

129 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

White River Hub, LLC	Docket Nos. RP09-1027-000 RP09-1027-001
Questar Southern Trails Pipeline Company	RP09-1028-000 RP09-1028-001
Questar Overthrust Pipeline Company	RP09-1029-000 RP09-1029-001
Questar Pipeline Company	RP09-1030-000 RP09-1030-001

ORDER ACCEPTING TARIFF SHEETS, SUBJECT TO CONDITIONS, AND
ESTABLISHING DISPUTE RESOLUTION PROCEDURES

(Issued October 14, 2009)

1. On September 2, 2009, as amended September 14, 2009, four affiliated companies¹ (Companies) in the above-captioned proceedings filed revised tariff sheets² to reflect added capabilities and revised procedures resulting from their new on-line gas management and electronic contracting system—Questline. The Companies also filed proposed revisions to their Questline Access Agreements (Access Agreements) to accommodate the new Questline system. The Companies seek an October 1, 2009 effective date. For the reasons discussed below, the Commission accepts and suspends

¹ The four affiliated companies are White River Hub, LLC, Questar Southern Trails Pipeline Company, Questar Overthrust Pipeline Company (Overthrust), and Questar Pipeline Company (Questar).

² For a list of these tariff sheets, see Appendix.

the Companies' proposed tariff sheets, to be effective on October 1, 2009, subject to refund and conditions. The Commission will refer the proceeding to the Commission's Dispute Resolution Service.

2. The Companies' revised tariff sheets reflect changed procedures and added capabilities incorporated as a result of the new Questline system. For example, the Companies are altering procedures for securing access to the system by eliminating a signature code requirement and replacing it with a logon and password. Also included in the Companies' revised tariff sheets are changes to the liability provisions contained in the Companies' existing Access Agreements. Proposed language in section 15 of the Access Agreements includes the following: "Shipper assumes all risk as to the accuracy, completeness, security, availability, quality, and performance of Questline and its contents, including all liability arising from access to Questline by third parties through shipper."³ Proposed language in section 16 of the Access Agreements provides:

[Companies shall not] be liable to shipper or any other person or entity for any loss or damages of any kind arising out of, related to, or in connection with Shipper's use, inability to use, or reliance on Questline or its contents, even if advised of the possibility of such damages or if such damages are foreseeable and regardless of the form of action, whether in contract or tort, except Questar may be held liable to Shipper for Shipper's direct damages from the use of Questline to the extent such damages are caused by the negligence of Questar in its operation of Questline and are not otherwise avoidable by Shipper.⁴

Notice, Interventions and Responsive Pleadings

3. Notices of the filings were issued on September 3, September 10 and September 28, 2009, with interventions and protests ultimately due on or before September 28, 2009. Pursuant to Rule 214,⁵ all timely 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. BP America Production Company and BP Energy Company (collectively, BP) filed protests to the September 2, 2009 tariff

³ Proposed Access Agreements § 15 (all capitals in original).

⁴ *Id.* § 16 (all capitals in original).

⁵ 18 C.F.R. § 154.210 (2009).

filings by Questar (Docket No. RP09-1030-000, -001) and Overthrust (Docket No. RP09-1029-000, -001). Encana Marketing (USA) Inc. (Encana) filed a protest of the Overthrust filings (Docket No. RP09-1029-000, -001). Encana essentially incorporates BP's protest by reference and shares BP's concerns.

4. On October 2, 2009, Questar and Overthrust filed answers to the protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁶ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Questar's and Overthrust's answers because they have provided information that assisted us in our decision-making process.

5. BP raised concerns about the liability provisions contained in the Access Agreements filed by Questar (Docket No. RP09-1030-000, -001) and Overthrust (Docket No. RP09-1029-000, -001). BP contends that section 16 of the Access Agreements contains exculpatory language that is at odds with Commission policy regarding the breadth and content of liability provisions pertaining to a pipeline's operation of its electronic bulletin board.⁷ BP argues that the Commission's simple negligence standard prohibits a pipeline from immunizing itself from liability in connection with direct damages that are caused by the pipeline's simple negligence, gross negligence or willful misconduct. BP contends that proposed section 16 of the Access Agreements addressing the foreseeability of damages and notice of the possibility of damages is inconsistent with this simple negligence standard. BP also objects to language in section 16 of the Access Agreements that would immunize Questar and Overthrust from liability for a shipper's damages caused by Questar's and Overthrust's negligence if the damages are "otherwise avoidable" by the shipper. BP contends that it is inappropriate for a pipeline to attempt to

⁶ 18 C.F.R. § 385.213(a)(2) (2009).

⁷ BP, September 24, 2009 Protest, Docket Nos. RP09-1030-000, -001, at 2 (citing *MarkWest Pioneer, LLC*, 125 FERC ¶ 61,165, at P 54 (2008); *Gulf States Transmission Corp.*, 114 FERC ¶ 61,006, at P 5 (2006); *Overthrust Pipeline Co.*, 112 FERC ¶ 61,083, at P 8 (2005); *Entrega Gas Pipeline, Inc.*, 112 FERC ¶ 61,177, at P 65, *order on reh'g*, 113 FERC ¶ 61,327 (2005), *aff'd on reh'g*, 114 FERC ¶ 61,326, at P 14 (2006); *Guardian Pipeline, LLC*, 101 FERC ¶ 61,107, at P 18 (2002); *Port Arthur LNG, LP*, 115 FERC ¶ 61,344, at P 37, *order on reh'g*, 117 FERC ¶ 61,213 (2006); *Cameron LNG, LLC*, 115 FERC ¶ 61,229, at P 37 (2006); *Kern River Gas Transmission Co.*, 62 FERC ¶ 61,191, at 62,276, *aff'd in pertinent part on reh'g*, 64 FERC ¶ 61,049, at 61,425-26 (1993)). *See also* BP, September 25, 2009 Protest, Docket Nos. RP09-1029-000, -001, at 2 (citing the same).

limit its liability by defining specific components of a negligence claim, arguing that such issues are more appropriately addressed by a court.⁸

6. BP next requests that the Commission require Questar and Overthrust to revise section 16 of their Access Agreements to state that a shipper can recover both direct damages and indirect damages if it is harmed by the respective pipeline's gross negligence or willful misconduct. BP argues that this is consistent with the Commission's policy that pipelines may only limit their liability to direct damages in the case of simple negligence, not gross negligence or willful misconduct.⁹

7. BP also contends that the Commission should reject proposed language in section 15 of the Access Agreements that would shift to shippers "all risk" associated with Questline's performance. BP contends that the pipeline, not shippers, administers Questline and that the pipeline should therefore bear the responsibility for damages associated with Questline.

8. With respect to Questar's Access Agreement in Docket No. RP09-1030-000, -001, BP also asserts that language in proposed section 10 stating that "Questar shall have no liability to Shipper or any other party for damages," would immunize Questar from all liability associated with its own negligence and is therefore inconsistent with the simple negligence standard.

9. In addition, BP raises concerns in Docket Nos. RP09-1030-000, -001, regarding the liability provisions contained in existing section 20 of Questar's General Terms and Conditions (GT&C). BP requests the Commission require Questar to revise the language in its existing tariff so that the language reflects the Commission's simple negligence standard and reject the language in Questar's existing tariff that would immunize Questar from liability for a shipper's damages caused by negligence if the damages are not due "solely" to Questar's conduct. BP refers to several cases that it claims support the proposition that existing tariff language can be subject to Commission review, regardless of whether it is related to the new proposed language.¹⁰ Therefore, BP states that the

⁸ In its protest, filed in Docket No. RP09-1030-000, -001, EnCana states that it shares the concerns raised by BP regarding the liability language in section 16 of the proposed Access Agreement. EnCana requests that the Commission ensure that the Access Agreement proposed by Overthrust and other members of its corporate family is consistent with Commission policy.

⁹ Citing *MarkWest Pioneer, LLC*, 125 FERC ¶ 61,165 at P 54.

¹⁰ BP, September 24, 2009 Protest, Docket Nos. RP09-1030-000, -001, at 7 (citing *Tuscarora Gas Transmission Co.*, 120 FERC ¶ 61,022, at P 15-16 (2007)).

existing tariff language should be reviewed by the Commission along with the proposed language.

10. In their answers, Questar and Overthrust argue that the language in section 16 regarding “foreseeability” and “notice” is designed to prevent shippers from attempting either to circumvent the direct damage limitations or to conjure a new liability theory merely by notifying the pipeline of the possibility of certain damages. Questar and Overthrust argue that this language is consistent with Commission policy and with language contained in the North American Energy Standards Board (NAESB) Electronic Data Interchange Trading Partner Agreement. With respect to BP’s objection to language in the proposed Access Agreements that excludes damages that are “otherwise avoidable,” Questar and Overthrust assert that this language merely recognizes a shipper’s duty to mitigate damages. Accordingly, Questar and Overthrust contend that such language does not conflict with Commission policy.

11. Questar and Overthrust acknowledge BP’s concern that proposed section 16 would immunize the pipelines from liability for consequential damages in cases involving gross negligence or willful misconduct. Questar and Overthrust therefore propose to incorporate the following language in section 16 to conform to Commission policy: “In addition, [Pipeline] may be liable for indirect, incidental, or consequential damages to the extent such damages are caused by [Pipeline’s] gross negligence or willful misconduct operating Questline and are not avoidable by Shipper.”

12. Questar and Overthrust also respond to BP’s argument that because the pipeline is the sole administrator of Questline, the pipeline alone should assume the risk associated with its operation. Questar and Overthrust contend that Questline is a complex program that depends on the input of many different shippers and interconnected system operators. As such, Questar and Overthrust argue that they should not bear the risk associated with the program because they do not have complete control over the system.

13. In addition, in Docket Nos. RP09-1030-000, -001, Questar acknowledges that proposed section 10 of the Access Agreement contains a clerical error. Accordingly, Questar clarifies that section 10 should state: “Shipper may adjust the number of licensed users, delete licensed users, or designate other licensed users pursuant to a written Request for User Access to Questline in the form attached as Exhibit A, incorporated into this Agreement by reference, issued by Shipper and submitted to Questar.”

14. Questar argues that the existing tariff provision governing liability is unrelated to the provisions proposed in its filing and that BP’s challenge to the existing language should be rejected.

Discussion

15. The Commission accepts and suspends the Companies' proposed tariff sheets, to be effective on October 1, 2009, subject to refund and conditions. Further, we find good cause to waive the 30-day notice requirement so that the Companies' proposed tariff revisions will take effect concurrently with the implementation of the new Questline system. Despite lodging protests in only two of the four proceedings addressed herein, BP has raised significant issues concerning the liability provisions contained in all of Companies' Access Agreements. We therefore accept the revised tariff sheets that contain the Companies' liability provisions, subject to the Companies' filing, within 15 days of this order, revised tariff sheets incorporating the additional language Questar and Overthrust propose adding to section 16 of the Access Agreements in their answers. In addition, Questar must file the revisions to section 10 of the Access Agreement as proposed in its answer.¹¹ We will refer the remaining issues raised in this proceeding to the Commission's Dispute Resolution Service, including those related to existing tariff provisions.

16. As the Commission has previously noted, it applies two general principles to the issue of liability: there should be no liability without fault; and a person should not be able to avoid all liability caused by his own gross negligence or intentional actions.¹² Additionally, the Commission has stated that the liability standard for operating a pipeline's EBB must be no different than the liability standard for its other operations.¹³ The Commission believes, that within those parameters, the issues raised by the protestors would best be resolved through mutual agreement. To that end, the Commission will direct the Director of its Dispute Resolution Service¹⁴ to convene a meeting of the parties, within 14 days of the date of this order, to arrange a process that may foster negotiation and agreement regarding the proposed revised tariff sheet. Companies must report the status of the negotiations to the Commission within 60 days of the date of issuance of this order. The Commission urges the parties to attempt to achieve resolution of these issues in such time as to allow any settlement to be put into effect within that time period. Furthermore, we will refrain from addressing BP's objections to the liability provisions in Questar's existing tariff at this point and urge the

¹¹ As described in the Appendix, we reject as moot the original tariff sheets that were revised by the Companies' supplemental filings.

¹² *Arkla Energy Resources Company*, 64 FERC ¶ 61,166, at 62,490 (1993).

¹³ *Overthrust Pipeline Co.*, 112 FERC ¶ 61,083 at P 8.

¹⁴ The Director of the Commission's Dispute Resolution Service is Nils Nichols, who can be contacted at (202) 502-8638 or at (877) FERC-ADR ((877) 337-2237 or (202) 502-6651).

parties to address this matter while in negotiations, as we believe that a negotiated solution is both possible and preferable in these circumstances.¹⁵ Accordingly, the Commission will accept and suspend the effectiveness of the revised tariff sheets subject to refund and conditions. The conditional acceptance is subject to further review by the Commission.

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 suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension). Such circumstances exist here, where prompt implementation of a new on-line gas management and electronic contracting system and the proposed Access Agreements designed to complement those systems would be beneficial to shippers and the pipeline, and the narrow contested issue may be amenable to resolution by the parties themselves.

The Commission orders:

(A) The Commission accepts and suspends the Companies' proposed tariff sheets, to be effective on October 1, 2009, subject to refund and the conditions discussed herein, as listed in the Appendix.

(B) The Commission rejects as moot the tariff sheets superseded by the Companies' supplemental filings, as listed in the Appendix.

(C) The Companies are directed to report to the Commission on the progress of any negotiations to the Commission within sixty (60) days of the date of issuance of this order.

¹⁵ We note that in addition to Questar's tariff, similar issues may arise with respect to the liability provisions in existing tariffs of the other companies subject to this proceeding. Accordingly, we urge the parties to attempt to resolve this issue in the course of negotiations.

(D) The Companies are directed to file revised tariff sheets consistent with the requirements of this order within fifteen (15) days of the date of issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

Docket Nos. RP09-1027-000 and RP09-1027-001

White River Hub LLC
FERC Gas Tariff, Original Volume No. 1

*Tariff Sheets Accepted and Suspended,
Effective October 1, 2009, Subject to Conditions:*

First Revised Sheet Nos. 36, 57, 59, 62, 68, 74, 201, 202, 203, 204 and 205

Second Revised Sheet No. 207

First Revised Sheet Nos. 221, 222, 222A and 225

Second Revised Sheet No. 227

First Revised Sheet Nos. 240-242

Substitute First Revised Sheet No. 243

First Revised Sheet No. 244

Original Sheet Nos. 245 and 246

Reserved Sheet Nos. 247-249

Tariff Sheet Rejected As Moot:

First Revised Sheet No. 243

Docket Nos. RP09-1028-000 and RP09-1028-001

**Questar Southern Trails Pipeline Company
FERC Gas Tariff, Second Revised Volume No. 1-A**

*Tariff Sheets Accepted and Suspended,
Effective October 1, 2009, Subject to Conditions:*

Eleventh Revised Sheet No. 4
Third Revised Sheet No. 35
Second Revised Sheet Nos. 39, 42, 43
First Revised Sheet Nos. 48 and 121
Second Revised Sheet No. 122
First Revised Sheet No. 123
Second Revised Sheet Nos. 125 and 126
First Revised Sheet Nos. 127-129
Substitute First Revised Sheet No. 130
Original Sheet Nos. 131-133

Tariff Sheet Rejected As Moot:

First Revised Sheet No. 130

Docket Nos. RP09-1029-000 and RP09-1029-001

Questar Overthrust Pipeline Company
FERC Gas Tariff, Second Revised Volume No. 1-A

*Tariff Sheets Accepted and Suspended,
Effective October 1, 2009, Subject to Conditions:*

Fourth Revised Sheet No. 4
First Revised Sheet Nos. 37, 39, 42, 43, 47, 97, 200, 201, 202, 203 and 205-210
Substitute First Revised Sheet No. 211
Original Sheet Nos. 212-214

Tariff Sheet Rejected As Moot:

First Revised Sheet No. 211

Docket Nos. RP09-1030-000 and RP09-1030-001

Questar Pipeline Company
FERC Gas Tariff, First Revised Volume No. 1

*Tariff Sheets Accepted and Suspended,
Effective October 1, 2009, Subject to Conditions:*

Sixteenth Revised Sheet No. 46
Eighth Revised Sheet No. 46A
Sixth Revised Sheet No. 46C
Fourth Revised Sheet No. 46D
Eighth Revised Sheet No. 54
Fourth Revised Sheet No. 57
Fourth Revised Sheet No. 181
Third Revised Sheet No. 183
Fifth Revised Sheet No. 184
Third Revised Sheet Nos. 185 and 185A
Second Revised Sheet No. 185C
Fifth Revised Sheet No. 187
Fourth Revised Sheet No. 194
First Revised Sheet No. 194B
Fifth Revised Sheet Nos. 196 and 197
Third Revised Sheet No. 198
First Revised Sheet No. 198A
Fourth Revised Sheet Nos. 199-201
Substitute Fourth Revised Sheet No. 202
Third Revised Sheet No. 203
Original Sheet Nos. 203A and 203B

Tariff Sheet Rejected As Moot:

Fourth Revised Sheet No. 202