on off-system capacity.

6. With respect to miscellaneous fees, WIC states that its proposal clarifies that a shipper is responsible for all costs associated with acquiring capacity for its behalf,

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

[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. WIC, December 9, 2008 Filing, at 4 (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)).

without regard to whether the costs were 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 such costs are nonetheless costs of acquiring the capacity and should be passed on to the shipper(s) requesting the capacity.[6]

7. 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 and that its tariff only allows it to recover these charges on a monthly basis. WIC argues that monthly billing does not make sense because fuel charges are normally retained on a daily basis. 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 will provide it with the ability to negotiate with a shipper for the reimbursement of fuel charges as a daily in-kind gas retention percentage, rather than on a monthly invoice.

II. Comments

8. On December 22, 2008, Indicated Shippers[7] filed a protest to WIC's filing generally objecting to WIC's acquisition of off-system capacity for operational purposes, and raising a number of specific issues unrelated to the specific tariff language filed by WIC in this proceeding, and pertaining instead to general concerns with WIC's provision of third-party service. On January 9, 2009, the Commission issued an order accepting the tariff sheets submitted with WIC's December 9, 2008 tariff filing, suspending their effectiveness for the maximum period, and permitting the parties to file additional comments.[8] On January 26, 2009, both WIC and Indicated Shippers filed additional comments. The comments are summarized below.

9. 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. WIC responds stating that section 6.2 of its existing tariff provides that WIC is only authorized to pass on to a primary firm shipper third-party

[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.

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

[8] *Wyoming Interstate Co., Ltd.*, 126 FERC ¶ 61,011.

charges where the shipper requests such service and WIC agrees to provide it. Furthermore, WIC argues that such a change to its *pro forma* service agreements is also inappropriate because third-party charges may not always be separately identifiable rates that can be reflected in fill-in-the-blank sections of the service agreements.

10. Indicated Shippers also argue 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. WIC argues that its proposal does not relate to charges for primary service, but rather relates to third-party reservation and commodity rates to be billed for secondary and/or interruptible service. To the extent that WIC proposes to allocate certain third-party charges, not directly attributable to reservation and/or usage charges, among multiple shippers, WIC states that such allocations will only take place in the rare circumstances that multiple shippers request off-system capacity on the same pipeline and the same time and the third-party pipeline has tariff authority to assess some additional fee or charge not directly attributable to an individual shipper.

11. Indicated Shippers next 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 idle third-party capacity, Indicated Shippers contend that WIC must absorb the cost of that capacity.[9] WIC responds that this is unnecessary, because although it would make attempts to remarket such capacity, WIC is responsible and at risk for any unrecovered costs associated with off-system capacity.

12. Indicated Shippers also argue 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. WIC responds that although Indicated Shippers may prefer an alternate method of allocating third-party costs to the one proposed by WIC, its proposal is nonetheless just and reasonable. WIC explains that any fees and charges subject to allocations would be the result of a request by multiple primary shippers for WIC to acquire firm off-system capacity. Therefore, WIC states that such fees and charges would not be directly

[9] 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. Indicated Shippers, December 22, 2008 Protest, at 3-4 (citing *Tennessee Gas Pipeline Co.*, 115 FERC ¶ 61,120, at P 11 (2006)).

attributable to an individual, discrete primary shipper and must be allocated in some fashion.

13. Indicated Shippers argue that the Commission should interpret proposed language basing third-party charges on the third-party pipeline's "applicable" reservation rates to permit WIC to flow through only the actual costs WIC incurs from the third-party pipeline. Indicated Shippers contend that this understanding is consistent with the Commission's prior order addressing WIC's third-party charges,[10] and it will prevent WIC from reaping a windfall on third-party charges. WIC responds that such a clarification is unnecessary because its current tariff states that WIC's third-party charges will not exceed the amount incurred and paid by WIC for the off-system capacity and that this issue was resolved in a prior proceeding.[11]

14. 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. WIC argues that this is unnecessary because its tariff already prevents it from recovering third-party charges in excess of that which it incurred in acquiring the relevant off-system capacity. Furthermore, WIC explains that to the extent it receives credits or refunds from a third-party pipeline, which are directly related to the third-party charges referred to in WIC's tariff, such refund or credits would be flowed through to the appropriate shipper(s) to the extent the rate paid by the shipper exceeds the net rate (after refund) WIC actually paid and WIC has otherwise fully recovered its costs for such off-system capacity. Although WIC believes additional tariff language is unnecessary, WIC states that it is willing to add the following subsection (b) to section 6.2 of its GT&C:

> If Transporter receives refunds or credits from a third-party pipeline which are directly related to Third-Party Charges, such refunds or credits would be flowed through to the appropriate Shipper(s) to the extent that the rate(s) paid by the Shipper(s) exceeds the net rate (after refund) Transporter has actually paid and Transporter has otherwise fully recovered its costs for such off-system capacity.[12]

15. Indicated Shippers suggest that the Commission require WIC to adopt tariff language to reflect the policy that third-party pipeline shippers may release their third-

[10] *WIC*, 120 FERC ¶ 61,162 at P 7.

[11] *Id.*

[12] WIC, January 26, 2009, Additional Comments, at 10.

party capacity and the release would be governed by WIC's tariff. WIC states that this suggestion is beyond the scope of its filing and that its existing tariff provides that a shipper may release its capacity in accordance with the capacity release provisions of WIC's tariff and Commission regulations. WIC is willing to add the following statement to section 6.3 of its GT&C: "For the purposes of capacity release, any off-system capacity acquired by Transporter from a third-party will be treated under the terms and conditions of Transporter's tariff."[13]

16. 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. We do not summarize Indicated Shippers' arguments on this point, or the details of WIC's responses to them, because they address issues unrelated to the tariff provisions filed in this proceeding, and we do not rely on them in reaching our decision here.

17. In their supplemental comments, Indicated Shippers reiterate points made in their protest, arguing that if WIC separately acquires off-system capacity pursuant to specific requests from shippers, there should be no need to allocate the third-party pipeline charges for such off-system capacity. Indicated Shippers argue further that WIC should credit any revenues from the sale of secondary and/or interruptible off-system capacity to the primary shippers on whose behalf off-system capacity was acquired. Indicated Shippers also state that if WIC separately contracts for off-system capacity for individual WIC shippers, any rates charged for secondary or interruptible service on that capacity should be determined by the contract for the specific capacity, where possible.

III. Discussion

18. Upon further consideration of WIC's filing, we accept WIC's proposals to clarify the application of third-party charges, with the exception of WIC's proposal to charge shippers for miscellaneous costs beyond those charged WIC by the third-party pipeline. Moreover, we find that WIC's two proposed clarifications (quoted in Paragraphs 14-15 above) are reasonable in light of Indicated Shippers' comments. Therefore, we direct WIC to file, within 15 days of the date this order issues, revised tariff sheets removing provisions that would permit WIC to flow through miscellaneous costs related to off-system capacity and incorporating the two proposed clarifications discussed above.

19. Commission policy requires that the acquiring shipper remain at-risk for the costs of off-system capacity.[14] Pipelines, however, may sell off-system capacity on a

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[13] *Id.* at 11.

[14] *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273, at 61,886 (2000).

secondary firm or interruptible basis if the shipper for whom such capacity was acquired chooses not to release it under the pipeline's capacity release program, and the pipeline may retain any revenue from such interruptible or secondary firm sales.[15]

20. In *WIC*, the Commission permitted the pipeline to pass through the additional costs of off-system capacity acquired at the request of a shipper, so long as those costs do not exceed the charges WIC is obligated to pay the third-party pipeline for the off-system capacity.[16] In that case, the Commission accepted proposals by WIC to pass through such additional costs to both firm shippers requesting such capacity and secondary and interruptible shippers utilizing the capacity when not used or released by the requesting shipper. The Commission stressed, however, that WIC was not permitted to charge (or would have to refund) any amounts collected in excess of costs WIC incurs in securing the off-system capacity.[17]

21. Here, WIC's proposals primarily clarify the manner in which WIC will pass through any additional third-party costs in specific situations where WIC sells off-system capacity on a secondary or interruptible basis. For instance, WIC's proposals to utilize a weighted average interruptible or secondary rate in situations where WIC holds more than one contract on a third-party pipeline reflects the fact that WIC cannot differentiate among the capacity held under the different contracts. Although Indicated Shippers seek a number of changes to the manner in which WIC provides service on off-system capacity, they do not oppose WIC's proposal to utilize a weighted average rate for interruptible and secondary service provided on the off-system capacity. We find that WIC's proposed use of a weighted average rate for interruptible and secondary service on off-system capacity establishes a fair and non-discriminatory method in which WIC will pass through off-system capacity costs to the shippers who use the off-system capacity. Moreover, this method will be transparent as WIC commits to posting on its electronic bulletin board the weighted average rate for all off-system locations where WIC holds off-system capacity. Finally, the proposed weighted average rates will not exceed the costs incurred by WIC in acquiring off-system capacity. Therefore, we accept WIC's proposed weighted average rate in the instant case, consistent with our prior holding in *WIC*.

22. For the same reasons, we accept WIC's proposals to specify a daily rate for shippers who use either secondary points or interruptible transportation service on off-system capacity, and to clarify that WIC may negotiate with a shipper to recover costs

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[15] *WIC*, 120 FERC ¶ 61,162 at P 7.

[16] *Id*.

[17] *Id.*

other than on a monthly invoice (e.g., such as through a fuel reimbursement charge). Neither of these proposals adds to the universe of off-system costs that WIC may recover from shippers, but they provide greater flexibility to WIC and customers with respect to the manner in which off-system costs will be passed through to interruptible and secondary firm shippers. WIC's proposal would allow it and a shipper to agree to billing methods other than the current monthly billing mechanism. At the same time, neither of these proposals would have the effect of allowing WIC to recover more than the costs it incurs in acquiring off-system capacity. We therefore accept these proposed tariff revisions.

23. On the other hand, we reject WIC's proposal to pass through to shippers any miscellaneous costs of off-system capacity not actually charged WIC by the third-party pipeline. In the past, the Commission has allowed pipelines, including WIC, to pass through costs incurred in acquiring off-system capacity to the shippers using such capacity.[18] When the Commission accepted WIC's proposal allowing WIC to pass through third-party charges, the Commission noted that the "pass-along charges cannot exceed the amount incurred by WIC."[19] Although the Commission did not expressly limit the scope of the third-party charges to those incurred by WIC from the third-party pipeline, such a limitation was implied by the fact that the Commission's acceptance was within the context of a proposal that, by its own terms, included such a limitation.[20] Thus, WIC's initial proposal to authorize the pass-through of third-party charges was reasonably limited to the well-defined class of third-party charges WIC incurred from the third-party pipeline.

24. In the instant proceeding, WIC seeks to expand the scope of third-party charges to include a broad and ill-defined class of miscellaneous costs. However, WIC has provided no reason to permit it to expand the universe of the types of third-party pipeline costs it is permitted to pass through to shippers to include costs it has not incurred from the third-

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[18] *See WIC*, 120 FERC ¶ 61,162 at P 7; *see also Tennessee Gas Pipeline Co.*, 118 FERC ¶ 61,159, at P 10 (2007).

[19] *WIC*, 120 FERC ¶ 61,162 at P 7.

[20] *See* WIC, July 17, 2007 Filing (proposing FERC Gas Tariff, Second Revised Vol. No. 2, Fourth Revised Sheet No. 63A (". . . if a Shipper(s) requests, and Transporter agrees, to acquire off-system capacity from a third-party(s) to provide transportation service for the benefit of such Shipper(s), Shipper(s) may, on a non-discriminatory basis, be required to pay Transporter, in addition to any applicable rates and charges assessed pursuant to this Tariff, the rates and charges Transporter is obligated to pay such third-party(s) for the off-system capacity.") We note that WIC has not proposed to remove this language in the instant filing.

party pipeline itself. Nor has WIC provided a satisfactory means by which customers and the Commission can be assured that the scope of such miscellaneous costs would be sufficiently limited to those incurred as a direct result of the off-system capacity acquisition. We note that allowing pipelines to pass-through additional costs incurred as a result of off-system capacity is an exception to the general rule that a pipeline must treat off-system capacity as if it were its own.[21] Accordingly, we decline to further expand this exception and reject WIC's proposal to pass-through miscellaneous costs associated with the acquisition of off-system capacity. We therefore direct WIC to remove language from its proposed tariff sheets that would enable it to recover miscellaneous costs not incurred from the third-party pipeline itself.

25. As discussed above, Indicated Shippers' comments generally do not address to the discrete proposals at hand; rather they make numerous proposals to WIC's existing provisions for providing service on third-party pipelines. We agree with WIC that most, if not all, of Indicated Shippers' proposed clarifications or revisions are either beyond the scope of the instant proceeding or redundant to provisions in WIC's existing tariff. Nonetheless, we note WIC's proposed clarifications in its additional comments, and find that they reasonably clarify WIC's practice with respect to refunds and capacity release vis-à-vis off-system capacity. WIC is therefore directed to include such clarifications in a compliance filing within 15 days of the date this order issues.

<u>The Commission orders</u>:

(A) WIC's revised tariff sheets listed in footnote 1 are accepted, effective June 12, 2009, subject to the conditions discussed above.

(B) WIC is directed to file revised tariff sheets within 15 days of the date of this order, subject to the conditions discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[21] *Tennessee Gas Pipeline Co.*, 115 FERC ¶ 61,120, at P 11 (2006) (*Tennessee Gas*) (citing *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000) (*Texas Eastern*)).