

146 FERC ¶ 61,128  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Paiute Pipeline Company

Docket No. RP13-1140-000

ORDER ACCEPTING TARIFF RECORDS

(Issued February 25, 2014)

1. On July 31, 2013, Paiute Pipeline Company (Paiute) filed tariff records to reflect 31 non-conforming Rate Schedule FT-1 transportation service agreements (TSAs) for inclusion in its FERC Gas Tariff. On August 29, 2013, the Commission accepted Paiute's proposed tariff records, effective July 31, 2013, subject to further review and order of the Commission.<sup>1</sup> Paiute's July 31, 2013 filing that included the non-conforming TSAs was unopposed.

2. The Commission's review of the subject TSAs is now complete. Based on this review, the Commission accepts Paiute's revised tariff records, effective July 31, 2013.

**Details of Filing**

3. Paiute states that following the Commission's order in *Southern Star Central Gas Pipeline, Inc.*,<sup>2</sup> it initiated a review of its currently-effective Part 284 firm TSAs to ensure compliance with Commission regulations and policy. As a result of that review, Paiute states that it identified 31 Rate Schedule FT-1 TSAs that differ from the *pro forma* transportation service agreements in its currently-effective tariff. Paiute asserts that while the non-conforming provisions may deviate from the applicable *pro forma* transportation service agreements in its tariff, the non-conforming provisions should be accepted as permissible deviations because they do not present a risk of undue discrimination.

4. Paiute maintains that most of the deviations included in the 31 TSAs involve format changes, minor editorial revisions, textual deviations, and other non-substantive

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<sup>1</sup> *Paiute Pipeline Co.*, 144 FERC ¶ 61,165 (2013).

<sup>2</sup> 125 FERC ¶ 61,082 (2008).

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revisions. Additionally, Paiute explains that some TSAs involve older, longstanding agreements that Paiute executed in connection with the certificated expansion of its facilities. Paiute states that the shippers that are parties to the subject TSAs have relied on these agreements, which Paiute submitted to the Commission as part of its certificate applications. Paiute affirms that no shipper has been harmed by these older certificated agreements.

5. Paiute includes with its filing various appendices summarizing the potentially non-conforming elements in each TSA. For each non-conforming provision, Paiute explains how the provision deviates from the applicable *pro forma* transportation service agreement, the effect of the provision on the rights of the parties, and why each deviation, to the extent it is a deviation at all, does not change the conditions under which Paiute provides service.

### **Discussion**

6. Section 154.1(d) of the Commission's regulations requires pipelines to file with the Commission any contract that materially deviates from the pipeline's form of service agreement.<sup>3</sup> In *Columbia Gas Transmission Corp.*, the Commission explained that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (2) affects the substantive rights of the parties.<sup>4</sup> The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than the service offered to other shippers under the pipeline's generally-applicable tariff or that affect the quality of service received by others.<sup>5</sup> However, not all material deviations are impermissible. As the Commission explained in *Columbia Gas*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions that the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (2) provisions that the Commission can permit without a substantial risk of undue discrimination.<sup>6</sup>

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<sup>3</sup> 18 C.F.R. § 154.1(d) (2013).

<sup>4</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia Gas*). See also *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,022 (2001) (*ANR*).

<sup>5</sup> *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

<sup>6</sup> *Columbia Gas*, 97 FERC ¶ 61,221 at 62,003; *ANR*, 97 FERC ¶ 61,224 at 62,024.

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7. The Commission has completed its review of the 31 currently-effective non-conforming and potentially non-conforming TSAs filed by Paiute. The Commission finds that there are several non-conforming TSAs containing material deviations from Paiute's respective *pro forma* service agreements. The first set of deviations included in the 31 TSAs involves format changes, minor editorial revisions, textual deviations, and other non-substantive revisions. These types of material deviations are permissible because they are either allowed under Paiute's generally-applicable tariff or are administrative or non-substantive in nature and pose no threat of undue discrimination among shippers.

8. Further, the Commission finds that some TSAs involve older, longstanding agreements that Paiute executed in connection with the certificated expansion of its facilities.<sup>7</sup> The TSAs at issue here all contain non-conforming language that was appropriate in the context of the certificate process. Paiute emphasizes that the shippers that are parties to these TSAs have relied on them for a number of years, and Paiute affirms that no shipper has been harmed by these older certificated TSAs and that they do not create the potential for undue discrimination.

9. Moreover, several of the TSAs identified by Paiute as potentially non-conforming appear to have contained no material deviations at the time they were executed. However, Paiute submitted these TSAs because one or more of the tariff records comprising the *pro forma* service agreement changed between the date of execution of the TSA and the date of the last amendment to that TSA. The Commission has stated that if a contract contains a material deviation from the currently-effective version of the *pro forma* service agreement, but the contract conforms to the *pro forma* service agreement in effect at the time the contract became effective and contains a *Memphis* clause,<sup>8</sup> the pipeline is not required to file the contract.<sup>9</sup>

10. Because *pro forma* agreements contain such clauses, the general rule is that existing agreements that conformed to the *pro forma* agreements when they were

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<sup>7</sup> These include, among others, Agreement Nos. F2, F3, F6, F7, F8, F9, F10, F12 (as amended by F12-A), and F13 (as amended by F13-A).

<sup>8</sup> A *Memphis* clause allows a pipeline to reserve the right to make Natural Gas Act (NGA) section 4 filings to propose changes in the rates and terms and conditions of service in settlements and contracts. *See United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958); *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678-A, *order on clarification and reh'g*, 117 FERC ¶ 61,190, at P 7 (2006).

<sup>9</sup> *Texas Gas Transmission, LLC*, 130 FERC ¶ 61,114, at P 16 (2010).

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executed should automatically incorporate subsequent changes to the terms and conditions in the tariff, including corresponding changes implemented through a revision to the *pro forma* agreement. Therefore, changes to a *pro forma* agreement that contains a *Memphis* clause need not cause existing agreements that conformed to earlier versions of the *pro forma* agreement to materially deviate from the new *pro forma* agreement. It follows that such existing agreements need not be filed with the Commission as non-conforming if the pipeline reasonably interprets the *Memphis* clause in its existing service agreements as extending to its current shippers the same terms and conditions of service contained in the new *pro forma* agreements. Therefore, changes to Paiute's *pro forma* service agreements do not render existing contracts that conform to earlier versions of the *pro forma* service agreements to be deemed to contain material deviations. When service agreements contain a *Memphis* clause, agreements based on a *pro forma* service agreement do not become unjust and unreasonable simply because the *pro forma* agreement is superseded or modified.

11. Finally, the Commission finds that several of the TSAs include non-conforming language that did not conform to prior tariff sheets and was not related to prior Paiute certificate applications.<sup>10</sup> However, Paiute affirms that these miscellaneous provisions and language do not create substantive rights or the potential for undue discrimination. Such provisions may include project or transaction-specific language in the term provisions. For example, the F31 TSA contains an additional provision in its "Article IV – Term of Agreement" which states "provided, however, that Paiute may terminate this Agreement by giving prompt written notice to Shipper if Paiute has not acquired the LNG Plant from Uzal, LLC by February 1, 2005." Paiute affirms that this non-conforming language reflects a pre-condition to the TSA that was unique to the shippers that are parties to those TSAs.

### **Waivers**

12. With regard to each TSA filed, Paiute requests a waiver of the requirement in sections 154.1(d), 154.112(b) and 154.207 of the Commission's regulations that non-conforming agreements must be filed with the Commission no less than 30 days before they are proposed to take effect or. In the alternative, Paiute seeks a determination that such TSAs are not non-conforming.

### **The Commission orders:**

(A) The Commission accepts Paiute's non-conforming agreements, effective as of July 31, 2013.

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<sup>10</sup> These include Agreement Nos. F31, F32, F33, F34, F35.

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(B) For good cause shown, the Commission grants all waivers necessary to permit the TSAS filed by Paiute to remain in effect for their respective terms and under their current terms and conditions.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.