

135 FERC ¶ 61,188
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Bridger Pipeline LLC

Docket No. IS11-313-000

ORDER ACCEPTING TARIFF

(Issued May 27, 2011)

1. This order addresses Bridger Pipeline LLC's (Bridger) April 29, 2011, tariff filing proposing new tariff language to implement penalties for over-nominations on its crude oil pipeline system. Bridger requests the Commission permit FERC Tariff No. 26.1.0 to become effective June 1, 2011. Concord Energy LLC filed a protest on May 16, 2011. For the reasons discussed below, the Commission accepts Bridger's FERC Tariff No. 26.1.0 to be effective June 1, 2011.

Background

2. Bridger services the Williston Basin transporting Bakken Shale crude oil from and to points in Montana and Wyoming. Bridger states Williston Basin production has risen from approximately 160,000 barrels per day (bpd) in 2006 to more than 420,000 bpd to date due solely to the Bakken Shale crude oil. Production could increase by an additional 350,000 bpd from North Dakota production alone with dramatic increases to continue for several years. As a result, the corresponding demand for transportation on Bridger's pipeline system has produced a proliferation of New Shippers and over-nominations by New and Existing Shippers,¹ subjecting significant portions of Bridger's system to near-continuous prorationing over the past several years.

¹ An Existing Shipper is a shipper that has tendered petroleum for transportation on a specific line segment during the Base Period, which is the twelve-month period beginning thirteen months prior to the month of prorationing. This ability to "earn" capacity over time has encouraged shippers to use affiliated companies to make

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3. Bridger states the extent of the prorationing problem is significant and that over the past twelve months, on average, initial nominations on its Poplar and Little Missouri pipeline systems have exceeded the total capacity by about 1648 percent and 2225 percent, respectively. In addition, Bridger states the scope of shipper over-nominations is worsening. For example, in March 2011, shippers on the Poplar and Little Missouri systems submitted initial nominations of nearly 1,062,258 and 980,252 bpd, respectively, even though the capacity of the Poplar and Little Missouri systems is at most only 42,000 and 33,000 bpd. These nominations exceed the total capacity of those systems by over 2529 percent and 2970 percent, respectively.

4. Nonetheless, Bridger's available capacity is under-utilized due to such unrealistic nominations that shippers apparently have no ability to tender and then fail to timely revise their nominations. When shippers over-nominate and consequently receive allocations of capacity that they cannot use, other shippers that need more capacity than they are allocated are forced to make other, and often less efficient, arrangements to transport their crude petroleum (e.g., via trucking) while some portion of Bridger's capacity remains under-utilized. For example, in January, February, and March of this year, Bridger notes its Little Missouri system was under-utilized by fifteen, sixteen, and nine percent, respectively, despite the existence of significant market demand.

5. Therefore, Bridger's proposed Item No. 76 in FERC No. 26.1.0 addresses the problems associated with the continual eroding of the capacity allocations of its shippers and the excessive and persisting shipper over-nominations. Bridger avers these developments also create administrative burdens, requiring Bridger to hire additional staff.

6. For all these reasons, Bridger revises Item No. 76 to include new language to implement penalties for over-nominations. Item No. 76 provides that Bridger will allocate available capacity among shippers when it determines initial nominations exceed available capacity during the month on a line segment. Bridger will then notify each shipper of its capacity allocation for the applicable line segment. Each nominating shipper will submit a revised nomination for that line segment equal to or less than such shipper's allocation. Each shipper's revised nomination shall be its "Binding Nomination." Revised Item No. 76 further provides that, if the aggregate of the Binding Nominations by shippers is less than the capacity of the applicable line segment, Bridger will allocate the unused capacity on a *per capita* basis among New and Existing Shippers that are not subject to capped initial nominations resulting from imposition of the second

nominations to eventually qualify as Existing Shippers and thus control more capacity. A New Shipper is a shipper that nominates on a specific line segment that does not qualify as an Existing Shipper.

tier penalty provision described below. If unused capacity remains, Bridger will distribute such capacity on a *per capita* basis to Existing and New Shippers that are subject to second tier penalty's capped initial nominations.

7. Any shipper accepting an additional capacity allocation must amend its Binding Nomination with an "Amended Binding Nomination" to reflect its increased allocation. If the aggregate Binding and Amended Binding Nominations total is less than the available capacity of the line segment following implementation of this process, the pipeline segment will no longer be in apportionment and the penalties described below will not apply with respect to the production month applicable to this allocation process. If the aggregate Binding and Amended Binding Nominations equal the available capacity of the line segment, the penalty provisions will apply to the allocation process for the subject month. Bridger also adds new language to Item No. 76 (Paragraph 4) to implement over-nomination penalty provisions. Paragraph 4 states that, during months of prorationing on any line segment, if any shipper delivers a volume of barrels less than 90 percent of its Binding or Amended Binding Nomination (which is not caused by a force majeure event) ("Deficient Tender"), certain penalties shall apply during any rolling 12-month period.

8. The first time a shipper makes a Deficient Tender during any rolling 12-month period, Bridger will invoice the shipper for its delivered volumes, plus a monetary penalty based on the applicable rate and the difference between the barrels delivered and the Binding or Amended Binding Nomination ("Monetary Penalty"). The second time a shipper makes a Deficient Tender during any rolling 12-month period (the second tier penalty noted above), the shipper will be subject to the Monetary Penalty, and the shipper's initial nomination for the three consecutive months beginning the first complete month after the second Deficient Tender becomes known to Bridger shall be capped at the barrels the shipper actually shipped during the prior month. The third time a shipper makes a Deficient Tender and for every Deficient Tender thereafter during any rolling 12-month period, the shipper will be subject to the Monetary Penalty, and prohibited from submitting for one month, any nomination on the line segment to which the Deficient Tender applies beginning the first complete month after the third Deficient Tender or any Deficient Tender thereafter becomes known to Bridger.

Interventions and Protests

9. Concord Energy filed a motion to intervene and protest on May 16, 2011, stating that while it supports the imposition of reasonable penalties to prevent abusive nomination practices and to promote the efficient use of Bridger's system, certain aspects of the proposal are in its view discriminatory and preferential.

10. In particular, Concord Energy states the proposed one-month flat prohibition on any transportation nominations for the third over-nomination infraction will unduly disadvantage New Shippers and is preferential to Existing Shippers not subject to the

over-nomination penalty. Concord Energy states the result will be the third-time offender will no longer qualify for Existing Shipper status. Instead it will take the offending shipper at least 13 months to rebuild its transportation history (i.e., the one-month prohibition, plus the unbroken 12-month eligibility requirement). The immediate result is that all other Existing Shippers, based on their allocation percentages, will (1) receive a 13-month capacity windfall in an aggregate amount equal to the third-time offender's prior capacity allocation; and (2) New Shippers will be substantially and adversely affected, even where no New Shippers engage in over-nominations. That is, after the one-month prohibition terminates, the now-demoted third-time offender will be competing for the limited capacity available for New Shipper nominations, substantially worsening the already grim capacity allocation prospects of the pre-existing New Shippers for the next 12 months.

Bridger's Answer

11. On May 23, 2011, Bridger filed an answer to Concord Energy's protest. Bridger asserts the Commission should reject the protest because Bridger's three-tiered system of penalties is a reasonable approach to resolving the serious problem of over-nominations and reasonably balances the competing interests of Bridger's shippers. In the alternative, if the protest is not rejected, Bridger requests the Commission temporarily suspend only the third-tier penalty until this issue is resolved, thereby permitting the unchallenged first- and second-tier penalties to become June 1, 2011, as proposed.

12. Bridger submits that shippers that violate the nominations procedure three times in a twelve-month period are pursuing behavior inimical to the reliable and efficient operation of the pipeline and to the interests of those shippers who comply with the pipeline's operating rules and deserve to have their historic usage patterns preserved. According to Bridger, it is neither unreasonable nor unjust to require a shipper that is a three-time violator to move to the back of the line to allow compliant, performing shippers to use the system's capacity. Thus, Bridger states its third-tier penalty is completely consistent with the purpose underlying the Commission's acceptance of historical-based prorationing.

13. Bridger contends that contrary to Concord's implications, New Shippers will benefit from the implementation of Bridger's third-tier penalty. Bridger states that in practice, any third-tier penalty applied to a New Shipper will create additional capacity allocations for other New Shippers. Thus, New Shippers that perform their obligations under the tariff will have access to the capacity lost by New Shippers that are three-time violators of Bridger's penalty provisions during a twelve month period. Further, Bridger submits that if a New Shipper is subject to no more than the first- and second- tier penalties during the applicable twelve-month period, then that New Shipper satisfies the historical requirements for becoming an Existing Shipper and will gain access to the Existing Shipper capacity allocation. By becoming an Existing Shipper, it will leave New Shipper status and the New Shipper capacity it formerly used will become available

to other New Shippers. Accordingly, Bridger asserts its tiered approach is beneficial to both Existing and New Shippers and provides all performing shippers with the opportunity to obtain additional access to capacity that they need and that they can realistically tender for transportation.

14. Bridger states that Concord Energy suggests that increasing the Monetary Penalty for third-time offenders would be an effective remedy. Bridger states while it is true that such a third-tier penalty would not affect the capacity allocations available to New and Existing Shippers, it would not be as effective a remedy because of shippers' valuations of their access to capacity given the constrained transportation infrastructure in the region. Thus, Bridger's second- and third-tier penalties are more likely to be effective deterrents to over-nominations than a penalty that is monetary. Bridger submits it is entirely possible that, given its assessment of capacity valuations in the Bakken Shale and other commercial factors, a shipper could still decide it will be economically feasible to disregard any financial penalty and to over-nominate, leaving Bridger in the continued position of having unused capacity on its system despite excessive nominations and prorationing. Moreover, Bridger argues that it would be difficult if not impossible for Bridger to set a financial penalty at a level that deters over-nominations effectively, since there is no way for Bridger to know what commercial incentives a particular shipper is facing during a given month. Bridger states that it has an interest in using all of the capacity on its system, not in assessing financial penalties that may or may not be effective depending on the operative commercial factors in effect during any given month. Bridger states that if a shipper, after violating Bridger's nomination requirements twice in a twelve-month period and being subjected to Monetary Penalties, still insists on over-nominating a third time, it is neither unreasonable nor unjust to insist that the shipper move to the back of the line to allow responsible shippers to fully utilize the system's capacity.

Discussion

15. In its filing, Bridger has proposed a three-tier penalty structure for over-nominations on its system in order to prevent shippers nominating barrels which they have no intention of delivering and to ensure that the capacity on all parts of its system can be used by shippers who have an intention to ship oil. Concord Energy generally supports the concept of the penalty structure and does not take issue with the first two tiers of the proposed penalty structure. Concord Energy's only issue is with one scenario under the third tier penalty where it claims that New Shippers would be at a disadvantage.

16. The Commission finds that Bridger's proposed penalty structure for over-nominations on its system is a reasonable response to an ongoing situation and designed to prevent certain shippers from gaming the system through over-nominations to gain valuable capacity. The pattern of over-nominations prevents shippers who have actual barrels to tender from shipping their oil. It also created a pattern of under-utilization on certain segments of the Bridger system because of the unrealistic nominations of shippers

who have no intention to tender barrels. While Concord Energy identifies one scenario where an Existing Shipper who receives the third tier penalty is put back in the New Shipper category thus competing for the limited capacity with other New Shippers, the Commission finds that such a scenario is not unduly discriminatory. The penalty structure simply reflects the differences between Existing Shippers and New Shippers under the approved prorationing policy and provides each category of shippers with appropriate incentives to comply with the nomination procedures. Further, Bridger's shippers are permitted to deviate from their Binding Nominations by 10 percent without any penalty being imposed. The proposed penalties are fair to all shippers who comply with the nomination procedures and will benefit New Shippers by allowing those who establish an historical pattern of shipments to become Existing Shippers while freeing up capacity for New Shippers when the third tier penalty is imposed on a non-complaint New Shipper. The Commission also finds the alternative third tier penalty suggested by Concord Energy may not eliminate the patterns of over-nominations because of the difficulty of setting a monetary penalty high enough to overcome the economic incentives of certain shippers to over-nominate. The Commission finds Bridger's penalty structure to be just and reasonable, and not unduly discriminatory and it is accepted to be effective June 1, 2011.

The Commission orders:

Bridger's FERC Tariff 26.1.0 is accepted to be effective June 1, 2011.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.