

146 FERC ¶ 61,222
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rockies Express Pipeline LLC

Docket No. RP14-536-000

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

(Issued March 24, 2014)

1. On February 27, 2014, Rockies Express Pipeline LLC (REX) filed tariff records to revise the Fuel, Loss and Unaccounted-for-Gas (FL&U) reimbursement percentages applicable to transportation service on REX's system. REX filed two alternative sets of tariff records, Option A¹ and Option B.² As discussed herein, the Commission accepts and suspends the Option A proposed tariff records, to be effective April 1, 2014, subject to refund and the outcome of the ongoing hearing proceedings in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000. The Commission rejects the tariff records filed as Option B as moot.

Background

2. Previously, the Commission accepted and suspended REX's March 2011 and March 2012 FL&U filings subject to hearing and refund.³ These proceedings remain ongoing. Subsequently, REX made FL&U filings in Docket No. RP13-610-000 and

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, 6.0.0; PAWS, Currently Effective Rates - PAWS, 2.0.0; Incremental Fac. Rates, Cheyenne Booster Facilities, 5.0.0; Incremental Facil. Rates, Meeker Booster Facilities, 2.0.0.

² Rockies Express Pipeline LLC, FERC NGA Gas Tariff, Third Revised Volume No. 1, Tariffs; CURRENTLY EFFECTIVE RATES, Currently Effective Rates - ITS/FTS FL&U, 6.0.1; PAWS, Currently Effective Rates - PAWS, 2.0.1; Incremental Fac. Rates, Cheyenne Booster Facilities, 5.0.1; Incremental Facil. Rates, Meeker Booster Facilities, 2.0.1.

³ *Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248 (2011), *order on reh'g*, *Rockies Express Pipeline LLC*, 138 FERC ¶ 61,241, at P 53 (2012) (Hearing Order).

RP12-1131-000, which the Commission accepted and suspended subject to refund and to the outcome of the ongoing hearing procedures in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000.⁴

Instant Filing

3. Pursuant to section 38.3 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, 2013) to be effective April 1, 2014. REX acknowledges that its calculations are subject to the outcome of the ongoing hearing proceedings in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000.

4. REX states its Deferred Account contains a net over collection of approximately \$8.8 million as of December 31, 2013, which results in a negative total FL&U rate for certain transportation paths.⁵ REX explains its electronic nomination system cannot accommodate nominations of negative fuel quantities. REX proposes to cash-out the over-recovered Deferred Account balance, through refunds to shippers based on the proportion of FL&U quantities each shipper tendered to the overall level of FL&U collection during 2013, as shown on Appendix E-2 of its filing. REX states that this cash-out will accelerate the return of the over-recovered Deferred Account balance to its customers and avoid the anomalous result of FL&U rates at less than zero. REX requests waiver of section 38 of its GT&C to allow REX to cash out the Deferred Account balance rather than include it in the calculation to derive the FL&U rates to become effective April 1, 2014. REX states that granting its requested waiver is consistent with Commission precedent granting tariff waivers for one time cash outs in similar situations.⁶ REX shows the resulting fuel rates if the waiver and cash out are reflected in its proposed Option A tariff records.

5. Alternatively, if the Commission does not grant the requested waiver, REX seeks a more limited waiver to assess a zero percent fuel rate where the combined total of the Volumetric Amortization Percentage (VAP) and the current FL&U rates is less than zero. REX has filed Option B tariff records reflecting this more limited waiver.

⁴ *Rockies Express Pipeline LLC*, 141 FERC ¶ 61,076 (2012); *Rockies Express Pipeline LLC*, 142 FERC ¶ 61,231 (2013).

⁵ REX notes that Zone 1 to Zone 1 transportation is -0.02 percent and backhaul paths are -0.44 percent.

⁶ REX Transmittal Letter at 3 (citing *El Paso Natural Gas Co., L.L.C.*, 141 FERC ¶ 61,253 (2013); *El Paso Natural Gas Co.*, 132 FERC ¶ 61,075 (2010); *Cheyenne Plains Gas Pipeline Co., LLC*, 123 FERC ¶ 61,227 (2008)).

6. REX seeks to implement the revised FL&U rates to be effective April 1, 2014. REX requests Commission action by March 26, 2014, to provide sufficient time and notice for REX's shippers to adjust gas supply quantities under new FL&U rates.

Protest and Comments

7. Public notice of the subject filing was issued on February 28, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2013)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)), 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 11, 2014, Ultra Resources, Inc. ("Ultra"), Indicated Parties⁷ and BP/WPX⁸ filed protests.

8. BP/WPX, Indicated Parties and Ultra state that REX's instant filing raises issues that the Commission has already discussed in the Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000 and set for hearing proceedings. The protesters also support the one-time cash out and request the Commission grant REX's temporary waiver request to cash-out its fuel over-recoveries. Therefore, the protesters state the Commission should accept the proposed Option A 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.

9. In addition, Ultra claims that REX's calculation of the cash-out is inconsistent with prior Commission holdings, which Ultra states require REX to calculate any cash-out of over-collected fuel by utilizing delivery point values rather than receipt point values. Ultra states that the Commission should direct REX to recalculate the cash-out using this methodology and to provide additional, supplemental refunds based upon the new calculation.⁹

Commission Determination

10. 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, 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 in hearing proceedings in Docket Nos. RP11-

⁷ ConocoPhillips Company, Shell Energy North America (US), L.P., and SWEPI LP (collectively, Indicated Parties).

⁸ BP America Production Company, BP Energy Company, and WPX Energy Marketing, LLC (collectively, BP/WPX).

⁹ Ultra Protest at 8 (citing *Ruby Pipeline, L.L.C.*, 142 FERC ¶ 61,104 (2013)).

1844-000, *et al.* Accordingly, the rates in the instant filing may need to be adjusted to reflect the outcome of the ongoing hearing proceedings. The Commission accepts REX's requested waiver of section 38 of its GT&C to allow REX to cash out the Deferred Account balance. The requested waiver is unopposed, returns the over-recovered Deferred Account balance to REX's customers, and avoids the anomalous result of FL&U rates at less than zero. Accordingly, the Commission accepts and suspends the tariff records in Option A to become effective April 1, 2014, subject to refund, and the outcome of the ongoing hearing proceedings related to REX's fuel tracker mechanism and FL&U filings. Any dispute regarding the adequacy of the approximately \$8.8 million cash-out, including those concerns raised by Ultra in this proceeding, may be addressed in a subsequent order once the Commission has resolved the issues related to REX's fuel mechanism in the ongoing hearing proceedings. Because we are accepting REX's proposed tariff records in Option A, the tariff records listed in Option B are rejected as moot.

11. 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.¹⁰ 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.¹¹ 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, 2014, subject to the conditions set forth in the body of this order and in the ordering paragraph below.

The Commission orders:

(A) The Option A tariff records listed in footnote one are accepted and suspended to be effective April 1, 2014, 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.

¹⁰ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹¹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(B) The Option B tariff records listed in footnote two are rejected as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.