

142 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rockies Express Pipeline LLC

Docket No. RP13-610-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS SUBJECT TO
REFUND AND THE OUTCOME OF HEARING PROCEDURES

(Issued March 28, 2013)

1. On February 28, 2013, Rockies Express Pipeline LLC (REX) filed tariff records¹ to revise the Fuel, Loss and Unaccounted-for-Gas (FL&U) reimbursement percentages applicable to transportation service on REX's system. As discussed herein, the Commission accepts and suspends the proposed tariff records, to be effective April 1, 2013, subject to refund and the outcome of the ongoing hearing procedures in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000.

Background

2. Pursuant to section 38 of REX's General Terms and Conditions (GT&C), the instant filing contains REX's annual FL&U percentage reconciliation and adjustment for the prior year (concluding December 31, 2012) to be effective April 1, 2013. REX's filing in this proceeding follows filings to revise FL&U rates in Docket Nos. RP11-1844-000 (March 2011 filing) and RP12-399-000 (February 2012 filing). The Commission accepted and suspended these FL&U filings subject to refund,² and, in March 2012, set both the March 2011 filing and the February 2012 filing FL&U rates for hearing.³ In addition to setting the calculation of the fuel rates for hearing, the Commission also set for hearing whether REX's fuel mechanism should be changed prospectively.⁴ This

¹ Rockies Express Pipeline LLC, FERC NGA Gas Tariff, Third Revised Volume No. 1, Tariffs; CURRENTLY EFFECTIVE RATES, Currently Effective Rates - ITS/FTS FL&U, 5.0.0; Incremental Fac. Rates, Cheyenne Booster Facilities, 4.0.0.

² *Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248 (2011); *Rockies Express Pipeline LLC*, 138 FERC ¶ 61,241, at P 53 (2012) (Hearing Order).

³ Hearing Order, 138 FERC ¶ 61,241 at P 53.

⁴ *Id.* P 54.

hearing proceeding is ongoing. Additionally, in September 2012, REX made an interim FL&U filing which raised similar issues to those subject to the hearing proceedings in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000, and, therefore, the Commission accepted and suspended the proposed tariff records subject to refund and to the outcome of the ongoing hearing procedures.⁵

Protest and Comments

3. Public notice of the subject filing was issued on March 1, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motion 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 or place additional burdens on existing parties. On March 12, 2013, Ultra Resources, Inc. ("Ultra"), Indicated Shippers⁶ and BP/WPX⁷ filed protests.

4. On March 18, 2013, REX filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept REX's answer and will, therefore, reject it.

5. Indicated Shippers and BP/WPX state that REX's February 28, 2013 filing raises issues that the Commission has already set for hearing in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000.⁸ Ultra urges the rejection of the filing based upon the evidence presented at hearing. In the alternative, Ultra agrees with the Indicated Shippers' and BP/WPX's position that the Commission should accept the proposed tariff records subject to refund and the outcome of the ongoing hearing proceeding in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000.

Commission Determination

6. Based upon a review of the filing, the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable,

⁵ *Rockies Express Pipeline LLC*, 141 FERC ¶ 61,076 (2012).

⁶ ConocoPhillips Company, ExxonMobil Gas & Power Marketing Company, and Shell Energy North America (US), L.P., and SWEPI LP (collectively, "Indicated Shippers").

⁷ BP America Production Company, BP Energy Company, and WPX Energy Marketing, LLC (collectively, "BP/WPX").

⁸ Indicated Shippers and BP/WPX Protests at 1.

unduly discriminatory, or otherwise unlawful. REX's proposed tariff records raise issues of material fact involving the application of REX's existing fuel mechanism similar to the issues that are currently being addressed at hearing in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000. As the same issues raised by the subject filing are being litigated in the ongoing hearing on the prior REX fuel filings, the rates here must ultimately be adjusted to reflect the outcome of the ongoing hearing. Accordingly, the Commission will accept and suspend the subject tariff records and permit them to become effective April 1, 2013, subject to refund, and the outcome of the ongoing hearing on REX's fuel tracker mechanism and FL&U filings.

7. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.⁹ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.¹⁰ Such circumstances exist here where REX's filing is made pursuant to an existing tariff mechanism. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on April 1, 2013, subject to the conditions set forth in the body of this order and in the ordering paragraph below.

The Commission orders:

The tariff sheets listed in footnote one are accepted and suspended to be effective April 1, 2013, subject to refund and the outcome of the ongoing hearing proceeding in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁰ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).