

149 FERC ¶ 61,123
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

American Midstream (AlaTenn), LLC

Docket No. RP15-50-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS

(Issued November 14, 2014)

1. On October 15, 2014, American Midstream (AlaTenn), LLC (AlaTenn) filed tariff records to implement Operational Flow Order (OFO) tariff provisions and to update its contact information.¹ AlaTenn's OFO tariff record is accepted and suspended, to be effective the earlier of April 15, 2015 or upon further order of the Commission. AlaTenn's proposed tariff records reflecting its new contact information are accepted November 15, 2014, as proposed.

Proposal

2. AlaTenn states that its currently effective tariff does not have OFO provisions. AlaTenn states that in light of its experience with weather over the last winter and an increase in contracted firm transportation for the upcoming winter, it is concerned whether it has the tools to address certain imbalances. AlaTenn asserts that it requires more tools to manage unscheduled imbalances and to maintain its ability to serve the requirements of its firm shippers within their maximum contract entitlements. Accordingly, AlaTenn proposes the instant OFO provisions.

3. AlaTenn proposes a tiered OFO mechanism. First, AlaTenn proposes that if it determines that operational circumstances exist such that the issuance of an OFO is imminent, but corrective actions may be taken to mitigate such circumstances, AlaTenn will issue an Immediate Action Critical Notice to warn affected shippers of a potential OFO and propose corrective actions to be taken by the affected shippers. AlaTenn states

¹ The proposed tariff records are shown in the Appendix.

that this action will allow its shippers an opportunity to take corrective actions to avoid the necessity of an OFO event.

4. Second, if conditions persist that threaten the safe operation of its system, AlaTenn proposes two types of OFOs to maintain efficient and reliable firm transportation service. First, AlaTenn proposes a Balancing OFO to counter situations caused by the difference in the amount of gas that shippers have delivered to and the amount of gas that they take from AlaTenn. Secondly, AlaTenn proposes a Critical Day OFO to compel prompt action by specific shippers if such action is necessary to protect the integrity of AlaTenn's system or maintain service to its firm shippers.

5. AlaTenn states that shippers will not be penalized if they comply with an OFO or if the shippers took all reasonable steps to comply but were not able to do so. In addition, AlaTenn also proposes a safe harbor provision with respect to penalties for actions during a Balancing OFO under which it will not penalize the shipper until it exceeds the greater of two percent of its daily scheduled quantities, or 1,000 Dekatherms (Dths) per Day per Shipper or 500 Dths per Day per meter. In addition, AlaTenn states that affected shippers will be granted more time to eliminate their imbalances to the extent the imbalances were caused by the shippers' compliance with an OFO.

6. AlaTenn proposes a Balancing OFO penalty of \$5.00 per dekatherm of a shipper's quantities at the receipt or delivery point that deviates from scheduled quantities, in excess of the above delineated safe harbor levels. AlaTenn proposes to credit penalty revenues, net of costs, to non-offending shippers pursuant to its existing penalty revenue crediting mechanism. AlaTenn proposes a Critical Day OFO penalty of \$10.00 per Dth, assessed against deviations from scheduled quantities in the same manner as the Balancing OFO penalty, but without any Safe Harbor.

7. Lastly, AlaTenn proposes to update its contact information.

Public Notice

8. Public notice of the filing was issued on October 16, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2014)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2014)), all timely filed motions to intervene and any unopposed motions 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. The Tennessee Valley Municipal Gas Association² (TVMGA) filed a protest. TVMGA argues that AlaTenn's OFO proposals are confusing and the proposal lacks meaningful distinctions between its various tiers that may have significant financial impact. TVMGA also questions AlaTenn's proposed penalty revenue credit mechanism, and requests that the Commission require AlaTenn to file an annual OFO report.

9. On October 31, 2014, AlaTenn filed an answer to TVMGA's protest. The Commission's Rules of Practice and Procedure do not permit answers to protests unless otherwise ordered by the decisional authority [18 C.F.R. § 385.213(a)(2) (2014)]. In this instance, the Commission finds good cause to admit AlaTenn's answer because it will not delay the proceeding, it assisted the Commission in understanding the issues raised, and it will ensure a complete record. Therefore, for good cause shown, AlaTenn's answer is accepted.

10. AlaTenn filed a response to TVMGA's protest, alleging that it needs the OFO authority proposed in this proceeding to be in effect for the upcoming winter season in order for AlaTenn to have the tools to manage the integrity of its system and maintain service to all its firm shippers. AlaTenn asserts that TVMGA is attempting to deny AlaTenn the tools it needs to manage extreme situations.

Discussion

11. The Commission finds that AlaTenn's OFO proposal has not been shown to be just and reasonable. The Commission accepts and suspends the OFO proposal, to be effective the earlier of April 15, 2015, or a date established by further Commission order. The remaining tariff records are accepted to be effective November 15, 2014. AlaTenn is directed to file explanations and/or revised tariff records to conform with the discussion below within 10 days of the issuance of this order. Parties to this proceeding have 10 days from the date of AlaTenn's filing to file comments.

OFO Proposal

12. The Commission requires that a pipeline take all reasonable actions to minimize the issuance and adverse impacts of OFOs or other measures taken to respond to adverse operational events on its system. To implement OFO provisions pipelines must first adopt objective standards and procedures for the use of OFOs.³ Specifically, the

² The members of TVMGA are Athens Utilities; Burnsville Gas Company; Decatur Utilities; Hartselle Utilities; City of Huntsville, Alabama; City of Moulton, Alabama; North Alabama Gas District; Sheffield Utilities; Tuscumbia Utilities; and Wheeler Basin Natural Gas Company, Inc.

³ 18 C.F.R. § 284.12(c)(2)(iv) (2014).

Commission requires each pipeline implementing an OFO to: (1) state clear, individualized standards, based on objective operational conditions, for when OFOs begin and end; (2) post information about the status of operational variables that determine when an OFO will begin and end; (3) state the steps and order of operational remedies that will be followed before an OFO is issued; (4) set forth standards for different levels or degrees of severity of OFOs to correspond to different degrees of system emergencies the pipeline may confront; and (5) establish reporting requirements that provide information after OFOs are issued on the factors that caused the OFO to be issued and then lifted.⁴

13. In the instant filing, the Commission finds that AlaTenn has adequately set forth its needs for additional tools to manage its system. To that end, AlaTen appears to propose a tiered OFO mechanism as it proposes a Balancing OFO with a penalty of \$5/Dth with certain tolerance levels, and a Critical Day OFO with a \$10/Dth penalty and no tolerances. The Commission finds that such a mechanism is justified if correctly constructed to prevent impairment of reliable service, and in the Commission's view, a pipeline's penalty structure and level should have a relationship to the harm the conduct could likely cause to the system. However, the Commission finds that the OFO tiers as presented by AlaTenn in proposed section 22.2 are undefined and in violation of the Commission's OFO policies as outlined above.

14. A correctly devised tiered OFO mechanism invokes incremental actions to react to different levels of crisis as they occur. It also clearly contemplates penalties commensurate with the potential harm to the pipeline because of these conditions. In the instant filing, AlaTenn has failed to set forth its mechanism in an understandable manner consistent with these principles.

15. AlaTenn proposes that the two types of OFOs it may issue are Balancing OFOs and Critical Day OFOs. However, AlaTenn's proposed tariff language fails to reasonably distinguish the Balancing OFO from the Critical Day OFO or to define the criteria necessary for AlaTenn to move from a Balancing OFO to a Critical Day OFO. In the introductory language in section 22.2, AlaTen proposes generally that it may issue an OFO in the event that "conditions exist that threaten the safe operations or integrity of the

⁴ See *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,312-13, *clarified*, Order No. 637-A, FERC Stats. & Regs. 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127, *order on reh'g*, 106 FERC ¶ 61,088, *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

system” or that “corrective actions are necessary to maintain system operations at pressures required to provide efficient and reliable firm transportation service.” However, AlaTenn does not describe which OFO it plans to issue to resolve these matters or why one OFO may be preferable to the other. Moreover, AlaTenn’s proposed section 22.2(b) concerning the Balancing OFO does not specify the criteria it will use to determine whether to issue a Balancing OFO. While section 22.2(c) concerning the Critical Day OFO does provide criteria for determining whether to issue a Critical Day OFO, some of those criteria appear equally applicable to the issuance of a Balancing OFO. As a result, the Commission is unable to distinguish the Balancing OFO from the Critical Day OFO or to determine what criteria is necessary for AlaTenn to move from a Balancing OFO to a Critical Day OFO.

16. For example, section 22.2(c) provides that the first criterion for issuance of a Critical Day OFO is that actual daily receipts from a shipper exceed actual deliveries to that shipper or vice versa. As TVMGA points out, this appears to be the same situation intended to be addressed by a Balancing OFO and it does not necessarily indicate a more critical situation faced by the pipeline.

17. The second criterion proposed for implementing a Critical Day OFO is that the “Shipper’s current daily imbalance is adversely affecting Shippers that are capable of delivering gas into or taking gas from the system during normal conditions.” In its Answer, AlaTenn states that “[a]s a final step in the tiered OFO approach, unlike the Balancing OFO, a Critical Day OFO can only be declared when the daily shipper imbalances reach the level where shippers which are capable of delivering or receiving gas to or from AlaTenn are adversely affected.” This merely restates the position set forth in the tariff language. The Commission agrees with TVMGA that the meaning of this requirement is unclear and that it does not appear to address a situation that is more harmful to the pipeline than that which might be addressed by a Balancing OFO.

18. Moreover, as pointed out by TVMGA, it is not clear why AlaTenn references actions that Shippers can take during normal conditions or why an adverse effect on any Shipper—including an interruptible Shipper—would create a more serious operational problem that would justify a shift from a Balancing OFO to a Critical Day OFO. AlaTenn responds that its tariff language does not contemplate adverse effects on interruptible shippers because its proposed language states that an OFO can be declared only when service to shippers receiving firm service is adversely affected.⁵ However, the purpose of an OFO is to maintain reliable pipeline operations which may require firm and/or interruptible shippers to respond to pipeline directions to maintain pipeline integrity and reliability. AlaTenn’s response focuses only on its firm service obligations as compared to TVMGA’s concern which is related to the pipeline’s overall operations.

⁵ AlaTenn Answer at 7 and fn.16.

Accordingly, AlaTenn must support its proposal concerning the criteria to be used to determine whether to issue Balancing OFOs and Critical Day OFOs and explain how it will accomplish its stated objective to provide an increasing deterrent to undesirable conduct in a clear and consistent manner.

19. AlaTenn has also failed to explain the difference between the shipper conduct that will trigger imposition of its proposed OFO penalties and the method of calculating those penalties. As set forth by TVMGA, proposed Section 22.2(b) provides that, if there is a difference between *actual* gas receipts from the shipper and *actual* gas deliveries to that shipper during a Balancing OFO, a penalty for such condition will be imposed based upon the extent that the shipper's *actual* receipts or deliveries vary from its *scheduled* receipt or deliveries.⁶ TVMGA argues that AlaTenn does not explain why the total level of penalty is not assessed based on the triggering action, (i.e., the difference between *actual* gas receipts and *actual* gas deliveries). TVMGA asserts that this inconsistency between the actions that trigger the penalty and how the penalty is derived creates confusion concerning exactly what situation AlaTenn intends to remedy by its imposition of this penalty.

20. In its answer, AlaTenn describes TVMGA's position as a smokescreen. AlaTenn then states that:

[T]he deviations from scheduled receipts and deliveries are the cause of imbalances on a pipeline's system that can, in an extreme situation, jeopardize safe operations, the integrity of the system, or firm service especially on a system like AlaTenn's which is ill-suited to fluctuations that AlaTenn saw last winter. Therefore, it is the deviation from scheduled receipts and deliveries that can and should trigger an OFO penalty.⁷

⁶ Proposed section 22.2(b) states in part:

If Shipper fails to take corrective action to maintain a balance between Shipper's receipt and deliveries during a Balancing OFO, then Transporter may assess a penalty of \$5.00 multiplied by each Dth of Shipper's quantities at a Receipt or Delivery Point(s) that deviate from scheduled quantities, plus or minus a safe harbor equal to the greater of (1) 2% of the daily scheduled quantities, or (2) 1,000 Dths per Day per Shipper or 500 Dths per Day per meter, when Transporter's Balancing OFO is in effect. Transporter shall not assess a Balancing OFO penalty if Transporter's SCADA/Real time data is unavailable to Shipper.

⁷ AlaTennAnswer at 7.

21. The Commission finds that AlaTenn's answer does not clarify the issues raised by TVMGA and shared by the Commission on this matter. AlaTenn's response ignores its use of the difference between actual receipts from the shipper at a receipt point and actual deliveries to the shipper at a delivery point to trigger the OFO penalties and the use of the difference between actual receipts/deliveries at a receipt/delivery point and scheduled volumes at the relevant point to derive its proposed penalty as set forth in its proposed tariff language. AlaTenn fails to explain why its penalty, derived in the manner it proposes, will deter the actions it intends to discourage. AlaTenn is directed to fully explain the workings of its proposed provision and/or file revised tariff records to accomplish any revisions necessary to conform with the instant discussion. In particular, AlaTenn is directed to explain why its tariff language states that it may assess a penalty if Shipper fails to take corrective action to maintain a balance between Shipper's actual receipts and deliveries during a Balancing OFO, which the Commission reads as a requirement that actual gas receipts and deliveries must balance during a Balancing OFO, and AlaTenn's statement in its Answer that "[T]herefore, it is the deviation from scheduled receipts and deliveries that can and should trigger an OFO penalty."

22. TVMGA also protests AlaTenn's proposed penalty revenue credit mechanism for failing to accrue interest as required by Commission precedent. The Commission finds that section 22.2(g)(2) contemplates penalty revenues consistent with section 3.7(g) which states that "[c]arrying costs shall be calculated on the net balance each Month utilizing the rate set forth in Section 154.501 of the Commission's Regulations [18 C.F.R. § 154.501 (2014)]." Thus the Commission finds that AlaTenn has committed to accrue interest on penalty revenues, and TVMGA's protest on this point is rejected.

23. Further, TVMGA criticizes the proposed penalty revenue crediting mechanism for including an overly expansive definition of offsetting costs, and not providing for an annual report of penalty revenue credits. TVMGA requests that the Commission require AlaTenn to modify the provision such that offsetting costs are demonstrated to be appropriate in an annual penalty revenue credit report.

24. AlaTenn, in its response to TVMGA states that it will refund any OFO penalty amounts net of cost using the same methodology it uses to refund its cash-out revenues as set forth in section 3.7(g) of its tariff. AlaTenn states that pursuant to that methodology it is required to refund its net OFO penalty revenues annually. AlaTenn states it makes such refunds based upon the most recent twelve months, in a report at the end of each 12-month period ending May 31 of each year. AlaTenn states that this methodology includes carrying costs at the Commission approved interest rate for the OFO net revenue account.

25. The Commission finds that AlaTenn's methodology adequately responds to the issues raised by TVMGA. In regard to TVMGA's suggestion that AlaTenn proposes an overly expansive definition of offsetting costs to its OFO revenues, the Commission finds

that AlaTenn's annual report must reflect penalty revenues, the costs netted against penalty revenues and any penalty credits for the previous year. At the time of its report, AlaTenn will have the burden to support any costs included in the report. AlaTenn's customers may challenge revenues, costs and the methods of identifying and accounting for these amounts when the report is filed.⁸

26. TVMGA also argues that proposed section 22.2(g)(2) could be read as precluding offending shippers from receiving penalty revenues forever, as opposed to the general practice of precluding offending shippers for only a year. In the Commission's view, this provision is intended to bar offending shippers from receiving penalty credits. However, as pointed out by TVMGA, it appears to permanently bar offending shippers from receiving penalty credits instead of barring them only for the OFO period from which the credits are derived. In its Answer, AlaTenn responds that it intends to determine on a monthly basis what shippers were assessed an OFO penalty and then calculate refunds of the OFO net revenue from that month for the remaining shippers. Following the end of each 12-month period ending May 31, AlaTenn states that it will make the necessary refunds with interest. The Commission finds that AlaTenn's response presents a reasonable methodology and directs AlaTenn to revise its proposed tariff language to fully encompass this explanation.

Contact Information

27. AlaTenn filed several tariff records updating its contact information. These changes are not protested. These tariff records, as identified in the Appendix, are accepted effective November 15, 2014, as proposed.

Suspension

28. Based upon review of the filing, the Commission finds that the proposed tariff record has not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept and suspend the effectiveness of the proposed tariff records for the period set forth below, subject to the conditions set forth in this order, and further review and order of the Commission.

29. The Commission's policy regarding tariff filings is that they 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

⁸ *Columbia Gas Transmission Corp.*, 100 FERC ¶ 61,084 at P 237 (2002); *Columbia Gulf Transmission Co.*, 100 FERC ¶ 61,344 at PP 124-125 (2002); *Panhandle Eastern Pipe Line Co.*, 97 FERC ¶ 61,046 at 61,273-74 (2001); and *Colorado Interstate Gas Co.*, 95 FERC ¶ 61,321 at 62,125 (2001).

with other statutory standards.⁹ 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.¹⁰ Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records listed in the Appendix, to be effective, subject to conditions, the earlier of April 15, 2015, or a date set by further order of the Commission.

Motion

30. In its Transmittal Letter to the instant filing, AlaTenn states, “AlaTenn hereby moves to place the tariff records into effect *at the expiration of any suspension period set by the Commission* provided the tariff records are approved as filed and without condition.” (Emphasis added.) The Commission’s regulations [18 C.F.R. § 154.7(a)(9) (2014)] provide two options regarding the filing of a motion to place suspended rates into effect pursuant to section 4(e) of the Natural Gas Act. In the case of a minimal suspension, the pipeline may include in its filing a motion to: (1) place the proposed rates into effect at the end of the suspension period; or (2) reserve the right to file a later motion. AlaTenn includes with its filing a motion to place the proposed tariff provisions into effect at the end of any suspension period. Pursuant to 18 C.F.R. § 154.7(a)(9) (2014), such a motion only applies to minimal suspensions and cannot apply to five-month suspensions. Thus, the motion included in AlaTenn’s filing is ineffective for purposes of moving the proposed tariff records into effect at the end of the suspension period. If and when AlaTenn decides to move the suspended tariff record into effect, it must do so consistent with 18 C.F.R. § 154.206(a) (2014) of the Commission’s regulations.

⁹ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁰ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

The Commission orders:

(A) AlaTenn's OFO tariff proposal is accepted and suspended, effective the earlier of April 15, 2015, or a date set by further order of the Commission, as shown on the Appendix;

(B) AlaTenn is required to provide additional support and/or revised tariff records within 10 days of the date of this order as discussed above;

(C) Parties to this proceeding may file comments addressing AlaTenn's filing required above within 10 days of AlaTenn's date of filing; and

(D) AlaTenn's proposed tariff records revising its contact information are accepted effective November 15, 2015, as shown on the Appendix.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix
Tariff Record Accepted and Suspended, Effective April 15, 2015

American Midstream (AlaTenn), LLC
FERC NGA Gas Tariff
FERC Gas Tariff, Sixth Revised Volume No. 1

[32-GT&C Section 22 \(Capacity Curtailment & OFOs\), 1.0.0](#)

Tariff Records Accepted Effective November 15, 2014

[1-Title Page, 1.0.0](#)

[7-Rate Schedule FT, 2.0.0](#)

[8-Rate Schedule FT-SG, 2.0.0](#)

[9-Rate Schedule IT, 2.0.0](#)

[10-Rate Schedule LMS, 1.0.0](#)

[13-GT&C Section 3 \(Measurement and Scheduling\), 2.0.0](#)

[44-GT&C Section 34 \(Marketing Affiliates\), 1.0.0](#)

[48-FT Service Agreement, 2.0.0](#)

[52-FT-SG Service Agreement, 1.0.0](#)

[56-Release Service Agreement, 1.0.0](#)

[58-IT Service Agreement, 1.0.0](#)

[62-Service Request Form, 1.0.0](#)

[65-Three Party Release Form, 1.0.0](#)