148 FERC ¶ 61,119
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 12, 2014

In Reply Refer To:
WBI Energy Transmission, Inc.
Docket No. RP14-1101-000

WBI Energy Transmission, Inc.
P.O. Box 5601
Bismarck, ND 58506-5601

Attn: Keith A. Tiggelaar
Director of Regulatory Affairs

Reference: Non-Conforming Service Agreement

Ladies and Gentlemen:

1. On July 14, 2014, WBI Transmission Energy, Inc. (WBI) filed revised tariff records[1] reflecting Contract No. IT-00814, a non-conforming service agreement with Devon Energy Production Company, L.P. (Devon), and the addition of this service agreement to the list of non-conforming agreements in its tariff. In addition, WBI requests a waiver of the 30-day notice requirement contained in section 154.207 of the Commission's regulations so that the agreement and applicable tariff records may be effective July 18, 2014.[2] As discussed below, the Commission accepts subject to conditions the non-conforming service agreement and associated tariff records to become effective on July 18, 2014.

2. On January 22, 2014, WBI and Devon reached an agreement wherein WBI purchased Devon's share of certain facilities jointly owned by WBI and Devon (Pipeline Facilities). The Pipeline Facilities currently provide a limited transportation service for Devon and will continue to provide the same service under the new agreement.

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[1] *See* Appendix.

[2] 18 C.F.R. § 154.207 (2014).

Additionally, on January 22, 2014 Devon executed Contract No. IT-00814, a negotiated rate agreement containing non-conforming provisions which deviate from WBI's *pro forma* service agreement. Two of these non-conforming provisions modify footnotes in Exhibit A. Footnote 1 in the *pro forma* service agreement provides the terms under which WBI Energy and a shipper could agree to a discounted rate. However, WBI states that since the rate for the instant agreement is a negotiated rate, Footnote 1 has been altered to reflect the details of the negotiated rate agreement. WBI explains that Footnote 3 in the *pro forma* service agreement has been removed from the instant agreement as it is applicable to the use of storage and there will be no use of storage under this agreement. WBI states that the changes to the aforementioned footnotes are administrative in nature and do not pose a risk of undue discrimination.

3. In addition, non-conforming language in Footnote 1 of Exhibit A and section 8 of the agreement includes an early termination option for Devon. After three years following the in-service date of the pipeline facilities, Devon will have the right to terminate the agreement in the event the wells producing the Field Gas average less than 3,000 Mcf/day over a six month consecutive period.[3] WBI states that if Devon exercises such right, WBI will prorate any Annual Revenue Commitment[4] WBI states that the early termination option addresses Devon's concerns regarding possible declines in natural gas supply and allows Devon to better align its transportation needs with available supply. WBI asserts that the early termination provision is a permissible non-conforming provision. WBI states that it typically executes a Rate Schedule IT-1 agreement for an initial term of one year, which can be terminated after the initial term by either party providing the appropriate written notification. Thus, WBI states that the early termination option in this five-year primary term contract does not pose a risk of undue discrimination because it is more restrictive than the termination rights a shipper would be entitled to under the more typical one-year term. Further, WBI states that it would work with other similarly situated interruptible shippers to devise mutually agreeable termination options.

4. Public notice of WBI's filing was issued on July 15, 2014. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2014)). Pursuant

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[3] Exhibit A of Contract No. IT-00814, details the applicable negotiated rate. The commodity charge will be $0.21per dekatherm and include Annual Charge Adjustment (ACA) and throughput surcharges.

[4] Devon will be obligated on an annual basis, during the primary term of the Agreement, to transport a volume of natural gas required to achieve a minimum transportation revenue commitment, excluding any fuel and applicable surcharges, of $383,250/year (Annual Revenue Commitment).

to Rule 214, 18 C.F.R. § 385.214 (2014), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the 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. No protests or comments were filed.

5. The Commission accepts the non-conforming service agreement and revised tariff records subject to conditions. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.[5] In *Columbia,* the Commission clarified that a material deviation is any provision in a service agreement that: (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (b) affects the substantive rights of the parties.[6] The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.[7] However, not all material deviations are impermissible. As the Commission explained in *Columbia*,[8] provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (b) provisions the Commission can permit without a substantial risk of undue discrimination.[9]

6. The Commission will only approve material deviations to a form of service agreement if the deviations do not change the conditions under which service is provided and do not present a risk of undue discrimination.[10] The Commission has held that provisions in service agreements that permit a shipper to terminate the contract early are valuable rights, which present too much potential for undue discrimination unless they

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[5] 18 C.F.R. § 154.1(d) (2014); 18 C.F.R. § 154.112(b) (2014).

[6] *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001).

[7] *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

[8] *Columbia*, 97 FERC ¶ 61,221 at 62,003-04.

[9] *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

[10] *Natural Gas Pipelines Negotiated Rate Policies and Practices Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

are offered in the pipeline's tariff pursuant to generally applicable conditions.[11] The Commission explained that, while a pipeline may place reasonable conditions on the negotiation of such rights, requiring the pipeline to file generally applicable tariff provisions setting forth those conditions is the best means of assuring that those rights are negotiated in a not unduly discriminatory manner.

7. Non-conforming provision in Footnote 1 of Exhibit A and section 8 of the agreement provides that, Devon shall have the right to an early termination of its service agreement under certain circumstances. Notwithstanding WBI's representations in its filing that it would be willing to offer a comparable provision to other similarly situated shippers, WBI's tariff contains no provision offering contract termination rights of this nature. Therefore, the Commission accepts the contract and the associated tariff records subject to WBI, within 30-days of the issuance of this order, making a compliance filing either (a) eliminating the provisions of the contract that offer Devon early termination rights or (b) revising its tariff to offer such a provision to similarly situated shippers. The Commission also finds that good cause exists to grant waiver of the notice requirements of the Commission's regulations to allow the proposed tariff record and service agreement to become effective, subject to the conditions discussed herein, July 18, 2014.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[11] *Natural Gas Pipeline Company of America LLC*, 144 FERC ¶ 61,064 (2013). *See also Steckman Ridge, LP*, 131 FERC ¶ 61,026 (2010).

Appendix

WBI Energy Transmission, Inc.
FERC NGA Gas Tariff
Third Revised Volume No. 1

Sheet No. 450C, , 9.0.0
Sheet No. 450D, , 2.0.0
Section 1, Table of Contents, 14.0.0
Section 4.5, Contract No. IT-00814, 3.0.0