

139 FERC ¶ 61,275  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Rockies Express Pipeline LLC

Docket No. RP12-765-000

ORDER ACCEPTING TARIFF RECORDS, REQUIRING ADDITIONAL TARIFF  
REVISIONS AND REQUIRING ADDITIONAL INFORMATION

(Issued June 29, 2012)

1. On May 31, 2012, Rockies Express Pipeline LLC (Rockies Express) in response to recommendations by Commission Staff in an audit filed revised tariff records to revise certain reservation charge crediting provisions, and modify the definitions of what constitutes a *force majeure* event.<sup>1</sup> As discussed below, we accept the proposed tariff records to be effective July 2, 2012, and, pursuant to section 5 of the Natural Gas Act (NGA), require Rockies Express to modify certain provisions in its tariff in order to comply with the Commission's reservation charge crediting policy. In addition, Rockies Express is directed to file additional information concerning its invocation of *force majeure* on its system over the last three years.

**I. Description of Rockies Express' Filing**

2. In conjunction with preliminary recommendations made in the Staff's Audit in Docket No. PA11-5-000, Rockies Express filed to revise certain reservation charge crediting provisions to conform to current Commission policy. Rockies Express previously removed a 98 percent safe harbor threshold before reservation charge crediting would apply, and in this filing it removed an inactive and residual reference to that threshold amount. In addition, Rockies Express has added language to more concisely describe the types of repairs, alterations and replacements that are included in the definition of a *force majeure* event.

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<sup>1</sup> Rockies Express Pipeline LLC, FERC NGA Gas Tariff, Tariffs; [Reservation Charge Credit, Section 7.14 - Reservation Charge Credits, 1.0.0](#); [FORCE MAJEURE, Section 21 - Force Majeure, 1.0.0](#).

## II. Public Notice and Interventions

3. Public notice of Rockies Express' filing was issued on June 1, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>2</sup> Pursuant to Rule 214,<sup>3</sup> 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. Indicated Shippers filed a protest in this proceeding.<sup>4</sup> Indicated Shippers state that in a number of ways Rockies Express' filing does not succeed in bringing Rockies Express' tariff into compliance with the Commission's current reservation charge crediting policy and requests that the Commission require Rockies Express to fully comply with the Commission's reservation charge crediting policy. Indicated Shippers' comments are addressed below.

## III. Discussion

### A. Renomination Requirement

4.. Indicated Shippers state Rockies Express' tariff does not comply with the Commission's policy related to nominations in the Timely and Evening cycles,<sup>5</sup> first established in *Wyoming Interstate Company, Ltd. (WIC)*.<sup>6</sup> Indicated Shippers state that in *WIC*, the Commission found that when a shipper whose nomination is curtailed in the Timely cycle by WIC and then nominates on another pipeline to flow the WIC-curtailed volumes, it would be unreasonable for WIC to require the shipper to re-submit its

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<sup>2</sup> 18 C.F.R. § 154.210 (2011).

<sup>3</sup> 18 C.F.R. § 385.214 (2011).

<sup>4</sup> Indicated Shippers for the purposes of this proceeding are BP America Production Company, BP Energy Company, Chevron U.S.A. Inc., ConocoPhillips Company, Cross Timbers Energy Services, Inc., and ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, and Shell Energy North America (US), L.P.

<sup>5</sup> The North American Energy Standards Board (NAESB) standards currently provide shippers four nomination opportunities: the Timely Nomination Cycle (11:30 a.m. Central Clock Time (CCT) the day prior to gas flow); the Evening Nomination Cycle (6 p.m. CCT the day before gas flow); Intra-Day Cycle 1 (10 a.m. CCT the day of gas flow); and Intra-Day Cycle 2 (5 p.m. CCT the day of gas flow).

<sup>6</sup> 130 FERC ¶ 61,091, at P 17 (2010).

nomination to WIC in the Evening Cycle in order to claim a reservation credit. In addition, Indicated Shippers state the Commission found in *WIC* that the pipeline may, as a means of preventing gaming, require a shipper that does not submit a nomination on another pipeline after it is curtailed in the Timely Cycle to re-submit its nomination through the Evening Nomination Cycle in order to receive reservation charge credits. The Commission added that the shipper need not nominate beyond those cycles.

5. Indicated Shippers state that in practice for shippers to receive reservation charge credits, Rockies Express requires shippers to nominate and fail to receive service in all of the nomination cycles for a gas day. Indicated Shippers claim this has led to many situations where shippers have not received reservation charge credits because Rockies Express could schedule some, or all, of a shipper's firm requirements in the two Intraday nomination cycles (Cycles 3 and 4), even though shippers have found other alternatives to their markets. Therefore, Indicated Shippers request that the Commission require Rockies Express to implement tariff language that provides a shipper only needs to nominate in the Timely and Evening nomination cycles to receive reservation credits unless the shipper nominates service on an alternate pipeline, then the shipper would not need to resubmit a nomination in the Evening Cycle on Rockies Express.

6. While the Commission found in *WIC* that it is unreasonable to require a shipper that has been curtailed by WIC and then moved its supply to another pipeline to renominate in the Evening Cycle in order to claim a reservation charge credit, that decision was in response to WIC's proposal to require a shipper to resubmit a nomination in the Evening Cycle in order to receive the credit even if the shipper moved to an alternate pipeline. Rockies Express' tariff, in contrast, has no such requirement nor does it require shippers to nominate in all of the nomination cycles in order to receive a reservation charge credit. Section 7.14C states "in the event Transporter fails to confirm Nominations on any Day under a firm contract, then the applicable Reservation Charges shall be eliminated for the quantity of Gas nominated but not scheduled for delivery by Transporter...." Therefore, Indicated Shippers' request that the Commission direct Rockies Express to implement tariff language that provides a shipper only need to nominate in the Timely and Evening nomination cycles to receive reservation credits is denied.<sup>7</sup> Moreover, to the extent Rockies Express interprets its tariff as requiring a shipper to submit additional nominations in the Evening and Intraday nomination cycles in order to receive a reservation charge credit, such interpretation would conflict with Commission policy as stated in *WIC*. Therefore, to the extent Rockies Express interprets its tariff to only issue reservation charge credits after nominations in the Evening and Intraday Cycles, Rockies Express must revise its tariff to comply with the Commission's policy as set forth in *WIC*.

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<sup>7</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,050, at PP 103-04 (2012) (*Tennessee*).

**B. Requirement That Nominated Amounts Be Confirmed**

7. Indicated Shippers state that General Terms and Conditions (GT&C), Sections 7.14C and 7.14D, restrict reservation charge credits to situations where Rockies Express either “fails to confirm” (Section 7.14C) or “fails to schedule and confirm” volumes (Section 7.14D). Indicated Shippers state these provisions are inconsistent with the Commission’s reservation charge crediting policy, which requires reservation charge credits to be based upon the amount a shipper nominates, but the pipeline is unable to schedule or deliver. Therefore, Indicated Shippers request that the Commission require Rockies Express to revise its tariff to provide reservation charge credits for nominations it cannot schedule or deliver, in accordance with Commission policy.

8. While the inclusion of the term “confirmed” in these sections appears unnecessary, the inclusion does not cause the sections to be contrary to Commission policy because they provide that credits are required “for the quantity of Gas nominated but not scheduled for delivery by Transporter...” (Section 7.14C). Rockies Express’ tariff provides for an exemption for nominations not scheduled or confirmed that are the result of the conduct of the shipper or the upstream or downstream operator of the facilities at the Receipt or Delivery Point (Section 7.14D(i)) but provides for reservation charge credits for any other volumes nominated. These provisions comply with Commission policy in that they provide shippers reservation charge credits for volumes nominated but not delivered through the fault of the pipeline. Therefore, no further changes are required.

**C. Conditions on Upstream or Downstream Pipelines**

9. Indicated Shippers state that Section 7.14D(i) provides that Rockies Express is not obligated to provide reservation charge credits if the failure to provide service “is the result of the conduct of Shipper or the upstream or downstream operator of the facilities at the Receipt or Delivery point respectively.” Indicated Shippers argue this provision does not comply with Commission policy because it could absolve Rockies Express of liability for reservation charge credits if the pipeline also was unable to provide service. Indicated Shippers request the Commission require Rockies Express to revise Section 7.14D(i) to state that Rockies Express’ failure to schedule or deliver “is **solely** the result of the conduct of Shipper or the upstream or downstream operator of the facilities....”

10. The Commission finds Rockies Express’ Section 7.14D(i), providing that the pipeline is not required to issue reservation charge credits when its failure to schedule and confirm nominations is the result of the conduct of the shipper or the upstream or downstream operator of the facilities at the Receipt or Delivery Point, should be clarified. If Rockies Express cannot schedule or provide service for a shipper on its system solely because the upstream or downstream operator is unable to deliver the gas to Rockies

Express, it is reasonable for Rockies Express not to provide a reservation charge credit to the shipper because Rockies Express was ready to fulfill its obligation under its contract with the shipper to provide primary firm service to the shipper. Thus, any exemption from crediting for nominated amounts not “confirmed” must be limited to events not within a pipeline’s control, *i.e.*, due to the conduct of the shipper or the upstream or downstream facilities operator.<sup>8</sup>

11. However, a *force majeure* event could affect the facilities of both Rockies Express and an upstream or downstream operator simultaneously. In such a situation, where the event was not solely caused by the upstream or downstream operator, the general policy regarding partial *force majeure* credits should apply. When *force majeure* events prevent pipelines from providing service, the Commission requires those pipelines to provide partial reservation charge credits to shippers in order to share the risk of an event for which neither party is responsible.<sup>9</sup>

12. We agree with Indicated Shippers that Section 7.14D(i) could be interpreted to deny shippers partial reservation credits when *force majeure* events occur on more than one system that prevent the pipelines from providing service. The Commission directs Rockies Express to narrow the scope of Section 7.14D(i) by making clear that Rockies Express is exempted from issuing reservation charge credits only when Rockies Express’ failure to schedule or deliver gas was due solely to the conduct of the shipper or operating conditions on upstream or downstream facilities.<sup>10</sup>

#### **D. Liability**

13. Indicated Shippers states that Section 7.14A states “Transporter shall have the right, without liability to Shipper, to interrupt or curtail service....” Indicated Shippers contend this provision is inconsistent with the remainder of Section 7.14, which clearly establishes that Rockies Express has liability in the event it fails to deliver the quantities a firm shipper nominates and requests the Commission require Rockies Express to revise its tariff to eliminate the reference to “without liability to Shipper” to eliminate any potential ambiguity or undermine that liability.

14. The Commission agrees with Indicated Shippers that Rockies Express’ limitation of liability in Section 7.14A is inconsistent with other portions of Section 7.14, which establish when Rockies Express is required to provide reservation charge credits to

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<sup>8</sup> See *Tennessee Gas Pipeline Co.*, 139 FERC ¶ 61,050 at PP 100-101.

<sup>9</sup> See *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,088 (1996). See also *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819 (D.C. Cir. 2007).

<sup>10</sup> *Paiute Pipeline Co.*, 139 FERC ¶ 61,089, at PP 30-32 (2012).

shippers when the shipper's nominated amounts are not delivered. Therefore, Rockies Express is directed to revise its tariff to eliminate the phrase "without liability to Shipper."

**E. Use of No-Profit Method for Reservation Charge Crediting During Force Majeure Curtailments**

15. *Force majeure* events are "events that are not only uncontrollable, but also unexpected."<sup>11</sup> In *force majeure* events, the Commission requires the pipeline and shippers to share the risk because neither is at fault. To accomplish this result, the Commission allows a pipeline to choose between the Safe Harbor method (full reservation charge credits are paid to shippers when the *force majeure* extends beyond 10 days) or the No-Profit method (pipeline pays reservation charge credits on the first day of the *force majeure* event equal to the return and taxes portion of the reservation charge) for calculating reservation charge credits during *force majeure* events. Rockies Express' tariff currently provides for the Safe Harbor method for calculating reservation charge credits for curtailments during *force majeure* events. Indicated Shippers state this method of partial reservation charge crediting is not just and reasonable given the significant number of *force majeure* events that Rockies Express has called. Indicated Shippers maintain that since the beginning of 2010, Rockies Express has called at least 13 *force majeure* events on its system and except for one instance these *force majeure* events have resulted in capacity curtailments of less than 10 days. Thus, shippers have been required to pay full reservation charges during these curtailments when they received no service. Therefore, Indicated Shippers request that the Commission require Rockies Express to implement the No-Profit method for determining reservation charge credits during *force majeure* events in order to ensure that Rockies Express and its shippers truly share the burden of these events in a fair manner.

16. The Commission is concerned about the large number of *force majeure* events on Rockies Express' system and the contention that Rockies Express is utilizing the Safe Harbor method to avoid paying reservation charge credits. However, at this point the Commission does not have sufficient information to make a further determination on this issue. Therefore, within 30 days of the date of this order Rockies Express is directed to provide the Commission with further information detailing the number of *force majeure* events on its system since 2010, the reason for invocation of *force majeure*, the length of the *force majeure* event, the impact on the pipeline's capacity, and whether any reservation charge credits were provided to shippers.

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<sup>11</sup> Opinion No. 406, 76 FERC at 61,088.

**F. Definition of Force Majeure**

17. Rockies Express proposes to revise Section 21.2A to insert “unscheduled or emergency” before “repairs, alterations or replacements” in its definition of *force majeure*. Indicated Shippers state this change may be inconsistent with Commission policy if Rockies Express intends for “unscheduled or emergency” to modify only “repairs” since this would allow Rockies Express to declare a *force majeure* for scheduled and non-emergency alterations or replacements which could be more properly classified as routine maintenance. Indicated Shippers request the Commission affirm that “unscheduled or emergency” modifies “repairs, alterations or replacements” in Section 21.2A. Because repairs, alterations and replacements are similar types of action the Commission interprets Rockies Express’ insertion of “unscheduled or emergency” to modify each of “repairs, alterations or replacement” in Rockies Express’ tariff, and will not require any further revision.

**G. Scheduled Maintenance to Comply with a Governmental Order**

18. Indicated Shippers request the Commission affirm that scheduled maintenance, alterations, and/or repairs done in order to comply with a governmental order are not *force majeure* events. Indicated Shippers state that Rockies Express has previously declared a *force majeure* event for the installation of additional noise controls to reduce the noise levels at a compressor station below the level set forth in its certificate order. Indicated Shippers state Rockies Express should not have declared this as a *force majeure* event because it was simply routine maintenance. Indicated Shippers argue this request is necessary to ensure that Rockies Express does not abuse the *force majeure*/reservation charge crediting process.

19. Recently in *Tennessee*,<sup>12</sup> the Commission addressed whether a pipeline was required to grant reservation charge credits where the service interruption was the result of “corrective action orders or other imposition of government agencies.” The Commission stated that the answer depended on whether the required action was within the control of the pipeline. Thus, where the governmental directive required the pipeline to take certain action so the curtailment was “not reasonably within the control of the pipeline,” it could be considered a *force majeure* event.<sup>13</sup> For example, the Commission held that a government order requiring a pipeline to be relocated for highway construction could be treated as a *force majeure* event.<sup>14</sup> However, consistent with

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<sup>12</sup> 139 FERC ¶ 61,050.

<sup>13</sup> *Id.* P 80.

<sup>14</sup> See *Florida Gas Transmission Co.*, 107 FERC ¶ 61,074, at P 32 (2004) (*Florida Gas*); *Tarpon Whitetail Gas Storage, LLC*, 125 FERC ¶ 61,050, at P 5 (2008)

Commission policy the Commission held that routine testing maintenance and repairs events are not *force majeure* events because such actions “to ensure safe and reliable operations of a pipeline are within the pipeline’s control including when performed in compliance with governmental orders and regulations.”<sup>15</sup> Thus, the pipeline could not include under its definition of *force majeure* circumstances within its control. Accordingly, Rockies Express must revise its tariff consistent with that ruling.

The Commission orders:

(A) The proposed tariff records are accepted effective July 2, 2012, subject to the conditions of this order.

(B) Within 30 days Rockies Express is directed to revise its tariff, as discussed in the body of this order.

(C) Within 30 days Rockies Express is directed to provide the Commission with additional information on *force majeure* events on its system, as discussed in the body of this order.

By the Commission. Commissioner Clark is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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(*Tarpon Whitetail*); *Texas Eastern Transmission, LP*, 138 FERC ¶ 61,126, at P 12 (2012) (*Texas Eastern*).

<sup>15</sup> *Tennessee*, 139 FERC ¶ 61,050 at P 82.