

149 FERC ¶ 61,215  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Enbridge Pipelines (North Texas) L.P.

Docket Nos. PR09-26-001  
PR12-31-000

ORDER ON COMPLIANCE AND CLARIFICATION

(Issued December 8, 2014)

1. On July 13, 2012, Enbridge Pipelines (North Texas) L.P. (EPNT) submitted a compliance filing (in Docket No. PR12-31-000) and a request for clarification or in the alternative for rehearing (in Docket No. PR09-26-001) regarding the Commission's June 2012 Order (in Docket No. PR09-26-000).<sup>1</sup> In its compliance filing, EPNT elects to revert to its original, one-part rate for interstate transportation service under section 311 of the Natural Gas Policy Act of 1978 (NGPA), and "confirms that ... no customer is affected by this rate restatement."<sup>2</sup> In its request for clarification, among other things, EPNT requests clarification "that the Commission is not announcing a generic policy modifying its section 311 rate election regulations under section 284.123(b)."<sup>3</sup> We accept the compliance filing, grant clarification, and as per EPNT's request, find its request in the alternative for rehearing to be moot.<sup>4</sup>

**Background**

2. Prior to this docket, EPNT's rates were filed with the Commission in an August 31, 2006 rate election. EPNT elected, under section 284.123(b)(1)(i)(A) of the

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<sup>1</sup> *Enbridge Pipelines (North Texas) L.P.*, 139 FERC ¶ 61,216 (2012) (June 2012 Order).

<sup>2</sup> Compliance at 1-2.

<sup>3</sup> Request for Clarification at 1.

<sup>4</sup> *Id.* ("Should the Commission grant the requested clarifications, EPNT's request for rehearing is moot and need not be considered.")

Commission's regulations, to base its maximum rates for firm (FT) and interruptible (IT) interstate transportation service under NGPA section 311 on the transportation component of the currently effective city-gate sales rate that the Railroad Commission of Texas had established for EPNT's predecessor in interest, Southwestern Gas Pipeline, Inc.<sup>5</sup> (2006 Rate Election).<sup>6</sup> That rate was \$0.49/MMBtu, inclusive of fuel.<sup>7</sup> Because a rate filed pursuant to section 284.123(b)(1) is presumed to be fair and equitable,<sup>8</sup> the Commission did not act on this 2006 filing, and therefore the presumption remains.<sup>9</sup> Meanwhile, EPNT entered into a new rate review before the Railroad Commission of Texas, which once again approved \$0.49/MMBtu as the transportation component of EPNT's city gate sales rate, but did not approve any other rate components.<sup>10</sup>

3. On June 1, 2009, EPNT proposed to change its Section 311 rate, not by filing with the Railroad Commission of Texas, but by filing with FERC in Docket No. PR09-26-000. In addition to changes to its terms of service, EPNT proposed to change the structure of its rates. First, EPNT proposed to charge a separate in-kind Fuel Reimbursement rate of 3.05 percent of receipts to both IT and FT shippers for the first time. Second, EPNT proposed a new reservation charge for firm shippers, set at \$0.2770/MMBtu of contract

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<sup>5</sup> *Southwestern Gas Pipeline, Inc.*, Gas Utilities Docket No. 8040 (Railroad Commission of Texas June 1, 1992).

<sup>6</sup> EPNT, Filing of Rate Election, Docket No. RM85-1-000, FERC Submittal No. 20060901-0151 (filed August 31, 2006).

<sup>7</sup> Section 2.1 of EPNT's SOC, which is now labeled section 3.2 in the instant filing, also provides that it has elected to base its rates on the methodology provided in section 284.123(b)(1)(i)(A), and that its maximum rate for NGPA service will be the applicable maximum rate approved by the Railroad Commission of Texas as that rate may change from time to time.

<sup>8</sup> See 18 C.F.R. § 284.123(d) (2014) ("If the intrastate pipeline is charging a rate computed pursuant to § 284.123(b)(1), the rate charged is presumed to be: (1) Fair and equitable....")

<sup>9</sup> Rate elections under section 284.123(b)(1) do not subject the Commission to the 150-day deadline imposed on section 284.123(b)(2) filings by 18 C.F.R. § 284.123(b)(2)(ii), but the Commission now endeavors to issue orders on section 284.123(b)(1) filings within 150 days as well, rather than allowing them to take effect by inaction.

<sup>10</sup> *Enbridge Pipelines (North Texas) L.P.*, Gas Utilities Docket No. 9691 (Railroad Commission of Texas April 10, 2007).

demand per day. As partial compensation for these new rate components, EPNT proposed to lower its volumetric usage charge, previously set at \$0.49/MMBtu “inclusive of fuel,” to \$0.3140/MMBtu for IT and \$0.0370/MMBtu for FT, exclusive of fuel. Finally, EPNT proposed an overrun service charge for all shippers, set at \$0.3140/MMBtu.<sup>11</sup>

4. In addition, EPNT’s 2009 filing proposed several changes to its Statement of Operating Conditions (SOC). The June 2012 Order directed several revisions to the SOC, which EPNT does not dispute.

5. In the June 2012 Order, the Commission accepted EPNT’s proposal to replace its one-part, volumetric rates for firm and interruptible shippers with multi-part rates, with a separate reservation charge, overrun rate, and in-kind fuel reimbursement. However, the Commission ruled that by replacing the previous rate, which had been approved by the Railroad Commission of Texas, with a new rate using a completely different rate design methodology, EPNT could no longer be said to be electing to use a rate based “upon the methodology used” in the rate “on file with the appropriate state regulatory agency.”<sup>12</sup>

6. The Commission explained that EPNT had only received state regulatory review of a one-part stated rate methodology; it had not received state regulatory review of a two-part rate that splits reservation and usage charges unbundles an in-kind fuel retention percentage from its stated volumetric rate. The Commission pointed out that, because the cost of natural gas varies, establishing an in-kind fuel reimbursement necessarily meant that EPNT was proposing a rate that fluctuated, even though the state-approved rate used the methodology of recovering a fixed dollar amount. Under Commission regulations, when an NGPA section 311 pipeline does not elect to follow state-approved rates, its proposed rates no longer constitute a section 284.123(b)(1)(i)(A) or (B) election. Instead, its rates should be submitted to the Commission for approval, under section 284.123(b)(2)(i).<sup>13</sup> Accordingly, the June 2012 Order directed EPNT to either: (1) modify section 3.2 of its SOC, in which it states that it elects to follow section 284.123(b)(1)(i)(A), to state instead that its rates are on file pursuant to section 284.123 (b)(2)(i); or else (2) initiate an expedited filing with the Railroad Commission of Texas seeking approval of its new rate methodology.<sup>14</sup> The June 2012 Order stated that, in the interim, it would deem EPNT not to have elected to use a state

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<sup>11</sup> June 2012 Order, 139 FERC ¶ 61,216 at P 10.

<sup>12</sup> *Id.* P 11 (quoting then-effective 18 C.F.R. § 284.123(b)(1)(i)(A) (2011)).

<sup>13</sup> *Id.* PP 12-13.

<sup>14</sup> *Id.* P 14.

rate under section 284.123(b)(1) and treat its instant filing as an application for Commission approval of its rates under section 284.123(b)(2). Reviewing the proposed rates under that standard, the Commission approved them as fair and equitable.

### **Compliance Filing**

7. On July 13, 2012, EPNT filed a revised SOC,<sup>15</sup> to comply with both the June 2012 Order and with Order No. 714.<sup>16</sup> Specifically, EPNT revised its SOC to:

- a. restore the 500 Mcf/day minimum volume limit to Section 9.6;
- b. add the word “unplanned” to modify “outage” in Section 18.1 “*Force Majeure*”; and
- c. eliminate Section 22, “Confidentiality.”

EPNT’s changes to its terms and conditions satisfactorily comply with the June 2012 Order, and accordingly we accept its SOC, effective July 13, 2012 as proposed.

8. EPNT also filed to eliminate the fuel reimbursement percentage and return its rate levels to \$0.49/MMBtu, rather than modify its SOC statement concerning its rate election or initiate an expedited filing with the Railroad Commission of Texas seeking approval of its new rate methodology, as directed by the June 2012 Order.<sup>17</sup> While EPNT’s compliance filing does not implement either of the options proffered by the Commission in the June 2012 Order, the Commission accepts EPNT’s filing as, in essence, withdrawing its original rate filing in Docket No. PR09-26-000. EPNT contends in this regard that via “the elimination of the fuel reimbursement percentage, EPNT has restated its rate levels to \$0.49/MMBtu, the maximum lawful rate for service determined by the Railroad Commission of Texas in Docket No. 9691.”<sup>18</sup>

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<sup>15</sup> Enbridge Pipelines (North Texas) L.P., FERC NGPA Gas Tariff, Enbridge Pipelines (North Texas) L.P. Statement of Operating Conditions, [Operating Conditions, EPNT SOC 1.0.0, 1.0.0](#).

<sup>16</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008), *clarified*, Order No. 714-A, FERC Stats. & Regs. ¶ 31,356 (2014) (cross-referenced at 147 FERC ¶ 61,115 (2014)).

<sup>17</sup> June 2012 Order, 139 FERC ¶ 61,216 at P 14.

<sup>18</sup> Compliance at 1.

9. We find that EPNT has elected rates for NGPA section 311 service, pursuant to 18 C.F.R. § 284.123(b)(1)(i)(A), that are based upon the methodology used by Railroad Commission of Texas to approve the pipeline's currently effective city-gate rates. EPNT's rates are accordingly accepted, subject to the periodic review requirement established in the June 2012 Order,<sup>19</sup> and subject to EPNT re-filing with the Commission in the event that it changes its city-gate rates.

### **Request for Clarification**

10. EPNT seeks limited clarification of the June 2012 Order's classification of EPNT's rate filing. In particular, EPNT requests the following clarifications:

- a. "[The June 2012] Order is limited to the facts and circumstances of EPNT's proceeding, and, further, that the Commission is not announcing a generic policy modifying its Section 311 rate election regulations under Section 284.123(b) to require that all 'rate design changes' and 'overrun rate proposals' must now be the subject of a formal rate election proceeding."<sup>20</sup>
- b. "[A]s EPNT has withdrawn its proposed fuel reimbursement mechanism, the Commission's determination that the mechanism needs affirmative agency approval because it could '... result in rates whose cost to the shippers varies as the cost of natural gas varies' is now moot."<sup>21</sup>
- c. "[T]he Commission ... will review the sufficiency of pipeline support for proposals to establish fuel reimbursement mechanisms on a case-by-case basis, as future facts and circumstances dictate."<sup>22</sup>

11. We grant the requested clarifications. The Commission's acceptance of EPNT's instant filing to restate its rate levels to the one-part volumetric \$0.49/MMBtu maximum lawful rate for service determined by the Railroad Commission of Texas renders moot the issues concerning rate design changes discussed in the June 2012 Order. In addition, the Commission will of course review the sufficiency of a pipeline's support for proposals to establish fuel reimbursement mechanisms "as future facts and circumstances dictate." The Commission always endeavors to examine the relevant data in each docket, and base

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<sup>19</sup> June 2012 Order, 139 FERC ¶ 61,216 at PP 27-28.

<sup>20</sup> Request for Clarification at 3.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 3-4.

its decision on a rationally articulated connection between the facts found and the choice made.<sup>23</sup>

The Commission orders:

(A) The Commission accepts the tariff record referenced in footnote no. 15 containing the statement of rates and revisions to the SOC to be effective on July 13, 2012, subject to the conditions discussed in this order.

(B) Clarification is granted, as discussed above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>23</sup> *E.g., Alcoa Inc. v. FERC*, 564 F.3d 1342, 1347 (D.C. Cir. 2009).