

149 FERC ¶ 61,094
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transwestern Pipeline Company, LLC

Docket No. RP15-23-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS SUBJECT TO
REFUND AND CONDITIONS, AND ESTABLISHING HEARING PROCEDURES

(Issued October 30, 2014)

1. On October 1, 2014, Transwestern Pipeline Company, LLC (Transwestern) filed pursuant to section 4 of the Natural Gas Act (NGA) to implement a general rate increase (Rate Filing). In its Rate Filing, Transwestern submitted two sets of proposed tariff records with alternative rate structures for consideration by the Commission: actual tariff records¹ as its primary case (Primary Case) and *pro forma* tariff records, filed on a prospective basis, that differ from the Primary Case with respect to fuel recovery (Preferred Fuel Case). The Primary Case includes a fuel tracking mechanism that would result in periodic adjustments of the fuel rates, while the Preferred Fuel Case includes fixed fuel rates that are not subject to adjustment. Transwestern requests that the Primary Case tariff records be placed into effect either on November 1, 2014, or at the end of any suspension period. For certain tariff records, Transwestern requests an effective date of May 1, 2015, or six months following a final Commission order approving the revisions.²

¹ See Appendix.

² Transwestern requests waiver of 18 C.F.R. § 154.207 of the Commission's regulations, 18 C.F.R. § 154.207 (2014), as to the tariff records relating to scheduling priorities and other matters. It asks in this regard, that such tariff records be made effective as of May 1, 2015, or six months following a final Commission order approving the revisions because it will need to update its computer software to reflect the tariff changes.

2. As discussed below, the Commission accepts and suspends the tariff records proposed to be effective November 1, 2014, for the full statutory period, and sets them for hearing. The Commission will not grant waiver with respect to the prematurely filed tariff records, but Transwestern may treat these records as *pro forma*, until such time as they may appropriately be filed as actual tariff records. Therefore, these tariff records are rejected.

I. Background

3. Transwestern made its Rate Filing to comply with the terms of the Stipulation and Agreement approved by the Commission in Docket No. RP11-2576-000 (2011 Settlement).³ In the 2011 Settlement, Transwestern agreed to file a new NGA general section 4 rate case on October 1, 2014. The 2011 Settlement required Transwestern to implement a fuel tracker, including an annual true-up that complies with the Commission's "then-existing policy with respect to fuel trackers." The 2011 Settlement required Transwestern to propose tariff revisions to comply with the Commission's existing policy on reservation charge crediting.

II. Details of the Filing

A. Rate Proposal

4. Transwestern's current transportation rates have been in effect since April 1, 2007. Transwestern explains that since that time the natural gas marketplace has significantly changed because of the development of non-conventional resources, a reduction in the price of natural gas, and a reduction in price differentials across regions. Transwestern states it has calculated its proposed cost of service using a twelve month base period ending May 31, 2014, with adjustment for changes anticipated to occur within a nine-month period ending February 28, 2015. Transwestern proposes revised rates based on a cost of service of \$339.8 million, which is an increase of approximately \$146.3 million from the overall cost of service of \$193.5 million established in the settlement that resolved Transwestern's NGA general section 4 rate case in Docket No. RP06-614-000, in 2007. Transwestern explains its cost-of-service increase reflects: (1) an increase in rate base; and (2) increases in overall rate of return and related taxes. Transwestern proposes to increase its total rate base from \$792 million to \$1.6 billion. Transwestern states its rate base has increased largely because of its Phoenix Expansion Project, which it placed in-service on March 1, 2009, and its New River Compressor Station project, which it placed into service on June 1, 2014. Transwestern's proposed total revenue requirement includes a proposed return on equity of 14.50 percent and an

³ *Transwestern Pipeline Co., LLC*, 137 FERC ¶ 61,095 (2011).

overall rate of return of 11.20 percent. Transwestern proposes to continue to use its existing depreciation rate of 1.2 percent.

5. Transwestern states over the past several years throughput on certain parts of its system has fallen dramatically. Consequently, Transwestern explains its proposed rate level changes result from decreased billing determinants and decreased throughput levels for its transportation services. Transwestern has therefore adjusted its billing determinants to reflect discounts and has designed its rates utilizing billing determinants of 431,856,574 MMBtu compared to 817,656,984 MMBtu in Docket No. RP06-614-000.

6. Transwestern also proposes to move from a Straight Fixed Variable (SFV) rate design to an Adjusted Straight Fixed Variable (ASFV) rate design. In doing so, Transwestern proposes to include five percent of its return on equity and associated federal and state income taxes in the usage component of its rates.

B. Fuel Tracker

7. In compliance with its 2011 Settlement, Transwestern proposes, in its Primary Case, a fuel tracker that requires an annual true-up. Transwestern's proposal permits adjustments not to exceed 0.5 percent to be effective at the beginning of any month upon 7- to 60-days' notice prior to the proposed effective date. Transwestern states that implementation of the fuel tracker further requires a system balancing tracker which it proposes in new section 38, Flow through of Balancing Tools, of its General Terms and Conditions (GT&C). Transwestern states that section 38 of its GT&C will govern the collection and distribution of penalties and the net costs of operationally required purchases and sales of natural gas.

8. However, Transwestern maintains that fixed fuel rates are more beneficial for its shippers. Therefore, its Preferred Fuel Case, which is reflected in the pipeline's *pro forma* tariff records, contains the same fuel rates proposed in its Primary Case, but the fuel rates are fixed and not subject to adjustment. Accordingly, the *pro forma* tariff records reflect the deletion of the fuel tracker provisions and the associated flow through of balancing tools, as well as references to those provisions.

C. General Tariff Proposals

9. Transwestern proposes extensive revisions to its operations and business practices. Transwestern claims, among other things, that such proposals will enable it to better manage its system in order to maintain reliable service and provide greater flexibility to shippers.

10. In compliance with the 2011 Settlement, Transwestern proposes to establish reservation charge crediting provisions in section 36, Reservation Charge Credit, of its GT&C and to remove reservation charge crediting language from other parts of its tariff.

Transwestern states its proposed reservation charge crediting language provides for credits in both non-*force majeure* and *force majeure* conditions. Transwestern states that implementation of the reservation charge crediting provisions will require revisions to the scheduling provisions of its tariff to allow it to accurately determine the quantities of natural gas that are eligible for reservation charge crediting. Thus, Transwestern proposes new scheduling priorities in section 22.2, Scheduling of Capacity, of its GT&C.

11. Transwestern also proposes several other tariff changes such as: (1) changes to hourly flow rates; (2) the addition of two new Rate Schedules with flexible hourly flow rates; (3) revised creditworthiness provisions; (4) new contracting provisions and modifications of Alert Day, Operational Flow Orders and Unauthorized Gas provisions; and (5) the removal of expired Rate Schedule FTS-4.

III. Notice of Filing, Interventions, Protests, and Answer

12. Public notice of Transwestern's filing was issued on October 2, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely-filed motions to intervene and any unopposed motions to intervene filed out-of-time 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.

13. The following parties filed protests challenging numerous aspects of Transwestern's filing: Agave Energy Corporation (Agave); Indicated Shippers;⁶ New Mexico Gas Company, Inc. (New Mexico Gas); Pacific Gas and Electric Company (PG&E); Sacramento Municipal Utility District (Sacramento MUD); Salt River Project Agricultural Improvement and Power District (Salt River); Southern California Gas Company and San Diego Gas & Electric Company (SoCal Gas and SDG&E); and UNS Gas, Inc., Tucson Electric Power Company and UNS Electric, Inc. (collectively UNS).

⁴ 18 C.F.R. § 154.210 (2014).

⁵ 18 C.F.R. § 385.214 (2014).

⁶ Indicated Shippers are BP Energy Company, Chevron U.S.A. Inc., ConocoPhillips Company, Cross Timbers Energy Services, Inc., Shell Energy North America (US), L.P., and SWEPI LP.

14. On October 20, 2014, Transwestern filed a Motion for Leave to Answer and Limited Answer in response to the protests. While the Commission's regulations generally prohibit answers to protests,⁷ the Commission will accept Transwestern's answer because it contains additional information that provides the Commission with a more complete record on which to base its decision.

IV. Positions of the Parties

15. In general, the protesting parties object to the magnitude of the proposed increases in Transwestern's rates, including, *inter alia*, the elements of Transwestern's proposed cost of service, capital structure, cost of equity and debt, billing determinants, and rate design. They contend the filing should be suspended for the maximum five-month period, subject to refund, and set for investigation and hearing. They also argue that Transwestern's non-rate proposals are unsupported and appear to be unjust and unreasonable. A number of these parties also maintain that Transwestern has not justified its proposed allocation of costs associated with its Phoenix Expansion and New River Compressor Station Projects, as well as the underlying methodology for allocating fuel, electric power costs, and lost and unaccounted for volumes. Additionally, the protesting parties challenge the Preferred Fuel Case as contrary to the 2011 Settlement, which required Transwestern to file a fuel adjustment tracking mechanism in the next rate case.

16. Some protesting parties ask the Commission to hold a technical conference or parallel settlement proceedings to address certain issues raised by Transwestern's filing. However, Indicated Shippers maintain that the rate and other issues are so interrelated that there should not be a bifurcated hearing or other parallel processes to the hearing. Indicated Shippers maintain that the Commission should examine all the issues by means of an evidentiary hearing. In support of this approach, Indicated Shippers explain how Transwestern's scheduling and imbalance proposals purportedly flow through from Transwestern's fuel tracker and reservation charge crediting proposals.

17. Many protesting parties contend that Transwestern's proposal to shift from an SFV rate design to an ASFV rate design is unjust and unreasonable and inconsistent with Commission policy and precedent, which requires fixed costs to be recovered in the reservation charge unless the parties have agreed to the use of an alternative rate design.⁸

⁷ 18 C.F.R. § 385.213 (2014).

⁸ The protesting parties cite 18 C.F.R. § 284.7(e) (2014); *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, at 30,434 (Order No. 636), *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and*
(continued...)

Several protesting parties request the Commission to summarily reject Transwestern's ASFV rate design because it allegedly violates Commission policy.⁹

18. In its answer, Transwestern argues that Commission precedent, regulations, and policy support its right to propose an alternative rate design, which the Commission must set for hearing. According to Transwestern, summary rejection of a portion of an NGA general section 4 rate filing is limited to instances where the facts are not in dispute and the filing is in patent violation of an applicable statute, regulation, or Commission policy, which it alleges is not the instant case.¹⁰ Transwestern further emphasizes that there are facts in dispute and that the regulations do not preclude it from proposing the ASFV or a rate design other than the SFV rate design.¹¹ Transwestern acknowledges that it bears the burden of demonstrating that the ASFV rate design is just and reasonable, but it also points out that the protesting parties have failed to carry the burden of justifying summary rejection of all or any portion of the filing.

19. Additionally, Transwestern argues that the non-rate tariff provisions it proposes are in compliance with Commission regulations and policy and should be accepted without condition and put into effect November 1, 2014 and May 1, 2015, respectively, as requested. In the absence of Commission action placing the non-rate tariff records into effect November 1, 2014, Transwestern supports examining these matters in a technical conference.

V. Discussion

20. Transwestern's filing raises contested issues that warrant further investigation. Accordingly, as many of the matters raised in the filing are interrelated, the Commission will establish a hearing to explore all issues raised by Transwestern's filing, and the issues set forth in the protests including but not limited to cost of service, rate design, fuel and other non-rate tariff issues. In addition, in its Rate Filing, Transwestern proposed modifications to its scheduling priorities, effective May 1, 2015 to allow for time to make the necessary computer changes. The parties should address this issue in hearing, but as

remanded in part sub nom. United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

⁹ The protesting parties cite *Northern Border Pipeline Co.*, 60 FERC ¶ 61,176, at 61,644 (1992) (*Northern Border*); *see also El Paso Natural Gas Co.*, 112 FERC ¶ 61,150 (2005); *South Carolina Electric & Gas Co.*, 79 FERC ¶ 61,083 (1997).

¹⁰ Transwestern cites *Northern Border*, 60 FERC ¶ 61,176 at 61,644.

¹¹ Transwestern Answer at 8 (citing 18 C.F.R. § 284.7(e) (2014)).

noted earlier the Commission is rejecting these tariff records until such time as they may appropriately be filed as actual tariff records.

VI. Suspension

21. Based on a review of the filing, the Commission finds that Transwestern's proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, except as noted, the Commission will accept and suspend the effectiveness of the tariff records proposed to be effective November 1, 2014 for the maximum statutory period, until April 1, 2015, subject to refund, the conditions set forth in this order, and the outcome of the hearing proceeding ordered herein.

22. The Commission's policy regarding suspension is that tariff 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 inconsistent with other statutory standards.¹² It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹³ The Commission does not find such results here where the pipeline has proposed an NGA general section 4 rate case. Therefore, the Commission shall accept, except as noted, and suspend for the maximum period of five months the proposed tariff records in Appendix, to be effective April 1, 2015, subject to refund, and the outcome of the hearing proceeding ordered herein.

23. Transwestern must adhere to section 154.303(c)(2) of the Commission's regulations which provides that at the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service or for which certificate authority is required but has not been granted.

The Commission orders:

(A) Except as noted, the proposed tariff records listed in Appendix are accepted and suspended, to be effective April 1, 2015, subject to refund and the outcome of the hearing established in this order.

(B) As noted in the Appendix, certain tariff records are rejected until such time that they may be appropriately filed as actual tariff records.

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

¹³ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(C) Transwestern must file its revised rates to reflect the removal of the costs of any facilities not in service at the close of the test period.

(D) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, 9, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held in Docket No. RP15-23-000 concerning the lawfulness of Transwestern's proposed rates.

(E) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the hearing.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

**Appendix
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**Transwestern Pipeline Company, LLC
FERC NGA Gas Tariff
Fifth Revised Volume No. 1**

Tariff records accepted and suspended to be effective April 1, 2015, subject to refund and conditions:

[Part I, Table of Contents, 1.0.0](#)

[Part IV, Currently Effective Rates, 1.0.0](#)

[1. FTS-1, FTS-4 and LFT, Currently Effective Rates, 1.0.0](#)

[2. Rate Schedule FTS-2, Currently Effective Rates, 1.0.0](#)

[3. Rate Schedule FTS-5, Currently Effective Rates, 1.0.0](#)

[4. Rate Schedule FTS-3, Currently Effective Rates, 1.0.0](#)

[5. Rate Schedule ITS-1, Currently Effective Rates, 1.0.0](#)

[6. Rate Schedule ITS-2, Currently Effective Rates, 1.0.0](#)

[7. Rate Schedule PNR, Currently Effective Rates, 1.0.0](#)

[8. Rate Schedule HPS, Currently Effective Rates, 1.0.0](#)

[Part V, Rate Schedules, 1.0.0](#)

[1. Rate Schedule FTS-1, Firm Transportation Service, 1.0.0](#)

[2. Rate Schedule FTS-2, Firm Transportation, No Notice Service, 1.0.0](#)

[3. Rate Schedule FTS-3, Firm Transportation Service, 1.0.0](#)

[4. Rate Schedule FTS-4, Firm Transportation Service, 1.0.0](#)

[5. Rate Schedule FTS-5, Firm Transportation Service, 1.0.0](#)

[6. Rate Schedule LFT, Limited Firm Transportation Service, 1.0.0](#)

[8. Rate Schedule ITS-1, Interruptible Transportation Service, 1.0.0](#)

[9. Rate Schedule ITS-2, Interruptible Transportation Service, 1.0.0](#)

[10. Rate Schedule PNR, Park 'N' Ride Service, 1.0.0](#)

[12. Rate Schedule HPS, Hourly Peaking Service, 0.0.0](#)

[Part VI., General Terms and Conditions, 1.0.0](#)

[GT&C Section 1., Definitions, 1.0.0](#)

[GT&C Section 2., Quality, 1.0.0](#)

[GT&C Section 3., NAESB Standards Compliance, 1.0.0](#)

[GT&C Section 4., Measurement, 1.0.0](#)

[GT&C Section 5., Measuring Stations, 1.0.0](#)

[GT&C Section 7., Payment, 1.0.0](#)

[GT&C Section 11., Force Majeure / Proration of Deliveries, 1.0.0](#)

[GT&C Section 13., Creditworthiness, 1.0.0](#)

[GT&C Section 14., Assignment, 1.0.0](#)

[GT&C Section 15., Operator Balancing Agreements, 1.0.0](#)

[GT&C Section 20., Right of First Refusal, 1.0.0](#)

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**Transwestern Pipeline Company, LLC
FERC NGA Gas Tariff
Fifth Revised Volume No. 1**

Tariff records accepted and suspended to be effective April 1, 2015, subject to refund and conditions:

[GT&C Section 22., Nomination and Scheduling of Capacity, 1.0.0](#)
[GT&C Section 23., Annual Charge Adjustment \(ACA\), 1.0.0](#)
[GT&C Section 24., Capacity Posting and Contract Procedures, 1.0.0](#)
[GT&C Section 30., Capacity Release, 1.0.0](#)
[GT&C Section 35., Fuel Reimbursement Adjustment, 0.0.0](#)
[GT&C Section 36., Reservation Charge Credit, 0.0.0](#)
[GT&C Section 37., Unauthorized Gas, 0.0.0](#)
[GT&C Section 38., Flow Through of Balancing Tools, 0.0.0](#)
[Part VII, Form of Service Agreements, 1.0.0](#)
[3. Rate Schedule FTS-3, Form of Service Agreement, 1.0.0](#)
[5. Rate Schedule FTS-5, Form of Service Agreement, 1.0.0](#)
[12. Rate Schedule HPS, Form of Service Agreement, 1.0.0](#)
[13. Capacity Release, Form of Service Agreement, 1.0.0](#)

Tariff records rejected:

[Part I, Table of Contents, 2.0.0](#)
[Part IV, Currently Effective Rates, 2.0.0](#)
[1. FTS-1 and LFT, Currently Effective Rates, 2.0.0](#)
[2. Rate Schedule FTS-2, Currently Effective Rates, 2.0.0](#)
[4. Rate Schedule FTS-4, Cancelled, 2.0.0](#)
[9. Negotiated Rates, Currently Effective Rates, 1.0.0](#)
[Part V, Rate Schedules, 2.0.0](#)
[GT&C Section 1., Definitions, 2.0.0](#)
[GT&C Section 22., Nomination and Scheduling of Capacity, 2.0.0](#)
[GT&C Section 23., Annual Charge Adjustment \(ACA\), 2.0.0](#)
[GT&C Section 30., Capacity Release, 2.0.0](#)
[GT&C Section 35., Fuel Reimbursement Adjustment, 1.0.0](#)
[GT&C Section 36., Reservation Charge Credit, 1.0.0](#)
[Part VII, Form of Service Agreements, 2.0.0](#)
[4. Reserved, Form of Service Agreement, 1.0.0](#)
[13. Capacity Release, Form of Service Agreement, 2.0.0](#)