

149 FERC ¶ 61,176  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

November 26, 2014

In Reply Refer To:  
Trailblazer Pipeline Company LLC  
Docket No. RP15-106-000

Trailblazer Pipeline Company LLC  
Attention: Michael Smith  
370 Van Gordon Street  
Lakewood, CO 80228

Dear Mr. Smith:

1. On October 31, 2014, Trailblazer Pipeline Company LLC (Trailblazer) filed revised tariff records<sup>1</sup> reflecting a new non-conforming negotiated rate agreement (Contract No. 948205) with Tenaska Marketing Ventures (Tenaska). Trailblazer also filed for Commission review two firm transportation service agreements (Contract Nos. 947594 and 947595) with Concord Energy LLC (Concord). As requested, the Commission grants waiver of the 30-day notice period,<sup>2</sup> and accepts and suspends the proposed tariff records effective November 1, 2014, subject to the conditions discussed below. The Commission also directs a compliance filing within 30 days to address certain modifications to the Concord agreements and to provide additional information regarding the Tenaska agreement.

2. Trailblazer states that it does not believe the Concord agreements are non-conforming and that it is only filing the agreements out of an abundance of caution. Trailblazer states that at the request of the shipper, the Concord agreements inserted a term not included in the *pro forma* service agreement which quotes language related to the use of secondary points from section 3.3(a) of the General Terms and Conditions (GT&C) of Trailblazer's tariff. Trailblazer states that this language is not material because, according to Trailblazer, it merely reiterates tariff terms applicable to all firm shippers. Trailblazer states that the agreements include other terms which consist merely

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<sup>1</sup> See Appendix.

<sup>2</sup> 18 C.F.R. § 154.207 (2014) and 15 U.S.C. § 717c (2012).

of filling in the blanks in the *pro forma* service agreement, such as including new primary delivery points and granting Concord a contractual rollover right consistent with Trailblazer's tariff. Because Trailblazer believes that the contracts conform to the *pro forma* service agreement, Trailblazer has not identified the Concord agreements as non-conforming in the filed tariff records.

3. With respect to the Tenaska agreement, Trailblazer states that the agreement is non-conforming due to two provisions. Trailblazer explains that pursuant to non-conforming provisions in section 1.4 of the Tenaska Agreement, contract demand will fluctuate dependent solely upon Trailblazer's operational capacity. Under this provision contract demand is defined as the volumetric difference between the pipeline's operating capacity and 743,763 Dth for any day in the contract term. The contract demand may not exceed 25,000 Dth/day. In addition, Trailblazer states that section 1.9 of the agreement provides an explanation of Shipper's negotiated rate under the contract. Trailblazer asserts that these non-conforming provisions should be accepted because they do not create any risk of undue discrimination or change service conditions.

4. Public notice of the filing was issued on November 3, 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. No protests or adverse comments were filed.

5. The Commission accepts and suspends the proposed tariff records subject to conditions. In *Columbia Gas Transmission Corporation*,<sup>3</sup> the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff and (2) affects the substantive rights of the parties. A material deviation may be permissible if the Commission finds that such deviation does not constitute a substantial risk of undue discrimination.<sup>4</sup> Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission permits the contract containing the material deviation, the Commission's regulations require the pipeline to file tariff records that reference the materially deviating contract in its tariff.<sup>5</sup>

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<sup>3</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001).

<sup>4</sup> *Columbia*, 97 FERC ¶ 61,221 at 62,004.

<sup>5</sup> 18 C.F.R. § 154.112(b) (2014).

6. The Commission finds that the Concord agreements contain impermissible material deviations. Trailblazer's *pro forma* service agreement includes a *Memphis* clause which ensures that each service agreement will incorporate subsequent changes to Trailblazer's tariff.<sup>6</sup> The Concord agreements include the *Memphis* clause provision consistent with the *pro forma* service agreement.<sup>7</sup> However, by inserting the quoted language from section 3.3 of Trailblazer's currently-effective GT&C, the Concord agreements may be construed as limiting the scope of the *Memphis* clause and providing that Concord may continue to receive service under this existing language notwithstanding any subsequent changes to section 3.3 of Trailblazer's GT&C. Under such a construction, the quoted language confers upon Concord valuable certainty regarding terms and conditions of service and provides the potential for discrimination in the event that section 3.3 of Trailblazer's GT&C changes in the future. Under this interpretation, the inserted quotation is an impermissible material deviation. Alternatively, if the quoted language is interpreted as consistent with the *Memphis* clause, then the provision neither affects the parties' rights under Trailblazer's current tariff<sup>8</sup> nor alters the parties' rights in the future as subsequent changes to section 3.3 of Trailblazer's GT&C will supersede the quoted language. To the extent that the quoted terms do not change the rights of the parties, there is no reason to include this language in the agreement.<sup>9</sup> In either case, the interaction between the *Memphis* clause and the quoted language creates unnecessary ambiguity. Accordingly, within 30 days, Trailblazer must

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<sup>6</sup> Trailblazer, Tariff, 6th Revised Vol. No. 1, Service Agreements, Form of Service Agreement FTS (1.0.0), § 9 (stating, "[t]he FTS Rate Schedule, as revised from time to time, controls this Agreement and is incorporated herein"). Named after *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Div.*, 358 U.S. 103 (1958), a *Memphis* clause reserves a pipeline's right to make NGA section 4 filings to propose tariff changes and to apply those changes to the pipeline's existing customers.

<sup>7</sup> Concord Agreement, Contract No. 947594, § 9 (stating, "[t]he above-stated Rate Schedule, as revised from time to time, controls this Agreement and is incorporated herein"); Concord Agreement, Contract No. 947595, § 9 (same).

<sup>8</sup> The Concord Agreements—consistent with Trailblazer's *pro forma* service agreement—incorporates by reference the terms of Trailblazer's tariff. See Concord Agreement, Contract No. 947594, § 8(j) (stating, "[t]his Agreement shall at all times be subject to all applicable provisions of Transporter's FERC Gas Tariff") & § 9 (stating, "[t]he above-stated Rate Schedule, as revised from time to time, controls this Agreement and is incorporated herein"); Concord Agreement, Contract No. 947595, § 8(j) & § 9 (same).

<sup>9</sup> *North Baja Pipeline, LLC*, 131 FERC ¶ 61,092 (2010).

make a compliance filing removing from the Concord agreements the quoted language from section 3.3 of its GT&C.

7. Regarding the Tenaska Agreement, the Commission requires more information before it can assess whether the non-conforming provision in section 1.4 related to contract demand is permissible.<sup>10</sup> Within 30 days, Trailblazer must make a compliance filing explaining whether it is able and willing to offer similar terms regarding contract demand to other similarly situated shippers, and, if not, why it is not unduly discriminatory to provide this non-conforming contract demand provision only to Tenaska. Trailblazer should also explain why the Tenaska Agreement defines the maximum daily quantity in terms of “the difference between Operating Capacity and 743,763 Dth/day”<sup>11</sup> and to provide any operational reason why this term was necessary. In addition, consistent with Commission requirements, Trailblazer must include in its compliance filing a redline version of the Tenaska agreement which identifies those terms that deviate from the *pro forma* service agreement.<sup>12</sup>

8. Trailblazer identified section 1.9 of the Tenaska Agreement as non-conforming because, although Trailblazer has negotiated rate authority, there is no blank in Trailblazer’s *pro forma* service agreement for including a negotiated rate formula or a narrative description of a negotiated rate.<sup>13</sup> Given that section 35 of Trailblazer’s GT&C authorizes such negotiated terms, the Commission finds this is a permissible non-conforming deviation.

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<sup>10</sup> Tenaska Agreement, Contract No. 948205, Negotiated Rate Agreement – FTS, § 1.4.

<sup>11</sup> The Tenaska agreement explains that the “[e]ffective MDQ is defined as the volumetric difference between the Operating Capacity and 743,763 Dth for any day in the contract term.” *Id.*

<sup>12</sup> *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 33 (2003). In its transmittal, Trailblazer states that it submitted a marked-up version identifying language in the Tenaska Agreement that is not contained in the pro-forma service agreement. Trailblazer Pipeline Co., October 31, 2014, Transmittal Sheet at 3. However, the Commission was not able to find this documentation in Trailblazer’s filing.

<sup>13</sup> The description of the data which may be inserted in section 1.9 in Trailblazer’s *pro forma* service agreement provides that only information pertaining to fuel rates are to be included in this blank. Trailblazer may want to modify its *pro forma* service agreement to include a blank to accommodate negotiated rate formula related to its base rates.

9. Based upon 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 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.

10. 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 with other statutory standards.<sup>14</sup> 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.<sup>15</sup> Such circumstances exist here, where the filings are unopposed and reflect the agreement of the parties. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records listed in the Appendix to be effective November 1, 2014, subject to conditions.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>14</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>15</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

**APPENDIX**

**Trailblazer Pipeline Company LLC**  
**FERC NGA Gas Tariff**  
**Tariffs**

**Tariff Records Accepted and Suspended, Effective November 1, 2014, Subject to**  
**Conditions**

[Rates, Negotiated Rates, 7.0.0](#)

[Non-Conforming Agreements, Non-Conforming Agreements, 2.0.0](#)

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[NC, NRA, Section 4.1 Tenaska K# 948205, 2.0.0](#)