

138 FERC ¶ 61,163
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Trailblazer Pipeline Company LLC

Docket No. RP11-2168-000
RP11-2168-001
RP11-2168-002
RP11-1939-002
RP11-1939-003
(not consolidated)

ORDER ON INITIAL DECISION, MOTION TO TERMINATE, AND PROPOSED
TARIFF RECORDS

(Issued March 9, 2012)

1. On December 15, 2011, Trailblazer Pipeline Company LLC (Trailblazer) filed a motion to terminate the proceedings in RP11-2168-000 related to Trailblazer's Expansion Fuel Adjustment Percentage (EFAP) rates, which had been set for hearing by the Commission's July 2011 order.¹ On December 21, 2011, the Presiding Administrative Law Judge issued an Initial Decision holding that the issues set for hearing were either resolved or moot and referring the motion to terminate to the Commission.² On December 29, 2011, Trailblazer filed proposed tariff records³ that revise its fuel rates consistent with its December 15, 2011 motion to terminate. The Commission grants the motion to terminate, affirms the initial decision, and accepts the proposed tariff records to be effective January 1, 2012, subject to the conditions discussed herein.

¹ *Trailblazer Pipeline Co. LLC*, 136 FERC ¶ 61,007 (2011) (July 2011 Order).

² *Trailblazer Pipeline Co. LLC*, 137 FERC ¶ 63,021, at P 24, 29-30 (2011) (Initial Decision).

³ Sheet No. 7, Expansion Fuel Reimbursement Percentage, 5.0.0 to Fifth Revised Volume No. 1, FERC NGA Gas Tariff.

I. Background

2. On June 3, 2011, Trailblazer filed revised tariff records to update its EFAP to 8.69 percent, which consisted of a current rate of 4.78 percent (to recover annual ongoing energy costs) and a deferred rate of 3.91 percent (to recover the balance in the deferred account, which tracks the difference between actual fuel collections and actual costs). In the July 2011 Order, the Commission accepted and suspended the proposed tariff records subject to refund and set for hearing issues related to the calculation of Trailblazer's EFAP rates.⁴

II. Filings by the Parties and the Initial Decision

A. Trailblazer's December 15 Motion to Terminate

3. In its December 15 Motion to Terminate filed both with the Commission and the presiding administrative law judge in the hearing, Trailblazer asserts that the issues set for hearing have been resolved or are otherwise moot. Trailblazer states that it has reached various settlements with each of the protesting parties that have since been filed with the Commission as part of negotiated rate filings to amend the shippers' negotiated rate agreements.⁵ Trailblazer states that neither Commission Trial Staff nor the other parties to the proceeding oppose the motion to terminate.

4. Trailblazer states that it agrees to forego recovery of the deferred account balance accumulated through May 6, 2012, upon termination of this proceeding,⁶ and that the deferred rate component will be set at 0.00 percent. Trailblazer states that as of May 7, 2012, Trailblazer will begin recording a balance to its deferred account. Trailblazer adds

⁴ In its June 3, 2011 Filing, Trailblazer proposed two other alternative tariff records with EFAP rates of 3.2 percent and 4.78 percent respectively. July 2011 Order, 136 FERC ¶ 61,007 at P 10-14. The July 1, 2011 Order rejected the two alternative case tariff records as inconsistent with Trailblazer's tariff. *Id.* P 21-25.

⁵ On November 9, 2011, Trailblazer states that it filed an amended negotiated rate agreement and the related settlement agreement with Indicated Shippers in Docket No. RP12-140-000, which was accepted by the Commission on December 6, 2011. Trailblazer states that it also filed on November 15, 2011, an amended negotiated rate agreement and the settlement agreement with Devon in Docket No. RP12-154-000. This filing was accepted by the Commission on December 13, 2011.

⁶ Trailblazer explains that several negotiated rate agreements related to its 2002 expansion expire on this date. These agreements involve a cap of 3.2 percent on fuel recoveries.

that for the one negotiated rate contract which will continue to cap fuel collections at 3.2 percent after May 7, 2012, Trailblazer will assume that it is collecting the entire EFAP for the purposes of determining the deferred account. Trailblazer states that this renders moot issues regarding the determination of the deferred account.

5. Trailblazer will continue to charge an EFAP of 4.78 percent, which consists of the “current component.” Trailblazer adds that to the extent any additional issues concerning revenue and cost data were raised regarding the current rate, those issues are best addressed in Trailblazer’s next annual tracker filing, which will be made on March 31, 2012, to be effective May 1, 2012.

6. Trailblazer also states that it will withdraw its requests for rehearing in Docket Nos. RP11-2168-000, *et al.*, and RP11-1939-000 *et al.*

B. December 21 Initial Decision

7. On December 21, 2011, in response to Trailblazer’s motion to terminate, the presiding administrative law judge in the hearing proceedings for this docket issued an Initial Decision. The Initial Decision concluded that the issues set for hearing are either resolved by Trailblazer’s concessions and or settlements. The Initial Decision ordered that the motion for termination be submitted for Commission approval.

C. Brief on Exceptions of Indicated Shippers

8. In their brief on exceptions, the Indicated Shippers⁷ express support for the termination of this proceeding. However, the Indicated Shippers filed exceptions only to ensure that the Commission limits its action: (i) to accepting Trailblazer’s proposal to eliminate the deferred account through May 6, 2012; and (ii) termination of this docket, which as a practical matter leaves intact Trailblazer’s current component of its EFAP. Indicated Shippers also state that issues relating to the 3.2 percent cap on fuel rates contained within some negotiated fuel rates have been resolved.

D. Trailblazer’s Brief Replying to Indicated Shippers

9. In its February 6, 2012 Reply, Trailblazer seeks to reassure the Indicated Shippers that its motion is only seeking termination of this proceeding and acceptance of its elimination of the deferred account balance through May 6, 2012, among other concessions described in its motion. Trailblazer confirms that its agreement with Indicated Shippers resolves this proceeding and nothing beyond. Trailblazer agrees with Indicated Shippers that the parties have not resolved issues relating to the recovery of any

⁷ Marathon Oil Company (Marathon), Western Gas Resources, Inc. (Western), and WPX Energy Marketing, LLC (WPX).

imbalance in the deferred account pertaining to periods after May 6, 2012. Trailblazer further stipulates that all parties will be free to raise any issues and take any position with respect to Trailblazer's future tracker filings and the calculation of the EFAP contained herein. Trailblazer states that it has discussed its reply with the Indicated Shippers and is authorized to state that it resolves the concerns raised in the Indicated Shippers' brief on exceptions.

E. Trailblazer's December 29, 2011 Filing

10. On December 29, 2011, pursuant to its motion to terminate, Trailblazer filed a revised tariff record to reduce the EFAP rate from 8.69 percent to 4.78 percent. Trailblazer seeks waiver to make the new rate effective January 1, 2012. Trailblazer explains that the new rate reflects the removal of the balance from the deferred account. Trailblazer states that if its Motion to Terminate is not granted as filed pursuant to the Commission order, Trailblazer reserves its right to withdraw the filing and revise the EFAP to 8.69 percent on a prospective basis.

11. Trailblazer again reiterates that it has reached settlement agreements with each of the parties that filed protests or comments. Trailblazer states that these settlement agreements have been filed with the Commission as part of negotiated rate filings to amend the shippers' negotiated rate agreements.⁸

12. Public notice of Trailblazer's December 29, 2011 Filing was issued on January 3, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2011)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), all timely filed motions to intervene and any unopposed 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 the proceeding

⁸ Trailblazer December 29, 2011, Application at p. 2 (citing *Trailblazer Pipeline Co. LLC*, 136 FERC ¶ 61,227 (2011) (accepting subject to conditions the amended negotiated rate filing between Trailblazer and J.M. Huber Corporation), *order on compliance, Trailblazer Pipeline Co. LLC*, Docket No. RP11-2510-001 (December 2, 2011); *Trailblazer Pipeline Co. LLC*, Docket No. RP11-2541-000 (September 29, 2011) (accepting amended negotiated rate filing between Trailblazer and Tenaska Marketing Ventures); *Trailblazer Pipeline Co. LLC*, Docket No. RP12-92-000 (November 29, 2011) (accepting negotiated rate and non-conforming provisions between Trailblazer and Shell Energy North America and Tenaska Marketing Ventures); *Trailblazer Pipeline Co. LLC*, Docket No. RP12-140-000 (December 6, 2011) (accepting amended negotiated rate filing between Trailblazer and Indicated Shippers); and *Trailblazer Pipeline Co. LLC*, Docket No. RP12-154-000 (December 13, 2011) (amended negotiated rate filing between Trailblazer and Devon Energy Production Company)).

or place additional burdens on existing parties. No party filed a protest or comments to Trailblazer's December 29, 2011 Filing.

III. Discussion

13. Based upon the representations of the parties and the findings of the Initial Decision, the Commission will terminate the hearing procedures and accept Trailblazer's proposed tariff record, subject to the conditions discussed herein. In its motion to terminate, Trailblazer has agreed to eliminate the amounts accumulated in its deferred account through May 6, 2012. Trailblazer also states that it will withdraw its requests for rehearing in Docket Nos. RP11-2168-000, *et al.*, and RP11-1939-000, *et al.* The Indicated Shippers support the termination of the hearing proceeding. Neither Commission Trial Staff nor any other party opposes Trailblazer's motion to terminate. The Initial Decision represents that all issues set for hearing have been resolved or are otherwise moot.⁹ The Indicated Shippers did not object to the holdings of the Initial Decision, but merely sought assurance that the Commission would limit its holdings to the issues directly raised by this proceeding and Trailblazer's agreement to limit recovery of its deferred account through May 6, 2012.

14. Thus, the Commission will terminate the hearing procedures and accept Trailblazer's proposed tariff record, subject to Trailblazer withdrawing within 7 days its rehearing requests in Docket Nos. RP11-2168-001, RP11-1939-002, and RP11-1939-003 consistent with the representations in its pleadings. In accepting Trailblazer's proposed EFAP rate of 4.78 percent, the Commission grants waiver of section 41 of Trailblazer's GT&C to the extent necessary in order to permit Trailblazer to eliminate amounts accumulated in the deferred account through May 6, 2012. The Commission also grants waiver of the 30-day notice requirement in section 4(d) of the Natural Gas Act and the Commission's regulations¹⁰ to allow the EFAP rate of 4.78 percent to be effective January 1, 2012.

The Commission orders:

The hearing procedures in Docket No. RP11-2168-000 are terminated and Trailblazer's proposed tariff record in footnote three is accepted, subject to Trailblazer

⁹ Initial Decision, 137 FERC ¶ 63,021 at P 24.

¹⁰ 18 C.F.R. § 154.207 (2011).

withdrawing within seven days its rehearing requests in Docket Nos. RP11-2168-001, RP11-1939-002, and RP11-1939-003.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.