137 FERC ¶ 61,096
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

East Cheyenne Gas Storage, LLC — Docket No. RP11-2571-000

ORDER ACCEPTING COMPLIANCE FILING SUBJECT TO CONDITIONS AND DENYING WAIVER

(Issued October 31, 2011)

1. This order addresses East Cheyenne Gas Storage, LLC's (East Cheyenne) filing on September 20, 2011 containing: (1) an initial baseline tariff; (2) compliance to the Commission's Certificate orders;[1] (3) compliance with Order No. 587-U;[2] (4) compliance with the Gas Quality Policy Statement;[3] and (5) requests for waiver and extensions of time with respect to certain North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ) Standards. For the reasons discussed below, the Commission accepts East Cheyenne's East Cheyenne Gas Storage Original Volume No. 1,[4] effective the later of November 1, 2011 or the date on which the facilities are

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[1] *East Cheyenne Gas Storage, LLC*, 132 FERC ¶ 61,097 (2010) (August 2 Order); *East Cheyenne Gas Storage LLC*, 135 FERC ¶ 61,021 (2011) (April 12 Order, and collectively the Certificate Orders).

[2] *Standards for Business Practices for Interstate Natural Gas Pipelines,* Order No. 587-U, FERC Stats. & Regs. ¶ 31,307 (2010) (Order No. 587-U).

[3] *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006).

[4] East Cheyenne's Tariff Title is "East Cheyenne Gas Storage Original Volume No. 1." "Tariff Title" is the meta data element used to name the tariff data base.

placed into service, subject to conditions as discussed in the body of this order,[5] and denies the requested waiver of certain NAESB WGQ Version 1.9 Standards.

Background

2. East Cheyenne is a Delaware limited liability company authorized to do business in Colorado and is owned by Merchant Energy Partners, LLC (Merchant Energy), a subsidiary of Quantum NGS Holdings, LLC.[6] Neither East Cheyenne nor its upstream owners have any ownership interests in any natural gas storage facilities in the United States other than the facilities authorized in the August 2 Order.

3. In the August 2 Order, the Commission authorized East Cheyenne to construct and operate a new interstate natural gas storage facility in the nearly depleted West Peetz and Lewis Creek oil and gas fields located in Logan County, Colorado subject to conditions. Specifically, the August 2 Order directed East Cheyenne to (1) submit gas quality and interchangeability specifications for Commission review; (2) incorporate and comply with the most recent version of the NAESB WGQ Standards; and (3) submit actual tariff sheets at least 60 days prior to the date service commences.[7] The August 2 Order also authorized East Cheyenne to provide firm and interruptible storage and hub services on an open-access basis at market-based rates. East Cheyenne accepted the certificate of public convenience and necessity on August 3, 2010.

4. In the April 12 Order,[8] the Commission authorized East Cheyenne's requested amendments to its certificate authorizations to modify certain aspects of its certificated project which relate to the design and number of wells to be employed in the initial project development. Further, the Commission affirmed its finding that East Cheyenne may charge market-based rates for its services as previously determined and conditioned in the August 2 Order.

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[5] When East Cheyenne files in compliance with section 157.20(c)(2) of the Commission's regulations it should make this informational filing with the Commission through the eTariff portal using a Type of Filing Code 620. *See Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010). In addition, East Cheyenne is advised to include as part of the eFiling description, a reference to Docket Nos. CP10-34-000 and CP11-40-000, and the actual in-service date for this project.

[6] Quantum NGS Holdings, LLC is a joint venture between Larry Bickle and Quantum Energy Partners, a private equity firm.

[7] *See* August 2 Order, 132 FERC ¶ 61,097 at P 30-31.

[8] *See* April 12 Order, 135 FERC ¶ 61,021 at P 40.

5. On September 20, 2011, East Cheyenne filed tariff records to establish its FERC NGA Gas Tariff in compliance with the Certificate Orders. East Cheyenne also requests waiver of certain NAESB WGQ Version 1.9 Standards pertaining to the netting and trading of imbalances,[9] and a continuation of an extension of time to comply with certain NAESB WGQ Version 1.9 Electronic Data Interchange (EDI) and Electronic Delivery Mechanism (EDM) data sets.[10]

Notice

6. Public notice of the filing was issued on September 21, 2011, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations. No protests or adverse comments were filed.

Discussion

7. East Cheyenne's FERC NGA Gas Tariff East Cheyenne Gas Storage Original Volume No. 1 generally complies with Certificate Orders, the Gas Quality Policy Statement,[11] and Order No. 587-U,[12] and is accepted, effective the later of November 1, 2011, or the date on which the facilities are placed into service. This acceptance is conditioned upon East Cheyenne filing revised tariff records, within 15 days of the date of this order, as discussed below.

8. East Cheyenne is directed to file revised tariff records addressing the following: (1) Standard 1.3.2(v) is required to be included in its tariff and should not be incorporated

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[9] East Cheyenne requests waiver of the following NAESB WGQ Version 1.9 Standards: 2.2.2, 2.2.3, 2.3.30, and 2.3.40 through 2.3.50.

[10] East Cheyenne requests and extension of time of the following NAESB WGQ Version 1.9 data sets: 2.4.9, 2.4.10, 2.4.11, 2.4.12, 2.4.13, 2.4.14, 2.4.15, and 2.4.16.

[11] *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006).

[12] *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, FERC Stats. & Regs. ¶ 31,307 (2010) (Order No. 587-U). In Order No. 587-U, the Commission incorporated by reference into its regulations Version 1.9 of the NAESB WGQ's standards. The Version 1.9 standards include, among other things, new and modified standards governing Index-Based Capacity Release and Flexible Delivery and Receipt Points, as well as standards adopted in response to Order Nos. 698, 712, 717, and 682.

by reference;[13] and (2) NAESB WGQ Version 1.9 Standard 10.3.13 should not be incorporated by reference in NAESB, 22. North American Energy Standards Board, 0.0.0 since this standard is deleted and no longer required to be incorporated by reference or stated verbatim.

9. Further, East Cheyenne requested that the Commission continue the extension of time to implement EDI/EDM data sets that are not currently being used up to 90 days following the receipt of a bona fide request to make them available. East Cheyenne is granted an extension of time to implement the NAESB WGQ Version 1.9 EDI/EDM data sets,[14] until 90 days following the receipt of a request from a Part 284 customer and is limited to the NAESB WGQ Version 1.9 Standards promulgated by Order No. 587-U.[15]

Waivers of Netting and Trading of Imbalances

10. The Commission will deny East Cheyenne's request for waiver of NAESB WGQ Version 1.9 Standards relating to netting and trading of imbalances. East Cheyenne has requested a waiver of the imbalance netting and trading standards on the ground that its tariff does not contain imbalance penalties. Upon further consideration of East Cheyenne's tariff, we find that East Cheyenne has failed to justify a request for waiver of netting and trading of imbalances because it offers imbalance management services and its tariff does contain Operational Flow Order (OFO) penalties.

11. The Commission established the requirement to offer netting and trading of imbalances in Order No. 587-G.[16] The Commission stated that imbalance trading regulations were necessary to reduce the business and financial risks of imbalances and the associated penalties.[17] Permitting shippers to trade imbalances in the same operational area enables shippers to avoid imbalance charges without jeopardizing system reliability. The NAESB WGQ business practice standards, as incorporated into the

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[13] *See* Order No. 587-U, FERC Stats. & Regs. ¶ 31,307 at P 39.

[14] NAESB WGQ Version 1.9 data sets: 2.4.9, 2.4.10, 2.4.11, 2.4.12, 2.4.13, 2.4.14, 2.4.15, and 2.4.16.

[15] *See B-R Pipeline Company*, 128 FERC ¶ 61,126 at P 6 (2009) (each time the Commission adopts new versions of the Standards, pipelines must request a waiver of the new Standards).

[16] *See Standards for Business Practices for Interstate Natural Gas Pipelines,* Order No. 587-G, FERC Stats. & Regs. ¶ 31,062 (1998) (Order No. 587-G).

[17] *See* Order No. 587-G, FERC Stats. & Regs. ¶ 31,062 at 30,644.

Commission's regulations, required among other things, that pipelines: (1) define the largest possible areas on their systems in which imbalances have similar operational effect; (2) explain why imbalances crossing those lines are not sufficiently similar in operational effect; (3) notify shippers of their imbalances and post imbalances automatically without charging a fee; and (4) process, without charging a separate fee, imbalance trades submitted by shippers or third parties acting to facilitate imbalance trading.[18] The requirement to offer netting and trading of imbalances applies regardless of whether a pipeline's tariff includes imbalance penalties.[19]

12. The Commission's requirement that pipelines offer imbalance management services was promulgated in Order No. 637.[20] Order No. 637 provides that pipelines must provide shippers, to the extent operationally feasible, imbalance management services, such as park and loan service, swing on storage service, or imbalance netting and trading. The requirement that pipelines offer imbalance management services makes it easier for shippers to stay in balance and avoids causing operational problems. It reduces the need for pipelines to impose penalties. The Commission found that penalties are not required, but to the extent that a pipeline assesses penalties, they must be limited to only those transportation situations that are necessary and appropriate to protect against system reliability problems.[21] Order No. 637 specifically defined imbalance penalties as incentives designed to deter shippers from creating imbalances, or from overrunning contract entitlements including; "penalties for physical imbalances (differences between commodity input and output), scheduling imbalances (differences

[18] *Id.*, FERC Stats. & Regs. ¶ 31,062 at 30,678 through 30,679.

[19] The Commission clarified that it would address on an individual basis pipelines on which shippers cannot incur imbalances and are not subject to imbalance penalties. *See Standards for Business Practices for Interstate Natural Gas Pipelines*, Order Granting Clarification of Order No. 587-L, 92 FERC ¶ 61,266 (2000). But in this order the Commission indicated that the absence of imbalances was necessary, not simply the absence of imbalance penalties. For example, some pipelines may require shippers to make up imbalances on a physical basis (without penalty) and imbalance netting and trading would provide an efficient method of making up those imbalances.

[20] *See Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC Stats. & Regs. ¶ 31,091 (2000) (Order No. 637).

[21] *See* Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,314.

between actual and scheduled quantities), and noncompliance with OFO and other tariff provisions."[22]

13. Of importance here, pipelines are not permitted to implement imbalance management services until they implement imbalance netting and trading on their systems.[23] Pipelines should not expect shippers to purchase imbalance management services until the shippers can determine whether imbalance trading will be adequate for their needs. Thus, the implementation of imbalance management services must coincide with, or follow subsequent to, the implementation of imbalance netting and trading.

14. In Order No. 637-A,[24] the Commission clarified its requirement to offer imbalance management services. The Commission stated that if a pipeline's tariff does not include OFO provisions and imbalance penalty provisions, it need not provide imbalance management services or information on imbalance status.[25] Thus, to the extent a pipeline has no authority to issue OFOs or to assess penalties for either imbalances or OFO violations, a shipper has no need for imbalance management services. However, if a pipeline that does not have such provisions in its tariff decides to include OFO or imbalance penalty provisions in its tariff, then such pipeline must offer imbalance management services including the netting and trading of imbalances.[26]

15. In Order No. 637-A, the Commission also clarified what constitutes a "penalty." The Commission considers a penalty to be any charge imposed by the pipeline that is designed to deter shippers from engaging in certain conduct and reflects more than simply the costs incurred as a result of the conduct. Thus, the term "penalty"

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[22] *See* Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,307. OFOs generally restrict service or require shippers to take particular actions. For instance, an OFO can reduce or eliminate tolerances for imbalances or contract overruns; institute severe penalties; or restrict intra-day nominations, the use of secondary receipt and delivery points, or firm storage withdrawals.

[23] *See* Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,311.

[24] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 (2000) (Order No. 637-A).

[25] *See* Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 at 31,600.

[26] *See* Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 at 31,601.

encompasses more than imbalance penalties, and includes, for example, scheduling, OFO, and unauthorized overrun penalties.[27]

16. In its certificate application East Cheyenne requested waiver of section 284.12(b)(2) of the Commission's regulations because its tariff does not contain imbalance penalties. However, East Cheyenne proposes to offer imbalance management services[28] and assess OFO penalties.[29] In these circumstances, we find that East Cheyenne has not justified its request for waiver of imbalance netting and trading and we will require East Cheyenne to file revised tariff records within 15 days from the date of this order to incorporate NAESB WGQ Version 1.9 Standards 2.2.2, 2.2.3, 2.3.30, and 2.3.40 through 2.3.50. Additionally, East Cheyenne's filing should indentify and define the largest possible areas on its system in which imbalances have similar operational effect and explain why imbalances crossing those lines are not sufficiently similar in operational effect.[30]

Open Season

17. GT&C section 3.1(a) in tariff record Request for Service, 3. Request for Service, 0.0.0, appears to provide East Cheyenne the option to sell capacity created as a result of an expansion either through an open season or on a first-come, first served basis. The Commission has found that tariff provisions that provide a pipeline with the discretion to hold an open season for expansion capacity prior to the in-service date of the facilities are unjust and unreasonable and unduly discriminatory.[31] Therefore, the Commission

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[27] *See* Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 at 31,610.

[28] East Cheyenne proposes to offer firm, enhanced, and interruptible hub services, including parking services under Rate Schedules FP and IP, loan services under Rate Schedules FL, EILS, and IL, and wheeling services under Rate Schedules EIWS and IWS. Further, East Cheyenne proposes to offer additional services, firm hourly balancing service under Rate Schedule FHBS, and interruptible hourly balancing service under Rate Schedule IHBS. These services are typically utilized as forms of imbalance management services.

[29] *Priority, Interruption, 5. Priority, Interruption of Service & Operational Flow Order, 0.0.0.,* § 5.5(i).

[30] *See* Order No. 587-G, FERC Stats. & Regs. ¶ 31,062 at 30,678 through 30,679.

[31] *Pine Prairie Energy Center, LLC*, 135 FERC ¶ 61,168, at P 36 (2011), *order on reh'g and compliance*, 137 FERC ¶ 61,060 (2011) (stating that the Commission will apply its "open season policies to all new construction projects, including market-based rate storage projects, that create capacity").

accepts East Cheyenne's filing subject to the condition that it file revised tariff records within 15 days from the date of this order to remove from its tariff the discretionary language to hold an open season, as it pertains to capacity created as a result of an expansion.

<u>The Commission orders:</u>

(A) East Cheyenne's proposed tariff records listed in the Appendix are accepted, subjected to the conditions discussed in the body of this order, effective the later of November 1, 2011, or the date the facilities are placed into service.

(B) East Cheyenne's request for waiver of NAESB WGQ Version 1.9 Standards 2.2.2, 2.2.3, 2.3.30, and 2.3.40 through 2.3.50 is denied, as discussed in the body of this order.

(C) East Cheyenne must file revised tariff records within 15 days from the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.