146 FERC ¶ 61,161
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Encana Marketing (USA) Inc.

v. Docket No. RP14-169-000

Rockies Express Pipeline LLC

ORDER ON COMPLAINT

(Issued March 7, 2014)

1. On November 15, 2013, Encana Marketing (USA) Inc. (Encana) filed a complaint against Rockies Express Pipeline LLC (Rockies) alleging that Rockies unlawfully denied Encana's request to reallocate the primary delivery point capacity applicable to Contract No. 553078, Encana's Rate Schedule FTS service agreement. As discussed below, the Commission denies Encana's complaint.

I. <u>Background</u>

A. <u>Rockies' System</u>

2. Rockies is a 1,679-mile-long natural gas pipeline extending from Colorado and Wyoming to Clarington, Ohio. Rockies' system provides total capacity of 1.8 billion cubic feet (Bcf) per day and includes three rate zones (Zones 1, 2, and 3). Rockies is currently constructing the Seneca Lateral pursuant to Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA).[1] The Seneca Lateral will consist of approximately 14 miles of pipeline which will enable Rockies to transport quantities of 250,000 Dth/day from the

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[1] Rockies filed an Advanced Notice of Construction with the Commission on August 26, 2013 in Docket No. CP13-539-000. *See also* Rockies December 20, 2013 Answer, Exh. REX-4.

Seneca Processing Plant to available delivery points in REX's Zone 3 that are west of Noble County, Ohio.[2]

B. Requests for Delivery Point Capacity at Midwestern Edgar and ANR Shelby

3. At the opening of business on September 26, 2013, Rockies had available long-term delivery capacity of 383,000 Dth/day at Midwestern Edgar and 227,000 Dth/day at ANR Shelby.[3] On that day, Encana requested to re-allocate 60,000 Dth/day of delivery point capacity from the delivery point at Texas Leb[4] to the Midwestern Edgar delivery point and 50,000 Dth/day to the ANR Shelby delivery point to be effective April 1, 2014.[5] On October 2, 2013, Rockies rejected the requested change. Rockies explained that Encana's request was for service commencing 187 days into the future, which Rockies stated is inconsistent with the Commission's policy requiring delivery point changes to be effective within 90 days.[6]

4. Within two weeks of Encana's denied request, two other shippers also requested to shift primary delivery point capacity to Midwestern Edgar and ANR Shelby effective on January 1, 2014. Rockies explains that it accepted these requests because capacity was available and the requests conformed with the aforementioned 90-day rule.[7] After these

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[2] Rockies December 20, 2013 Answer, Exh. REX-4.

[3] The Midwestern Edgar and ANR Shelby delivery points are all in Rockies' eastern most zone, Zone 3. The Midwestern Edgar delivery point is in Edgar County, Illinois, and serves as an interconnection with the Midwestern Gas Transmission Company pipeline. The ANR Shelby delivery point is in Shelby County, Indiana, and serves as an interconnection with the ANR Pipeline.

[4] The Texas Leb delivery point is in Lebanon, Ohio, and in Zone 3 of Rockies' system. It serves as an interconnection with the Texas Gas Pipeline.

[5] Specifically, Encana sought to (1) decrease the delivery point capacity currently allocated to Texas Leb from 110,000 Dth/day to 0 Dth/day; (2) increase the delivery point capacity currently allocated to Midwestern Edgar from 94,000 Dth/day to 154,000 Dth/day; and (3) increase the delivery point capacity currently allocated to ANR Shelby from 208,000 Dth/day to 258,000 Dth/day, effective April 1, 2014.

[6] Rockies December 20, 2013 Answer at 4.

[7] On September 26, 2013, Ultra Resources, Inc. (Ultra) requested to reallocate primary point delivery capacity of 25,000 Dth/day to Midwestern Edgar and

(continued…)

requests were granted Rockies had available 323,000 Dth of long-term delivery point capacity at Midwestern Edgar and 134,500 Dth/day at ANR Shelby.

5. Later, on October 23, 2013, Rockies signed a new Rate Schedule BHS[8] service agreement with an unnamed "Cornerstone Shipper" for 200,000 Dth/day primary delivery point service at Midwestern Edgar "beginning the later of December 1, 2013, or the in-service date of the Seneca Lateral facilities."[9] Although Rockies states that it initially expected the Seneca Lateral to be in-service in early December, the in-service date has been postponed to March 1, 2014, due to weather and permitting delays. At the close of business on October 23, 2013, available long-term delivery capacity was 123,000 Dth/day at Midwestern Edgar and 134,000 Dth/day at ANR Shelby.

6. After the October 23, 2013 agreement with the Cornerstone Shipper, Rockies began rejecting requests by other shippers to shift primary point capacity to the Midwestern Edgar and ANR Shelby delivery points, if the requests exceeded available long-term capacity at those points. On October 29, 2013, ConocoPhillips Company (ConocoPhillips) requested to shift 208,000 Dth/day of capacity to the Midwestern Edgar delivery point and 162,000 Dth/day to the ANR Shelby delivery point.[10] ConocoPhillips requested to make the switch effective November 1, 2013. Rockies denied this request, stating that ConocoPhillips' request exceeded the available capacity.[11] On October 31, 2013 ConocoPhillips submitted a revised request which reallocated fewer volumes

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75,000 Dth/day to ANR Shelby. Rockies December 20, 2013 Answer at 4. Ultra requested that the change become effective on November 1, 2013, which was within 90 days of September 26, 2013. Also on October 10, 2013, an unidentified shipper requested to switch 35,000 Dth/day of primary point delivery capacity to Midwestern Edgar and 17,500 Dth/day of primary point delivery capacity to ANR Shelby. *Id*. This requested change became effective January 1, 2013.

[8] Rate Schedule BHS is a special backhaul service which has a lower scheduling priority than nominations to primary points under existing Rate Schedule FTS, but a higher scheduling priority than secondary FTS nominations and interruptible nominations.

[9] As explained by Rockies, the Cornerstone Shipper has provided a binding financial commitment for the construction of the Seneca Lateral.

[10] Rockies December 20, 2013 Answer at 6.

[11] *Id.*

(123,000 Dth/day at Midwestern Edgar and 134,500 Dth/day at ANR Shelby).[12] Rockies accepted ConocoPhillips' revised request, effective November 1, 2013. Following the acceptance of ConocoPhillips' revised request, Rockies states that no long term, firm capacity remained available at either Midwestern Edgar or ANR Shelby.

7. On November 4, 2013, Encana submitted a request to reallocate capacity from the Texas Leb delivery point, reallocating 92,500 Dth/day to Midwestern Edgar and 17,500 Dth/day to the ANR Shelby delivery points on a long-term basis. Encana requested to make the change effective November 6, 2013. Rockies rejected the request because no capacity was available for long term service.[13]

8. On November 5, 2013, Rockies solicited bids for 235,000 Dth/day of capacity at Midwestern Edgar and 17,500 Dth/day of capacity at ANR Shelby that was available for the interim period from November 8, 2013, through December 31, 2013. This interim delivery capacity included both the capacity sold to two unidentified shippers in October 2013 effective on January 1, 2014 and the capacity sold to the Cornerstone Shipper. Rockies states that it only made the capacity available through December 31, 2013, because, prior to learning of further delays, it expected the Seneca Lateral to be complete and the Cornerstone Shipper to begin receiving service on January 1, 2014. Encana submitted a bid for this capacity during the open season. However, Rockies rejected this bid because Encana requested long-term capacity extending beyond December 31, 2013.

II. Encana's Complaint, Notice, Interventions, and Answers

9. On November 15, 2013, Encana filed a complaint asserting that Rockies improperly denied its September 26, 2013 request to shift primary delivery point capacity to Midwestern Edgar and ANR Shelby effective April 1, 2014.

10. Public notice of the complaint was issued on November 15, 2013. Interventions and protests were due on December 5, 2013, as provided in section 154.210 of the Commission's regulations.[14] Pursuant to Rule 214,[15] all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this

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[12] *Id.*

[13] *Id.*

[14] 18 C.F.R. § 154.210 (2013).

[15] 18 C.F.R. § 385.214 (2013).

order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

11. On December 5, 2013, Rockies filed its answer to Encana's complaint and a motion for summary disposition. On December 4, 2013, Ultra filed comments. On December 5, 2013, the Indicated Shippers[16] filed comments. On December 11, 2013, ConocoPhillips filed a late motion to supplement the Indicated Shippers' comments. On December 20, 2013, Rockies filed an answer to the Indicated Shippers' comments. On December 20, 2013, Encana filed an answer to Rockies' December 5, 2013 answer. On January 10, 2014, Indicated Shippers filed a subsequent answer. On January 27, 2014, Rockies filed another answer.

12. The Commission's Rules of Practice and Procedure prohibit answers to answers and answers to protests unless otherwise ordered by the decisional authority.[17] We accept ConocoPhillips' late motion and the answers filed in this proceeding because they have provided additional information which has assisted the Commission's decision-making process.

III. Discussion

A. Rockies' Denial of Encana's September 26, 2013 Request to Change Primary Delivery Points

1. Encana's Complaint

13. Encana contends that Rockies improperly denied Encana's September 26, 2013 request to reallocate primary delivery point capacity to Midwestern Edgar and ANR Shelby effective April 1, 2014.[18] Encana states that firm shippers have the right to change primary points if capacity is available. Encana asserts that its request satisfied the primary point change requirements set forth in section 3.2(C) of Rockies' GT&C.[19]

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[16] Anadarko Energy Services Company, BP Energy Company, ConocoPhillips Company, and WPX Energy Marketing, LLC.

[17] 18 C.F.R. § 385.213(a)(2) (2013).

[18] Encana November 15, 2013 Complaint at 7.

[19] GT&C Section 3.2(C) states in relevant part that:

> Subject to the availability of firm Capacity at the requested point(s), Shipper, under any firm service, may change Primary Delivery or Receipt Points from time-to-time. Subject to the conditions set forth below, Transporter shall agree to

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Encana asserts that Rockies may not deny a request to change primary delivery points based upon a 90-day rule when Rockies' tariff does not include such a provision.[20] Encana adds that Rockies' refusal to accept its September 26, 2013 request is inconsistent with Rockies' acceptance of the subsequent Cornerstone Shipper Agreement on October 23, 2013.

2. Comments and Answers

14. Indicated Shippers and Ultra assert that firm shippers should be permitted, on a first-come, first-serve basis to modify their primary receipt or delivery points. Indicated Shippers and Ultra also contend that the 90-day rule does not apply absent a provision incorporating this policy into Rockies' tariff. Ultra adds that the 90-day rule exists to prohibit shippers from tying-up firm capacity at a future date without requiring a shipper to begin paying reservation charges. Ultra emphasizes that because Encana is an existing shipper switching its primary delivery points, Encana will pay a reservation charge during the period prior to the primary point change. Accordingly, Ultra asserts that Encana should not be bound by the 90-day rule.

15. In its December 5, 2013 Answer, Rockies asserts that it has consistently applied the 90-day rule to its forward-haul and backhaul shippers.[21] Rockies contends that the 90-day rule is standard Commission policy[22] and applies notwithstanding the absence of a provision in Rockies' tariff. Rockies asserts when a tariff is silent or ambiguous regarding a Commission policy requirement, the tariff is interpreted as consistent with

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> any such change in Primary Delivery or Receipt Point(s) to the extent that such selection of new Points is within the same zone of the existing Primary Receipt or Delivery Point(s) and to the extent that such selection of new points does not result in Shipper exceeding the existing contract MDQ and to the extent that firm transportation and Point Capacity is available, after taking into account existing Capacity commitments under other firm agreements….

[20] Encana November 15, 2013 Complaint at 10 (citing 15 U.S.C. § 717c(c); 18 C.F.R. § 154.1(b) (2013)).

[21] Rockies December 5, 2013 Answer at 5, n.15.

[22] *Id.* at 2-3 (citing *Northern Natural Gas Co.*, 52 FERC ¶ 61,047 (1990) and *Trailblazer Pipeline Co.*, 103 FERC ¶ 61,225 (2003)).

Commission policy.[23] Rockies also claims the Commission has previously upheld the application of the 90-day rule to a firm shipper's request to change its primary delivery points.[24]

16. In its December 20, 2013 Answer, Encana continues to assert that a pipeline is generally not permitted to implement a policy that is not written into its tariff.[25] In those circumstances where a rule is self-implementing, Encana argues that the Commission will affirmatively state this intention.[26] Accordingly, Encana contends that because Rockies' tariff does not contain provisions effectuating the 90-day rule, the 90-day rule does not apply to shipments on that pipeline. Encana emphasizes that prior cases involving the 90-day rule (a) related to actual tariff provisions and (b) involved requests for new transportation service as opposed to requests to change primary delivery points. Encana contends that Rockies must be required to accept Encana's September 26, 2013 request to change its primary delivery points, effective April 1, 2014.

3. Commission Determination

17. The Commission denies the complaint regarding Encana's September 26, 2013 request to shift its primary point delivery point capacity. Because there were more than 90 days between Encana's September 26, 2013 request and Encana's requested April 1, 2014 effective date for the primary point change, Encana's request violated the Commission's 90-day rule.

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[23] *Id.* at 5 (citing *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127, at P 35 (2002) (Order on Remand); *ProGas USA Inc. v. Iroquois Gas Transmission Sys. L.P.*, 116 FERC ¶ 61,033, at P 19, n.9 (2006) (*ProGas USA Inc.*)).

[24] *Id.* at 3 (citing *Gulf South Pipeline Co., LP*, 135 FERC ¶ 61,119 (2011) (*Gulf South*)).

[25] Encana December 20, 2013 Answer at 4 (citing *Tennessee Gas Pipeline Co.*, 108 FERC ¶ 61,177, at P 51 (2004); *Tennessee Gas Pipeline Co.*, 95 FERC ¶ 61,272, at 61,960 (2001); *Transcontinental Gas Pipe Line Corp.*, 83 FERC ¶ 61,050, at 61,294 (1998)); Encana Answer at 7 (citing *Natural Gas Supply Ass'n, et al.*, 135 FERC ¶ 61,055, at P 28 (2011)).

[26] *Id.* at 6.

18. In the absence of specific terms to the contrary in Rockies' tariff, the 90-day rule applies as a matter of general Commission policy.[27] The Commission has emphasized that the 90-day rule is "standard Commission policy" and that it provides the "appropriate time limit for commencement of service."[28] The equity of a first-come, first-served policy depends on shippers requesting service only when they have a definite need for it.[29] While allowing time for a pipeline and a customer to process a request for service, the 90-day rule requires a shipper which has obtained capacity on a first-come, first-served basis to begin paying a reservation charge within a reasonable time frame after requesting service. Through this policy, the 90-day rule prevents customers from unreasonably tying-up future capacity by requesting it months or years in advance, and, while not paying a reservation charge, blocking other shippers (who may value the capacity more) from obtaining this capacity on a long-term basis.[30] The 90-day rule is the Commission's generic policy and, under these circumstances, it is reasonable for a pipeline to apply the rule in the absence of pipeline tariff provisions to the contrary.

19. Contrary to the assertions in shipper comments, it is also reasonable for Rockies to apply the 90-day rule to requests to change the primary points in existing shipper contracts, not merely to new shipper service agreements.[31] In this case, permitting Encana to switch primary delivery points more than 90 days in the future, would allow Encana (a) to continue receiving service at its existing primary delivery points pursuant to its reservation charge until April 1, 2014, and (b) at no additional cost, to block other shippers from acquiring long term firm transportation capacity at the new Midwestern Edgar and ANR Shelby delivery points. Prior to the April 1, 2014 effective date, Encana would preserve the option to switch back to service at its less-congested existing delivery points without ever using the reserved capacity at Midwestern Edgar or ANR Shelby points. The Commission intended the 90-day rule to prohibit shippers from unreasonably tying-up capacity, and these concerns apply to existing shippers switching primary delivery points, despite the fact they are currently paying a reservation charge for their existing service.

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[27] Commission policy requirements may apply although the pipeline's tariff does not specifically incorporate the policy. The applicability of a particular Commission policy in the absence of a specific pipeline tariff provisions depends upon the particular circumstances. Order on Remand, 101 FERC ¶ 61,127 at P 24 n.23.

[28] *Northern Natural*, 52 FERC ¶ 61,047 at 61,211.

[29] *Id.* at 61,212.

[30] *Gulf South*, 135 FERC ¶ 61,119 at P 20.

[31] *Id.* PP 3, 22.

20. Commission policy permits certain exceptions to the 90-day rule, such as for the construction of facilities which may require substantial time planning and investment.[32] However, Encana has not demonstrated that its request qualifies for this or any other Commission-approved exception to the 90-day rule. Accordingly, the Commission denies Encana's complaint.

B. Rockies' Acceptance of the Cornerstone Shipper's October 23, 2013 Request for Service

1. Comments and Answers

21. Indicated Shippers assert that Rockies discriminated in favor of the Cornerstone Shipper by not applying the 90-Day Rule to the Cornerstone Shipper's October 23, 2013 request for service. Indicated Shippers state that according to Rockies' current estimates, the Seneca Lateral will not be operational until March 1, 2014, more than 90 days after the Cornerstone Shipper's October 23, 2013 request. Indicated Shippers assert that because Rockies' October 23, 2013 sale to the Cornerstone Shipper is effective at some point in the future, the deal was necessarily "pre-arranged." The Indicated Shippers state that section 17.1(E) of Rockies' GT&C requires that all "pre-arranged capacity" be subject to posting and bidding procedures. The Indicated Shippers assert that Rockies failed to follow the posting and bidding required by section 17.1(E).

22. Rockies asserts that the objections to the Cornerstone Shipper contract are beyond the scope of Encana's complaint. Rockies further asserts that the Cornerstone Shipper contract under Rate Schedule BHS is consistent with the 90-day rule because the contract is to be effective "beginning the later of December 1, 2013, or the in-service date of the Seneca Lateral facilities." Rockies states that December 1, 2013 is within 38 days of October 23, 2013, and Rockies states that it initially expected the Seneca Lateral to be in-service in December 2013. In its January 27, 2013 answer, Rockies adds that the 90-day rule includes an exception for service that depends upon the construction of new facilities.[33]

23. Rockies also claims that the Cornerstone Shipper contract did not violate section 17.1(E) of its GT&C related to pre-arranged deals. Rockies states that because it intended the Cornerstone Shipper contract to be effective within 90 days, no open season

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[32] *Id.* P 25.

[33] Rockies January 27 Answer at 7 (citing *Gulf South*, 135 FERC ¶ 61,119 at P 25).

or posting and bidding was required. Rockies also states that under section 17.1(E), it is only required to hold competitive bidding for prearranged "firm" capacity. Rockies asserts that the Cornerstone Shipper contracted for BHS service, which, Rockies states is only a "semi-firm" service and thus not subject to section 17.1(E).[34]

24. Rockies also addresses section 2.5 of its GT&C, which relates to the reservation of capacity associated with expansions of the Rockies system. Rockies states that section 2.5 of its GT&C does not require it to hold an open season immediately. Rather, Rockies states that it is only required to announce its intent to reserve capacity and, thereafter, to conduct an open season before filing its certificate application.[35]

2. Commission Determination

25. The Commission finds that Rockies' October 23, 2013 BHS service agreement with the Cornerstone Shipper complied with the 90-day rule and Rockies' tariff. In order to encourage new facilities and the development of new supply sources, the Commission allows exceptions to the 90-day rule for requests for service which depend upon the construction of new facilities.[36] The BHS service agreement with the Cornerstone Shipper is linked to the construction of the Seneca Lateral and, thus, falls within the exception to the 90-day rule for new construction.

26. In addition, neither Commission policy nor Rockies' tariff required it to hold an open season before selling delivery capacity at Midwestern Edgar and ANR Shelby to the Cornerstone Shipper. The Commission has not required pipelines to sell capacity solely through open seasons. Rather, so long as a pipeline posts all available firm capacity, as Rockies at all times did in this case, it may sell that capacity on a first-come, first-served basis.[37] The Commission has explained that it assumes that a pipeline will always seek the highest possible rate from non-affiliated shippers, since it is in its own economic interest to do so. Therefore, use of the first-come, first-served method is consistent with

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[34] Rockies December 20 Answer at 3.

[35] Rockies Answer to Indicated Shippers' Comments at 13. Rockies asserts that it has posted an open season for the Seneca Lateral project based on a revised in-service date of March 1, 2014. Rockies further asserts that construction delays have created additional interim firm capacity that will be available during the period of January 1, 2014, through February 28, 2014.

[36] *Gulf South*, 135 FERC ¶ 61,119 at P 25.

[37] *Northern Natural Gas Co.*, 110 FERC ¶ 61,361, at P 10 (2005).

the Commission's goal of placing capacity in the hands of those that value it the most.[38] Accordingly, the Commission has approved tariff provisions which give the pipeline the discretion to hold an open season for capacity when it believes such an open season will help it obtain the highest value for the capacity, but permit it also to sell capacity on a first-come, first-served basis when an open season is not needed for this purpose.[39]

27. Rockies' tariff is consistent with this policy. Section 17.1(F) of its GT&C provides that "[f]rom time-to-time, Transporter *may* post an open season for the purposes of obtaining competitive bids of specific Firm Capacity [emphasis supplied]." Similarly, the "pre-arranged capacity" provisions specified in sections 17.1(E) of Rockies' GT&C provide that Rockies "*may* pre-arrange with any party for the sale of its posted available firm capacity." Only if Rockies chooses to enter into such a pre-arranged deal, does section 17.1(E) require it to hold an open season to permit other shippers to submit a higher bid. Here, Rockies exercised the discretion provided by Commission policy and its tariff to sell available delivery capacity at Midwestern Edgar and Shelby ANR to the Cornerstone Shipper on a first-come, first-served basis.

28. Indicated Shippers assert that because Rockies' October 23, 2013 sale to the Cornerstone Shipper is effectuated when the Seneca Lateral enters into service (now expected to be March 1, 2014), the sale was necessarily "pre-arranged" and subject to the posting and bidding described in section 17.1(E). However, Rockies' tariff does not require it to treat all sales of pipeline capacity with an effective date that occurs sometime after the capacity request as a "pre-arranged capacity" sale requiring the posting and bidding specified in section 17.1(E).[40] That section does not contain any requirement concerning the effective date of the subject pre-arranged deal or contain any language requiring Rockies to use the section 17.1(E) procedures when making capacity sales to take effect at some future date. Rather, section 17.1(E) provides an optional procedure

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[38] *Northern Natural Gas Co.*, 111 FERC ¶ 61,379, at PP 37-38 (2005).

[39] *Id.* P 39.

[40] Rockies has honored, on a first-come, first-served basis requests from shippers to change delivery points at a future date. For example, on September 26, 2013, Ultra Resources requested to change delivery points, to be effective 35 days following its request on November 1, 2013. Rockies December 20, 2013 Answer at 4. No party suggests that Rockies' decision to accept Ultra Resource's request on a first-come, first-served basis violated section 17.1(E) of Rockies' tariff. Several other parties requested delivery point changes with Rockies in which the request became effective at least a few days *after* the party submitted the request to Rockies. Rockies accepted these requests on a first-come, first-served basis. No party has objected to these transactions.

for Rockies to use when selling capacity effective as soon as the conclusion of the three day bidding period provided for in that section or at some future date. Just as Rockies "may" enter into a "pre-arranged capacity" sale pursuant to section 17.1(E) of its tariff, Rockies may also sell future capacity on a first-come, first-served basis so long as it complies with the 90-day rule and other Commission policies. In this case, Rockies opted to sell the capacity to the Cornerstone Shipper on a first-come, first-served basis, and this decision did not violate Rockies' tariff or any Commission policies.[41] The objections to Rockies' sale to the Cornerstone Shipper are denied.

C. Rockies' Denial of ConocoPhillips' and Encana's Requests for Service after October 23, 2013

29. Some comments argued that, following the agreement with the Cornerstone Shipper, Rockies improperly rejected requests for primary point service at the Midwestern Edgar and ANR Shelby delivery points. ConocoPhillips (a member of the Indicated Shippers) asserts that Rockies improperly denied its October 29, 2013 request to shift delivery point capacity to the Midwestern Edgar and ANR Shelby delivery points. Encana also objects to Rockies' rejection of requests for capacity on November 4, 2013 and November 7, 2013.

30. The Commission finds, however, that once Rockies agreed to provide service to the Cornerstone Shipper on October 23, 2014 effective on the later of January 1, 2014 or the completion of the Seneca Lateral, this capacity was no longer available on a long-term basis. In the case of ConocoPhillips, Rockies informed ConocoPhillips of the available levels of capacity, and ConocoPhillips submitted a request for the available capacity which Rockies accepted. Rockies appropriately rejected subsequent requests for long-term capacity.

D. Other Issues Raised by the Parties

31. The Indicated Shippers request several additional remedies in their comments. Indicated Shippers assert that Rockies' tariff should be modified to require mandatory open bidding processes for all new capacity on Rockies' system. Indicated Shippers propose to undo all existing agreements for service on Rockies' system which become effective at some future date and to subject this capacity to an open season. The

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[41] We are not adopting Rockies' argument that because section 17.1(E) applies to "firm" shippers, section 17.1(E) does not apply to the "semi-firm" Rate Schedule BHS tariff. The term "semi-firm" does not appear in Rockies' tariff. When Rockies' tariff uses the terms "firm" and "interruptible" to describe its general rates and practices, it does not mention a separate category relating to BHS Shippers.

Indicated Shippers also argue that construction of the Seneca Lateral under section 311 of the NGPA is an attempt to circumvent the tariff and Commission regulations and policies. The Indicated Shippers object to Rockies' stated intention to convert the Cornerstone Shipper's BHS service agreement to an FTS service following the Seneca Lateral open season. The Indicated Shippers contend that these concerns are within the scope of Encana's complaint, which alleges that Rockies has awarded capacity on an unduly discriminatory basis.

32. Rockies contends that Indicated Shippers' comments are beyond the scope of Encana's initial complaint and that the Indicated Shippers' requested remedies are unsupported and unnecessary. Rockies asserts that it has complied with Commission policy and precedent.

33. The Commission rejects Indicated Shippers' request that we initiate a proceeding under NGA section 5 to modify Rockies' tariff to require mandatory open bidding processes for all new capacity on Rockies system. As discussed above, Commission policy does not require pipelines to use open season bidding procedures to sell capacity, and Rockies' existing tariff is consistent with Commission policy.

34. The Commission will not address Indicated Shippers' remaining arguments because these issues are beyond the scope of Encana's complaint. Encana's complaint related to Rockies' rejection based upon the 90-day rule of Encana's September 26, 2013 request to shift primary delivery point capacity to Midwestern Edgar and ANR Shelby. In order to address Encana's allegations of discrimination, the Commission has also examined Rockies' subsequent treatment of other shipper requests for service at the Midwestern Edgar and ANR Shelby delivery points, particularly in the context of the 90-day rule. However, we will not address in this proceeding issues related to the certificate process and other matters involving the Seneca Lateral.[42] If and when Rockies proceeds to convert the Seneca Lateral from an NGPA section 311(a) service to an NGA section 7(c) certificated service, the Indicated Shippers (or other entities) may raise relevant issues in the applicable certificate proceeding.

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[42] Rockies filed an Advanced Notice of Construction with the Commission on August 26, 2013 in Docket No. CP13-539-000. In that proceeding, on September 24, 2013, the Indicated Shippers filed a "Request for Clarification" which raises issues related to Rockies' use of the NGPA 311 process and which remains pending before the Commission.

The Commission orders:

Encana's complaint is denied for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.