

129 FERC ¶ 61,022  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Wyoming Interstate Company, Ltd.

Docket No. RP09-148-002

ORDER GRANTING REHEARING

(Issued October 9, 2009)

1. In this order, the Commission grants the request, filed by BP America Production Company and BP Energy Company (collectively, BP), for rehearing of the Commission's June 11, 2009 order accepting a proposal by Wyoming Interstate Company, Ltd. (WIC) to revise and clarify WIC's application and allocation of third-party charges.<sup>1</sup> Accordingly, WIC must file revisions to its tariff to provide credits consistent with Commission policy when firm service is curtailed, or show cause as to why it should not be required to do so.

**I. Background**

2. The June 11 Order addressed WIC's proposal to make the following tariff revisions: (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 idle off-system 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).

3. BP filed a protest to WIC's filing generally objecting to WIC's acquisition of off-system capacity for operational purposes, and raising issues unrelated to the tariff language filed by WIC in this proceeding. On January 9, 2009, the Commission issued

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<sup>1</sup> *Wyoming Interstate Co., Ltd.*, 127 FERC ¶ 61,236 (2009) (June 11 Order).

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.<sup>2</sup>

4. In its comments, BP argued, among other things, that the Commission should require WIC to incorporate new provisions into its tariff that would provide a reservation charge credit when the pipeline curtails firm service. WIC responded to this request, arguing that it was beyond the scope of the instant filing. In the June 11 Order, the Commission took note of BP's argument, stating simply that it would "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."<sup>3</sup>

## II. Rehearing Request

5. In its July 13, 2009 request for rehearing, BP argues that there is a sufficient nexus between BP's protest and WIC's filing, that the Commission has required other pipelines to adopt similar tariff language in the context of tariff proceedings unrelated (in a direct sense) to the pipeline granting a reservation charge credit during curtailment, and that under the circumstances present here, the public interest favors a curtailment credit when WIC is unable to provide contracted-for service.<sup>4</sup>

6. BP argues that unlike other pipelines, WIC's tariff does not require WIC to grant a curtailment credit when it curtails firm service. BP argues that this omission is inconsistent with Commission policy and that the Commission has repeatedly required pipelines to revise their tariffs accordingly. As an example, BP asserts that the Commission required Natural Gas Pipeline Company of America (NGPL) to provide a full reservation charge credit if the pipeline curtails service, except during *force majeure* situations.<sup>5</sup> BP also argues that the Commission required Tennessee Gas Pipeline Company (Tennessee) to grant curtailment credits to shippers in the context of an

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<sup>2</sup> *Wyoming Interstate Co., Ltd.*, 126 FERC ¶ 61,011 (2009).

<sup>3</sup> June 11 Order at P 16.

<sup>4</sup> On July 15, 2009, BP filed an errata to its July 13, 2009 rehearing request, in which BP submitted a substitute first page containing a full heading and citations inadvertently omitted from the first page of its original filing.

<sup>5</sup> BP, July 13, 2009 Rehearing Request, at 2 (citing *NGPL*, 102 FERC ¶ 61,326, at P 18 (2003), *clarified*, 106 FERC ¶ 61,310, *order on clarification and reh'g*, 108 FERC ¶ 61,170 (2004)).

unrelated filing.<sup>6</sup> BP states that the Commission required pipelines to provide curtailment credits in other instances as well, including Colorado Interstate Gas Company (CIG). BP states that in some contexts full reservation charge credits should be granted, while in other situations, such as in connection with *force majeure* events, only partial credits should be granted.

7. BP next states that the only basis given by the Commission in the June 11 Order for declining to address the curtailment credit issue was that the issue is unrelated to the tariff provisions filed in the instant proceeding. BP argues, however, that the nexus between this issue and WIC's tariff filing is sufficient to permit the Commission to require WIC to grant curtailment credits. First, BP argues that most third-party pipelines upstream and downstream of WIC have tariff provisions permitting curtailment credits. BP notes that in the instant filing, WIC proposes to pass through third-party pipeline refunds and credits (including these third-party curtailment credits) to WIC's shippers.<sup>7</sup> Second, BP argues that WIC is essentially a loop of CIG's Wyoming system. BP then sets forth the following argument:

[I]f WIC acquired capacity on CIG for its shippers, any CIG curtailment credits would be passed through to WIC shippers. However, the reverse is not applicable because WIC does not grant curtailment credits to its own shippers. When the WIC system is down, CIG may, in some situations, be the only alternative pipeline; but CIG will charge WIC shippers the full CIG rate and WIC will not credit the same shippers for the reservation charges paid to WIC.<sup>8</sup>

8. Third, BP argues that absent a requirement that WIC grant a curtailment credit, an inequity could result where WIC would flow through a curtailment credit that WIC receives when the third-party pipeline curtails service, but WIC would not have to grant a curtailment credit when it curtails service. Fourth, BP argues that the nexus between the curtailment credit issue and WIC's filing is consistent with the nexus found to exist in other cases where the Commission ordered tariff changes to provisions not subject to proposed changes by the pipeline. BP cites a case involving Tuscarora Gas Transmission Company (Tuscarora), in which the pipeline proposed tariff revisions that would allow its transportation contracts to specify different maximum daily quantities (MDQ) for a

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<sup>6</sup> *Id.* (citing *Tennessee*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,086 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070, at 61,198 (1997)).

<sup>7</sup> *Id.* at 5 (citing WIC, June 26, 2009 Compliance Filing).

<sup>8</sup> *Id.*

shipper for different times of the year.<sup>9</sup> In that case, the Commission granted a shipper's request to require Tuscarora to adopt a curtailment credit, even though the pipeline argued that such a provision was beyond the scope of the filing.<sup>10</sup> Although acknowledging that the Commission may deviate from its precedent, BP argues that the Commission must explain such departures as part of reasoned decision-making. BP argues that the June 11 Order did not mention, nor did it try to reconcile, precedent that indicates that the Commission must address the curtailment issue.

9. Finally, BP argues that recent expansion projects on WIC's system, accompanied by substantial new capacity commitments to shippers, will have a significant impact on WIC's operations and could result in unanticipated operational issues. BP states that when WIC's system is down, CIG (WIC's affiliated operator) may be the only alternative, creating a disincentive for WIC to fix the problem expeditiously. Accordingly, BP argues that it is imperative for the Commission to grant rehearing and require WIC to provide credits to shippers whose service it curtails.

### **III. Discussion**

10. For the reasons set forth below, we grant rehearing of the June 11 Order and direct WIC to file revisions to its tariff to provide credits consistent with Commission policy when firm service is curtailed, or show cause as to why it should not be required to do so.

11. The June 11 Order disposed of BP's request to direct WIC to revise its tariff to provide curtailment credits in a summary fashion because it appeared unrelated to the proposed tariff revisions at issue in this proceeding. Accordingly, such comments were of no use in determining whether WIC's proposed tariff sheets were just and reasonable. BP's request for rehearing, however, places directly before us what appears to be a clear showing that WIC's pre-existing tariff is inconsistent with Commission policy. We will therefore grant rehearing of the June 11 Order and direct WIC to file revised tariff sheets providing for curtailment credits consistent with Commission policy. This decision will have the benefit of avoiding the elevation of form over substance by obviating the need for a complaint before moving to correct the inconsistency with Commission policy in

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<sup>9</sup> *Id.* at 6 (citing *Tuscarora Gas Transmission Co.*, 120 FERC ¶ 61,022 (2007) (*Tuscarora*)).

<sup>10</sup> BP also cites additional cases, showing that the Commission required pipelines to make revisions in the context of a section 4 proceeding, even though such revisions were not directly related to the issues raised in the filing. *Id.* at 7 (citing *Petal Gas Storage, LLC*, 124 FERC ¶ 61,082, at P 12 (2008); *NGPL*, 102 FERC ¶ 61,326, at P 18 (2003), *clarified*, 106 FERC ¶ 61,310, *order on clarification and reh'g*, 108 FERC ¶ 61,170 (2004)).

WIC's tariff. Though we discourage parties from raising unrelated issues in the context of a section 4 proceeding, where the Commission is made aware of a tariff provision that is clearly inconsistent with Commission policy, we may exercise our discretion to act under section 5 of the Natural Gas Act. As the Commission stated in *Tuscarora*, the fact that a proposed revision is not directly related to the subject filing and the absence of a complaint "are not conditions precedent to Commission action under section 5 of the [Natural Gas Act] where the Commission is made aware of a tariff provisions that is clearly contrary to Commission policy."<sup>11</sup>

12. Sections 12 and 13 of the General Terms and Conditions of WIC's tariff pertain to interruptions of service, either due to *force majeure* or other events. However, neither section provides for the crediting of reservation charges when WIC curtails firm service. Section 12.3 provides, in part:

Any force majeure which results in Transporter's inability to transport all or any portion of Shipper's Gas, or any force majeure which results in Shipper's inability to Tender Gas to Transporter for transportation hereunder or any other force majeure whatsoever shall not operate to suspend or otherwise affect in any way Shipper's obligation to pay the applicable Reservation Charge.

Additionally, section 13 provides that with the exception of providing notice of any service interruptions and attempting to minimize the inconvenience of shippers, "[t]ransporter shall have no other responsibilities to Shipper for any alterations or repairs and no liability for any losses occasioned by such alterations or repairs except to the extent that Transporter has acted in an unreasonable or imprudent manner."

13. These provisions appear to be contrary to the Commission's policy on the crediting of reservation charges when firm service is curtailed. In *Tuscarora*, the Commission required full reservation credits when a curtailment is in the control of the pipeline and partial reservation charge credits if the curtailment is due to a *force majeure* event.<sup>12</sup> Such has been the Commission's policy for a number of years.<sup>13</sup> Accordingly, we find WIC's failure to provide credits when firm service is curtailed to be unjust and unreasonable. Pursuant to section 5 of the Natural Gas Act, the Commission directs WIC to submit a compliance filing within thirty (30) days of this order revising its tariff so that

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<sup>11</sup> *Tuscarora*, 120 FERC ¶ 61,022 at P 13.

<sup>12</sup> *Id.* P 16.

<sup>13</sup> See, e.g., *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,089 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070, at 61,200 (1997).

it is consistent with Commission policy on the provision of credits when firm service is curtailed, or to show cause why it should not be required to do so.

The Commission orders:

(A) Rehearing of the Commission's June 11 Order is granted, as discussed above.

(B) WIC is directed to submit a compliance filing within thirty (30) days of the date this order issues revising its tariff so that it is consistent with Commission policy, or show cause why it should not be required to do so.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.