

149 FERC ¶ 61,021
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Sierrita Gas Pipeline LLC

Docket No. RP14-1195-000

ORDER ON COMPLIANCE FILING

(Issued October 8, 2014)

1. On August 21, 2014, Sierrita Gas Pipeline LLC (Sierrita) filed tariff records¹ to comply with the Commission's June 6, 2014 Order Issuing Certificate and Granting Presidential Permit,² in Docket Nos. CP13-73-000 and CP13-74-000, which required Sierrita to file actual tariff records to comply with the directives of the June 6 Order to revise, remove, or modify a number of items within its tariff. The Commission accepts the proposed tariff records, subject to the condition that Sierrita file revised tariff records, to be effective September 30, 2014, or the date on which Sierrita places the proposed facilities into service, if that date is different.

I. Background

2. On February 7, 2013, in Docket No. CP13-73-000, Sierrita filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)³ and Part 157 of the Commission's regulations⁴ for a certificate of public convenience and necessity to construct and operate a new 60.9-mile⁵ interstate natural gas pipeline between Tucson

¹ See *infra* Appendix.

² *Sierrita Gas Pipeline LLC*, 147 FERC ¶ 61,192 (2014) (June 6 Order).

³ 15 U.S.C. § 717f(c) (2012).

⁴ 18 C.F.R. pt. 157 (2014).

⁵ In the original application filed on February 7, 2013, Sierrita proposed a 59.1-mile pipeline. Sierrita filed a route modification on March 25, 2013 to parallel State Highway 286 and Sierrita adopted another route modification subsequent to the draft Environmental Impact Statement. The route changes added approximately 1.8 miles of pipeline to the project.

and Sasabe, Arizona. Sierrita's proposed pipeline will provide transportation service for approximately 200,846 dekatherms (Dth) per day of natural gas to a new border crossing facility located near the international boundary between the United States and Mexico. Sierrita requested approval for its proposed initial recourse rates for transportation service and for its *pro forma* tariff.⁶ The Commission's June 6 Order approved Sierrita's initial rates and tariff subject to conditions and modifications.

II. Compliance Filing

3. On August 21, 2014, Sierrita filed its proposed baseline tariff compliance filing. Sierrita asserts the baseline tariff contains modifications in compliance with the June 6 Order. The June 6 Order directed Sierrita to modify its tariff as follows:

- a. Revise the revenue sharing mechanism to provide that certain revenues will be credited to maximum rate firm and interruptible shippers;
- b. Revise the lost and unaccounted for (L&U) percentage to reflect the 0.25 percent industry standard;
- c. Remove all references to Rate Schedule FT winter-time only service;
- d. Remove references to greenhouse gas costs;
- e. Revise operational purchases and sales language to include certain provisions;
- f. Update to the current version of the NAESB WGQ standards, as necessary, and include certain NAESB pooling standards;
- g. Revise certain scheduling and curtailment properties;
- h. Revise specific aspects of the right-of-first-refusal (ROFR) and extension rights provisions;
- i. Revise the penalty crediting provisions to identify the appropriate account for booking such credits;
- j. Modify the definition of *force majeure* consistent with Commission policy;
- k. Revise the reservation charge crediting provisions based on previous Commission orders in pipeline proceedings.

⁶ 18 C.F.R. pt. 284 (2014).

4. Although Sierrita has generally complied with the June 6 Order, the Commission requires Sierrita to make additional modifications to its baseline tariff to comply fully with the June 6 Order before its project's in-service-date.
5. Sierrita has reflected an effective date of December 31, 1998 for its baseline tariff, until such time as the effective date is determined. Sierrita states, at the time the project-in-service date is known, Sierrita will submit an informational filing to note the actual in-service date and to effectuate the baseline tariff on that date.

III. Discussion

6. The June 6 Order directed Sierrita to revise General Terms and Conditions (GT&C) section 16.1 to make it clear that Sierrita is exempted from issuing credits only when its failure to deliver gas is due solely to the conduct of others or events not controllable by Sierrita.⁷ Proposed section 16.1 complies with this directive. However, Sierrita also added a new GT&C section 16.4 which begins with the sentence "Subject to [s]ections 16.1 and 16.2, if Transporter fails to schedule Shipper's nominated and confirmed quantities pursuant to [s]ection 16.4(a), Shipper shall receive a reservation charge adjustment." The word "confirmed" in the quoted sentence could be interpreted as exempting Sierrita from providing credits whenever a shipper's nomination is not confirmed by the upstream or downstream entities,⁸ including when the failure to confirm is not due solely to the conduct of others or events not controllable by Sierrita. Such an interpretation would be contrary to Commission policy. While the Commission has approved an exemption from crediting when the pipeline's inability to schedule service is due solely to the failure of an upstream or downstream entity outside the pipeline's control to confirm the shipper's nomination,⁹ the Commission has recognized that there

⁷ See, e.g., *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224, at P 84 (2012); *Iroquois Gas Transmission Sys., L.P.*, 145 FERC ¶ 61,233, at PP 43-44 (2013) (*Iroquois*); *Gas Transmission Northwest LLC*, 141 FERC ¶ 61,101, at P 42 (2012); *Paiute Pipeline Co.*, 139 FERC ¶ 61,089, at P 31 (2012) (*Paiute*).

⁸ The scheduling process entails the shipper submitting a scheduling nomination to the pipeline, the pipeline obtaining confirmation from the upstream and downstream entities that they can deliver the gas to the pipeline's receipt point and take it away from the pipeline's delivery point, and the pipeline then scheduling the gas that is properly nominated and confirmed. See NAESB Standard 1.3.2 establishing deadlines for the pipeline's receipt of completed confirmations from upstream and downstream connecting parties. Hence, confirmation of nominations is an act performed by the upstream and downstream entities, not the pipeline.

⁹ *Iroquois*, 145 FERC ¶ 61,233 at P 43.

are also situations in which the pipeline could not schedule primary firm service regardless of the ability of the upstream and downstream entities to confirm the shipper's nomination. One such situation, as discussed in *Paiute*,¹⁰ is where a *force majeure* event affects the facilities of both Sierrita and an interconnection pipeline. In such a situation, Sierrita's inability to provide service would not be caused solely by the interconnecting pipeline, and Sierrita should provide partial reservation credits. In addition, as discussed in *Iroquois*,¹¹ there could be situations where both an interconnecting pipeline and Sierrita are unable to provide service, because each is performing routine maintenance on its system. In that situation, it is also reasonable to require Sierrita to provide full reservation charge credits, consistent with Commission policy, because it could not have provided service even if the upstream pipeline was not performing maintenance. Therefore, Sierrita is directed, within thirty days of the date of this order, to file revised tariff records which specify that any exemption from crediting for nominated amounts not confirmed is limited to events not within the control of Sierrita, i.e., due to conduct of the shipper or by an upstream or downstream facilities operator.

7. The June 6 Order required several changes to Sierrita's proposal concerning how it will calculate the level of reservation credits it will provide.¹² Sierrita proposed in GT&C sections 16.5(a) through (c) of its *pro forma* tariff that reservation charge credits be applied to the lesser of the following quantities: (a) a shipper's Maximum Daily Quantity (MDQ), (b) the nominated and confirmed volumes that Sierrita was not able to schedule or deliver, or (c) the difference between the quantities delivered and the average of daily deliveries in the seven days before notice of the outage. Sierrita's proposal also included a sentence stating that, if it does not give advance notice of a non-*force majeure* outage, credits will not be calculated based on historical usage. Citing *Southern Natural Gas Co. (Southern)*,¹³ the order stated that Commission policy requires that, if Sierrita has not given advance notice of an outage before the first opportunity to nominate service for the day, the shipper's credits must be based on the quantities it nominates for scheduling up to its MDQ which were not delivered, as proposed in GT&C section 16.5(b), and not on any measure of historical usage. Similarly, if Sierrita has given notice of the outage

¹⁰ *Paiute*, 139 FERC ¶ 61,089 at P 31.

¹¹ *Iroquois*, 145 FERC ¶ 61,233 at P 44.

¹² In the *pro forma* tariff addressed by the June 6 Order, the relevant reservation charge crediting provisions were set forth in GT&C section 16.4. However, in Sierrita's instant filing, those provisions appear in GT&C section 16.5. For convenience, in the discussion below, we use the current GT&C section numbering.

¹³ June 6 Order, 147 FERC ¶ 61,192 at P 93 (citing *Southern Natural Gas Co.*, 135 FERC ¶ 61,056, at P 32, *order on reh'g*, 137 FERC ¶ 61,050 (2011)).

before the first opportunity to submit a scheduling nomination, then the shipper must be given credits based upon an appropriate historical usage up to its MDQ, as proposed in GT&C section 16.5(c), and not on the shipper's scheduling nominations. Accordingly, the order stated that there is never a situation where both sections 16.5(b) and 16.5(c) could apply, depending upon which alternative provides the least credits.¹⁴

8. The June 6 Order held that although Sierrita's proposal correctly provided that if a shipper is not given advance notice of a non-*force majeure* outage, credits will not be calculated based on historical usage, there was no corresponding sentence providing that if advance notice is given, credits will be calculated based on historical usage rather than nominations. Therefore, the Commission directed that Sierrita revise its tariff to provide that when advance notice is given, credits must be calculated based on historical usage.

9. Finally, the June 6 Order directed Sierrita to remove the first sentence of the last paragraph of GT&C section 16.5(c), which provided that when the shipper has no nomination in place, Sierrita will base credits on the "lesser of" GT&C section 16.5(a) or 16.5(c). The order required deletion of that sentence because it would require the "lesser of" methodology as the default crediting method where no nomination is in place instead of distinguishing between the crediting methods in sections 16.5(b) and (c) based on whether the pipeline has given notice of an outage before the first opportunity to schedule service for a Gas Day.

10. GT&C section 16.5 is not fully compliant with the aforementioned directives. The June 6 Order required Sierrita to revise its tariff to provide that, when it has given advance notice of an outage before the first opportunity to nominate service for the day (cycle 1), the shipper's credits must be based on a measure of historical usage, and not on the quantities it nominates for scheduling up to its MDQ which were not delivered. Sierrita proposes to comply with this requirement by adding a sentence to proposed GT&C section 16.5 providing, "Pursuant to this [s]ection 16.5, should Transporter's notice of a service interruption be provided prior to Cycle 1, the 7-day average criteria in section 16.5(c) above shall be included in the 'lesser of' determination." This sentence fails to include the express statement, required by the June 6 Order, that when notice has been provided before Cycle 1, credits will not be based on the shipper's nominations. By simply providing that, when advance notice of an outage is provided, the 7-day average criteria in section 16.5(c) will be included in the 'lesser of' determination, Sierrita continues to leave open the possibility that, in this situation, credits could be based on the shipper nomination criteria in section 16.5(b). Therefore, Sierrita is directed to further revise GT&C section 16.5 as directed in the June 6 Order to include an express statement that, when advance notice of an outage is provided, the shipper nomination criteria in section 16.5(b) will not be used.

¹⁴ *Id.*

11. Sierrita also seeks a waiver of the Ordering Paragraph (K) requirement that directed Sierrita to submit a tariff filing no less than 30 days and no more than 60 days prior to commencement of service. Sierrita states that it expects to commence system operations as early as September 30, 2014; however, Sierrita claims it is uncertain as to the actual date that the facilities will be ready for service. The Commission finds that good cause exists to grant Sierrita's requested waiver and accepts the proposed tariff records listed in the Appendix, effective September 30, 2014, or the date on which the proposed facilities are placed into service if that date is different, subject to the conditions discussed above. When Sierrita files in compliance with section 157.20(c)(2) of the Commission's regulations, it should also make this informational filing with the Commission through the eTariff portal using a Type of Filing Code 620. In addition, Sierrita is advised to include as part of the eFiling description, a reference to Docket No. CP13-73-000, and the actual in-service date for project.¹⁵

The Commission orders:

(A) The tariff records listed in the Appendix are accepted, subject to Sierrita's filing revised tariff records within 30 days of the date of this order as discussed above, to be effective on the date the project goes into service.

(B) Sierrita must move to place its tariff records into effect as soon as possible after the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁵ *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

APPENDIX**Sierrita Gas Pipeline LLC
FERC NGA Gas Tariff
Sierrita Tariffs*****Tariff Records Accepted Effective September 30, 2014, or the project's in-service-date,
whichever is later***

Tariff, Original Volume No. 1, 0.0.0

Part I: Overview, Section 1 - Table of Contents, 0.0.0

Part I: Overview, Section 2 - Preliminary Statement, 0.0.0

Part I: Overview, Section 3 - System Map, 0.0.0

Part I: Overview, Section 4 - Points of Contact, 0.0.0

Part II: Stmt. of Rates, , 0.0.0

Part II: Stmt. of Rates, Section 1 - Service Rates, 0.0.0

Part II: Stmt. of Rates, Section 2 - Fuel and L&U Rates, 0.0.0

Part II: Stmt. of Rates, Section 3 - Surcharges, 0.0.0

Part II: Stmt. of Rates, Section 4 - Footnotes, 0.0.0

Part III: Rate Schedules, , 0.0.0

Part III: Rate Schedules, Section 1 - Rate Schedule FT, 0.0.0

Part III: Rate Schedules, Section 2 - Rate Schedule IT, 0.0.0

Part IV: GT&C, , 0.0.0

Part IV: GT&C, Section 1 - Definitions, 0.0.0

Part IV: GT&C, Section 2 - Measurement, 0.0.0

Part IV: GT&C, Section 3 - Quality, 0.0.0

Part IV: GT&C, Section 4 - Requests for Services, 0.0.0

Part IV: GT&C, Section 4.1 - Request for Service, 0.0.0

Part IV: GT&C, Section 4.2 - Information To Be Provided, 0.0.0

Part IV: GT&C, Section 4.3 - Capacity Bidding and Evaluation Criteria, 0.0.0

Part IV: GT&C, Section 4.4 - Execution Requirement, 0.0.0

Part IV: GT&C, Section 4.5 - Capacity Reserved for Expansion Projects, 0.0.0

Part IV: GT&C, Section 4.6 - Off-System Capacity, 0.0.0

Part IV: GT&C, Section 4.7 - Electronic Execution of Agreements, 0.0.0

Part IV: GT&C, Section 4.8 - Changes to Shipper's Transportation Service, 0.0.0

Part IV: GT&C, Section 4.9 - Right-of-First-Refusal, 0.0.0

Part IV: GT&C, Section 4.10 - Extension Rights, 0.0.0

Part IV: GT&C, Section 4.11 - Contract Extension, 0.0.0

Part IV: GT&C, Section 4.12 - Creditworthiness, 0.0.0

Part IV: GT&C, Section 4.13 - Discounting, 0.0.0

Part IV: GT&C, Section 4.14 - Negotiated Rate Authority, 0.0.0

Part IV: GT&C, Section 4.15 - Statutory Regulation, 0.0.0

Part IV: GT&C, Section 4.16 - Assignments, 0.0.0

[Part IV: GT&C, Section 4.17 - Agents and AMAs, 0.0.0](#)
[Part IV: GT&C, Section 4.18 - Termination Obligations, 0.0.0](#)
[Part IV: GT&C, Section 5 - Service Conditions, 0.0.0](#)
[Part IV: GT&C, Section 6 - Nominations and Scheduling Procedures, 0.0.0](#)
[Part IV: GT&C, Section 6.1 - Nomination Cycles, 0.0.0](#)
[Part IV: GT&C, Section 6.2 - Nomination Procedures, 0.0.0](#)
[Part IV: GT&C, Section 6.3 - Scheduling of Receipts and Deliveries, 0.0.0](#)
[Part IV: GT&C, Section 6.4 - Confirmation Procedures, 0.0.0](#)
[Part IV: GT&C, Section 6.5 - Allocation of Capacity, 0.0.0](#)
[Part IV: GT&C, Section 6.6 - Protection of Life and Property, 0.0.0](#)
[Part IV: GT&C, Section 6.7 - Transporter's Non-Liability, 0.0.0](#)
[Part IV: GT&C, Section 7 - Responsibility for Gas and Products, 0.0.0](#)
[Part IV: GT&C, Section 8 - Operating Provisions, 0.0.0](#)
[Part IV: GT&C, Section 8.1 - Firm Service, 0.0.0](#)
[Part IV: GT&C, Section 8.2 - Interruptible Service, 0.0.0](#)
[Part IV: GT&C, Section 9 - Capacity Release Program, 0.0.0](#)
[Part IV: GT&C, Section 9.1 - Purpose, 0.0.0](#)
[Part IV: GT&C, Section 9.2 - Applicability, 0.0.0](#)
[Part IV: GT&C, Section 9.3 - Availability of Released Capacity, 0.0.0](#)
[Part IV: GT&C, Section 9.4 - Qualification for the Capacity Release Program, 0.0.0](#)
[Part IV: GT&C, Section 9.5 - Capacity Release Timeline, 0.0.0](#)
[Part IV: GT&C, Section 9.6 - Prearranged Releases, 0.0.0](#)
[Part IV: GT&C, Section 9.7 - Notice of Capacity Release - Open Season Basis, 0.0.0](#)
[Part IV: GT&C, Section 9.8 - Notice of Capacity Release - Prearranged Basis, 0.0.0](#)
[Part IV: GT&C, Section 9.9 - Term of Released Capacity, 0.0.0](#)
[Part IV: GT&C, Section 9.10 - Bids for Released Capacity - Open Season, 0.0.0](#)
[Part IV: GT&C, Section 9.11 - Awarding of Released Capacity, 0.0.0](#)
[Part IV: GT&C, Section 9.12 - Recalls and Reput of Capacity, 0.0.0](#)
[Part IV: GT&C, Section 9.13 - Execution of Agreements or Amendments, 0.0.0](#)
[Part IV: GT&C, Section 9.14 - Notice of Completed Transactions, 0.0.0](#)
[Part IV: GT&C, Section 9.15 - Effective Date of Release and Acquisition, 0.0.0](#)
[Part IV: GT&C, Section 9.16 - Rates, 0.0.0](#)
[Part IV: GT&C, Section 9.17 - Marketing Fee, 0.0.0](#)
[Part IV: GT&C, Section 9.18 - Billing, 0.0.0](#)
[Part IV: GT&C, Section 9.19 - Compliance by Replacement Shipper, 0.0.0](#)
[Part IV: GT&C, Section 9.20 - Temporary Capacity Release Obligations, 0.0.0](#)
[Part IV: GT&C, Section 9.21 - Refunds, 0.0.0](#)
[Part IV: GT&C, Section 9.22 - Temporary Capacity Release Termination, 0.0.0](#)
[Part IV: GT&C, Section 10 - Imbalance Management, 0.0.0](#)
[Part IV: GT&C, Section 10.1 - Imbalance Management and Operating Tolerances, 0.0.0](#)
[Part IV: GT&C, Section 10.2 - Imbalance Adjustments, 0.0.0](#)
[Part IV: GT&C, Section 10.3 - Cash Out, 0.0.0](#)
[Part IV: GT&C, Section 10.4 - Determination of Deliveries, 0.0.0](#)

[Part IV: GT&C, Section 10.5 - Operational Balancing Agreements, 0.0.0](#)
[Part IV: GT&C, Section 10.6 - Maintenance of System Integrity, 0.0.0](#)
[Part IV: GT&C, Section 11 - System Operational Parameters, 0.0.0](#)
[Part IV: GT&C, Section 11.1 - Cautionary Condition Procedures, 0.0.0](#)
[Part IV: GT&C, Section 11.2 - Flow Control, 0.0.0](#)
[Part IV: GT&C, Section 11.3 - Force Majeure, 0.0.0](#)
[Part IV: GT&C, Section 12 - Billing and Payment, 0.0.0](#)
[Part IV: GT&C, Section 13 - Fuel and L&U, 0.0.0](#)
[Part IV: GT&C, Section 14 - Penalties, 0.0.0](#)
[Part IV: GT&C, Section 15 - Revenue Sharing Mechanism, 0.0.0](#)
[Part IV: GT&C, Section 16 - Reservation Charge Credit, 0.0.0](#)
[Part IV: GT&C, Section 17 - Annual Charge Adjustment Surcharge, 0.0.0](#)
[Part IV: GT&C, Section 18 - Waivers, 0.0.0](#)
[Part IV: GT&C, Section 19 - Descriptive Headings, 0.0.0](#)
[Part IV: GT&C, Section 20 - Electronic Bulletin Board, 0.0.0](#)
[Part IV: GT&C, Section 21 - Affiliate-Related Information, 0.0.0](#)
[Part IV: GT&C, Section 22 - Adverse Claims to Natural Gas, 0.0.0](#)
[Part IV: GT&C, Section 23 - Compliance With 18 CFR, Section 284.12, 0.0.0](#)
[Part IV: GT&C, Section 24 - Taxes, 0.0.0](#)
[Part IV: GT&C, Section 25 - Indemnification/Liability, 0.0.0](#)
[Part IV: GT&C, Section 26 - Complaint Procedures, 0.0.0](#)
[Part IV: GT&C, Section 27 - Incidental Purchases and Sales, 0.0.0](#)
[Part V: Service Agreement, , 0.0.0](#)
[Part V: Service Agreement, Section 1 - Rate Schedule FT, 0.0.0](#)
[Part V: Service Agreement, Section 2 - Rate Schedule IT, 0.0.0](#)
[Part VI: Illustrations, , 0.0.0](#)