130 FERC 61,100
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Bridger Pipeline LLC   Docket No. IS10-105-000

ORDER ON TARIFF FILING

(Issued February 11, 2010)

1. On January 12, 2010, Bridger Pipeline LLC (Bridger) filed a tariff to initiate new gathering and transportation services and rates for certain laterals in North Dakota. Bridger requested an effective date of February 1, 2010, allowing 19 days' notice. For the reasons discussed below, the Commission will accept the tariff to be effective February 1, 2010.

Background

2. Bridger filed Supplement No. 3 to FERC No. 14 pursuant to 18 C.F.R. § 342.2(b) to initiate new gathering and transportation services and rates for laterals south of Parshall Township, North Dakota. The rates for this transportation will be $1.7540 per barrel if a shipper ships up to 7499 barrels per day; if a shipper ships 7500 or more barrels per day, the rate will be $1.0000 per barrel. When Bridger performs gathering services on the Kraft, Brendle, or other laterals south of Parshall Township, North Dakota it will assess an additional $0.2500 per barrel. In accordance with the provisions of 18 C.F.R. § 342.2(b), Bridger attached a sworn affidavit that these new rates have been agreed to by at least one non-affiliated shipper who intends to use the new services in question.

3. Bridger's Supplement No. 3 to FERC No. 14 also includes new language to: (1) specify that the "barrels per day" listed in the Table of Rates are those delivered to Stanley Station, North Dakota from South Parshall Field and the Kraft, Brendle or other laterals south of Parshall Township, North Dakota in the note marked "*"; (2) change the wording in the note marked "*" from the term "total" to the term "aggregate"; and (3) change the wording under the heading "Gathering Charge" from the abbreviation "bbl" to the term "barrel."

4. Pursuant to 18 C.F.R. § 341.14, Bridger requests the Commission grant a waiver under Section 6(3) of the Interstate Commerce Act (ICA) to file Supplement No. 3 to FERC No. 14 on 19 days' notice, and permit the tariff to become effective on February 1,

2010. Bridger states that because the new services reflected in Supplement No. 3 to FERC No. 14 required new construction, it was uncertain when the services would be available for use. Bridger states that it has now determined that the new services will be available for use on February 1, 2010, and Bridger therefore requests this short notice in order to allow shippers to begin using the new services as soon as they are available. Bridger acknowledges this tariff publication is conditionally accepted subject to refund pending a thirty-day review period.

Protest

5. On January 27, 2010, Enserco Energy Inc. (Enserco) filed a motion to intervene, protest and motion for consolidation. Enserco states that it is a marketing company specializing in the optimization of energy assets in the western and mid-continent regions of the U.S. and Canada. Enserco states its Crude Oil Services Group has been in the crude oil business since 2006 and purchases, aggregates and transports Rocky Mountain area crude oil lease production to area refineries or other markets. Enserco further states it is a past, current, and future shipper on the interstate, common carrier, pipeline system of Bridger.

6. Enserco asserts that it has sought a truck loading/unloading facility at the destination point on Bridger's Parshall line known as Stanley, where barrels that have moved through the Parshall line must be taken off the line for further movement either on Enbridge Pipelines North Dakota (Enbridge) or by truck. Enserco states that it desires to use Bridger's new services at the proposed high volume incentive rates; however, because Enbridge is full and in apportionment, without a truck loading facility at the Stanley destination on Bridger's system, Enserco cannot avail itself of those rates, as barrels moved from Parshall to Stanley would become stranded at Stanley. Accordingly, Enserco states that it has a substantial economic interest in these proceedings that cannot be adequately represented by any other party.

7. Enserco contends that Bridger's proposed transportation rate of $1.7540 per barrel for low-volume shippers appears excessive as it greatly exceeds industry norms for similar short-haul gathering service. Absent discovery, however, Enserco states it lacks adequate factual information to assess whether Bridger's higher than average rate is just and reasonable. Enserco submits that because the 75 cent differential between the high-volume and low-volume rate is significant and also above the differentials typically seen for like services (which are more in the 25 cent range), Bridger has not shown the high-volume incentive rate of $1.0000 per barrel to be just and reasonable. Enserco asserts Bridger has not shown that its proposed additional charge of $0.2500 per barrel for the new gathering service on the Kraft, Brendle, or other laterals south of Parshall Township, North Dakota is just and reasonable. Enserco argues that absent discovery and review of cost of service data, there is no basis to determine whether the charge is just and

reasonable. Accordingly, Enserco urges the Commission to direct Bridger to file cost, revenue and throughput data supporting the proposed rates as required by Part 346 of the Commission's regulations.

8. Enserco asserts that Bridger's proposed rate differential of $0.7540 per barrel is unjust and unreasonable. Enserco submits that typically, the rate differential between high- and low-volume shippers is somewhere around $0.25 per barrel. Enserco contends that Bridger's proposed differential is approximately three times the customary differential. Enserco argues that the only plausible explanation for a divergence of this magnitude between the rates seems to be to provide Bridger's marketing affiliate, Eighty-Eight Oil, LLC (Eighty-Eight), a significant competitive advantage. Eighty-Eight is one of a few shippers who could avoid paying the much higher rate for low volume shippers because few, if any, of the other shippers can use the high-volume rate due to capacity constraints at Stanley Station, North Dakota.

9. Enserco requests the Commission consolidate Docket No. IS10-105-000 with the on-going investigation in Docket Nos. IS09-92-000 and IS09-93-000.[1] Enserco asserts that Bridger, in the guise of proposing new services allegedly available to all shippers that wish to be high-volume shippers, once again seeks to provide an undue preference to Bridger's affiliate. Enserco states that it has sought access to the Stanley, North Dakota location, but Bridger has so far refused. Enserco contends that Bridger's proposal in Docket No. IS10-105-000 appears simply to perpetuate Bridger's arbitrary and capricious denial of access to the Stanley, North Dakota station to the benefit of its marketing affiliate, Eighty-Eight. Enserco submits that this is exactly the type of conduct that is subject to investigation by the Commission in the on-going Docket No. IS09-92-000, *et al.* proceeding. In addition, Enserco asserts the timing of Bridger's filing and the lack of sufficient prior notice of these new services may prejudice Enserco's shipper history for purposes of future allocations on the pipeline under Bridger's prorationing policy. Enserco states the application and impact of Bridger's prorationing policy is one of the issues raised in the pending investigation.

<u>Bridger's Answer</u>

10. In its February 1, 2010 answer, Bridger submits the Commission should reject the protest because Enserco lacks a substantial economic interest in the challenged rates and Enserco's allegations upon which the protest is founded are demonstrably false.

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[1] *Belle Fourche Pipeline Company,* 126 FERC ¶ 61,054 (2009).

11. Bridger states that in the summer of 2009, at the request of a producer in the area south of the Parshall Township, North Dakota and later at the request of the producer's affiliate (neither affiliated with Bridger, Eighty-Eight, or Enserco), Bridger undertook certain new construction designed to provide gathering and transportation service for production from the producer's leases south of Parshall Township, North Dakota. Bridger states it constructed new laterals to serve the producer's leases south of Parshall Township, North Dakota and constructed a new pipeline to connect the new laterals with Bridger's existing pipeline at South Parshall Field. Bridger states that the new gathering and transportation rates in its filing were agreed to by the producer and its affiliate, who will be the shipper, in the context of their request that Bridger undertake new construction to serve the producer's leases.

12. Bridger asserts the Commission should reject Enserco's protest and accept its filing because Enserco has no standing to file its protest. Bridger states that under Commission Rule 343.2(b), only persons with a substantial economic interest in the filing may file a protest to a tariff filing pursuant to the ICA. Bridger contends that Enserco has no interest - much less a substantial one - in the rates set forth in the tariff filing. Bridger states that Enserco claims that its substantial economic interest is shown by its desire to have a truck loading/unloading facility at the destination point on Bridger's Parshall line known as Stanley and its desire to utilize the new services proposed in the tariff filing at the high volume incentive rates. Bridger argues that this is demonstrably false. Bridger notes the new gathering and transportation services in the filing serve leases held by a producer, which is not Enserco and, contrary to Enserco's assertion, is not Bridger's affiliate, Eighty-Eight. Bridger states the producer indicated that it intends to sell its production at its leases to the shipper (unaffiliated with Bridger, Eighty-Eight Oil, or Enserco), and does not intend to sell its oil prior to shipment to any other entity, such as Enserco or Eighty-Eight. Because the new rates in the tariff filing relate to service on a new pipeline segment that is tied solely to wells owned by the single, unaffiliated producer and the producer’s affiliate will be the sole shipper, it is physically impossible for Enserco to use the new services.

13. Bridger also urges the Commission to reject Enserco’s request for consolidation. Bridger submits that because Enserco has no barrels of crude petroleum to transport from the new laterals to Stanley, North Dakota, the fact that Enserco has no Stanley Facility is irrelevant to Enserco's protest and to the new rates at issue here. Bridger contends that Enserco’s assertion that it requested access to the Stanley, North Dakota station appears nowhere in the voluminous pleadings and submissions by Enserco to the Commission in the pending proceeding in Docket Nos. IS09-92-000 and IS09-93-000. In fact, Bridger submits that Enserco never indicated to Bridger any interest in having a truck station at Stanley until an oral statement less than thirty days ago.

Discussion

14. In its January 12, 2010 filing in Docket No. IS10-105-000, Bridger filed a tariff to initiate new gathering and transportation services and rates for certain laterals in North Dakota. Pursuant to section 342.2(b) of the Commission's regulations, Bridger attached a sworn affidavit that these new rates have been agreed to by at least one non-affiliated shipper who intends to use the services in question.[2] Under section 342.2(b), if the initial rate filing is protested, the carrier must file cost, revenue and throughput data supporting such rate as required by Part 346 of the Commission's regulations. In this proceeding, Enserco protested Bridger's filing asserting that it has a substantial interest in the rates and services at issue. However, Bridger responded that Enserco does not have standing to file a protest because it does not have a substantial economic interest in the tariff filing pursuant to section 343.2(b) of the Commission's regulations.

15. The Commission finds that Enserco does not have standing to file a protest to Bridger's proposed rates because it does not have a substantial economic interest in the tariff filing. As Bridger has stated, the new laterals were built and the new services were created for the benefit of a producer and its affiliate who will ship oil from the producer's wells on the new pipeline facilities and it will be physically impossible for Enserco to access such facilities. Moreover, Bridger stated the producer and shipper are not affiliated with Bridger or Eighty-Eight. Since there is no valid protest to Bridger's proposed rates, there is no requirement for Bridger to file a cost justification pursuant to Part 346 to support the rates. Accordingly, the Commission accepts Bridger's Supplement No. 3 to FERC No. 14, effective February 1, 2010, upon 19 days' notice.

16. The Commission also denies Enserco's request for consolidation with the ongoing proceeding in Docket Nos. IS09-92-000 and IS09-93-000. As Bridger points out in its answer, the new laterals were constructed to serve the wells of a specific producer and it is physically impossible for Enserco to use the proposed services. Enserco's claim that it has requested a truck unloading facility at Stanley Station, North Dakota does not raise an issue of discrimination in access to Bridger's pipeline like the issue raised in Docket Nos. IS09-92-000 and IS09-93-000. In those proceedings, allegations were made that Eighty-Eight, Bridger's affiliate, was provided access to certain points to the exclusion of certain non-affiliated shippers. Because the laterals are dedicated to a specific producer, no such issue is present here.

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[2] On February 1, 2010, EOG Resources, Inc. and EOG Resources Marketing, Inc. (EOG Companies) filed a motion to intervene and comments in support of Bridger's filing. The EOG Companies state that EOG Resources is a producer on Bridger's system and EOG Resources and EOG Marketing plan to ship barrels under the tariff in this docket. The EOG Companies state they are in agreement as to the proposed rates for all services under the proposed tariff.

The Commission orders:

(A) Bridger's Supplement No. 3 to FERC No. 14 is accepted to be effective February 1, 2010, upon 19 days' notice.

(B) Enserco's protest is rejected because Enserco lacks standing pursuant to section 343.2(b).

(C) The EOG Companies' motion to intervene is granted.

(D) Enserco's request for consolidation with the proceeding in Docket Nos. IS09-92-000 and IS09-93-000 is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.