

152 FERC ¶ 62,056  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

DBM Pipeline, LLC

Docket No. CP15-104-000

ORDER ISSUING CERTIFICATE

(Issued July 24, 2015)

On March 3, 2015, DBM Pipeline, LLC (DBM Pipeline) filed an application, pursuant to section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations requesting authorization to own and operate its existing Ramsey Residue Line located in Reeves County, Texas. DBM Pipeline requests a Part 284, Subpart G blanket certificate to provide natural gas transportation services and approval of its *pro forma* tariff, and a Part 157, Subpart F blanket certificate to construct and abandon certain facilities. Also, DBM Pipeline requests extensions of time to comply with or waivers of certain requirements related to website requirements and standards as well as waivers of certain standards related to affiliate standards of conduct. As discussed below, this order grants the requested authorizations and extensions of time and waivers, subject to certain conditions.

**Background and Proposal**

DBM Pipeline, a wholly-owned direct subsidiary of Delaware Basin Midstream, LLC (Delaware Basin Midstream),<sup>2</sup> is organized under the laws of the State of Delaware. DBM Pipeline was formed by Delaware Basin Midstream to own and operate certain natural gas pipeline facilities and rights-of-way, including the Ramsey Residue Line.

Delaware Basin Midstream was formerly known as Nuevo Midstream, LLC (Nuevo Midstream). When Nuevo Midstream was formed in 2011, the Ramsey Plant was idle and had not been used to provide processing services for a number of years. Nuevo Midstream refurbished and restarted the plant as part of the general upgrade and expansion of the gathering system. At this time, Nuevo Midstream constructed an 8-mile, 8-inch diameter residue line to connect the plant to a nearby intrastate pipeline owned by Enterprise Products Partners, LP. In 2013, Nuevo Midstream expanded the

---

<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> Delaware Basin Midstream offers gathering, processing, transportation and marketing services to oil and gas producers in West Texas and Southeast New Mexico.

processing and treating capacity of the Ramsey Plant and constructed the 275,000 Dekatherms (Dth) per day Ramsey Residue Line, a 16-inch-diameter, 9-mile long pipeline, to connect to the interstate pipeline system of El Paso Natural Gas Company, LLC. DBM Pipeline asserts that this larger residue line was primarily constructed in the same right-of-way as the smaller line that was constructed in 2011. Once the Ramsey Residue Line was completed and placed in service, the 8-inch diameter line was converted to transport natural gas liquids.

Nuevo Midstream did not seek authorization from the Commission prior to constructing or operating either of the lines. DBM Pipeline avers that Nuevo Midstream assumed that both lines would either (1) be considered intrastate facilities due to the fact that both lines are located entirely within the state of Texas, or (2) be considered non-jurisdictional gathering facilities similar to the other facilities that comprise its gathering system.

Delaware Basin Midstream now recognizes that the Ramsey Residue Line would likely be considered a jurisdictional transmission line subject to the Commission's jurisdiction and formed DBM Pipeline to own and operate the line. DBM Pipeline asserts that the smaller residue line that was constructed in 2011, has since been converted to natural gas liquids service and is connected to an intrastate pipeline and therefore would not qualify as a jurisdictional transmission line.

DBM Pipeline states that it does not own any of the gas that is transported by the Ramsey Residue Line, but transports gas for Delaware Basin Midstream and other third party producers that process their gas at the Ramsey Plant. Consequently, DBM Pipeline requests that it be granted a blanket transportation certificate pursuant to Part 284, Subpart G of the Commission's regulations in order to provide open access transportation to third parties. DBM Pipeline also requests approval of its *pro forma* tariff under which it proposes to provide transportation services. DBM Pipeline asserts that it will comply with the conditions set forth in section 284.221(c) of the Commission's regulations,<sup>3</sup> except to the extent that the specific requested exemptions or waivers detailed below are granted.

DBM Pipeline also requests a Part 157, Subpart F blanket certificate permitting DBM Pipeline to automatically, or after prior notice, perform certain activities related to the construction, acquisition, abandonment, and replacement and operation of the existing pipeline facilities.

DBM Pipeline also requests a waiver or extension of time to comply with certain website requirements applicable to interstate natural gas pipelines. Specifically, the Commission's regulations and certain North American Energy Standards Board

---

<sup>3</sup> 18 C.F.R. § 284.221(c) (2014).

(NAESB) standards require interstate natural gas pipelines to maintain an internet website (1) that complies with informational posting requirements adopted by the Commission, and (2) that provides shippers with certain interactive features, such as the ability to schedule service and engage in capacity release transactions through the website. DBM Pipeline requests an extension of time and flexibility to implement certain aspects of both sets of requirements. DBM Pipeline requests that it also be granted similar waivers or extensions of time applicable to the NAESB formatting standards.

### **Notice and Interventions**

Notice of DBM Pipeline's application in Docket No. CP15-104-000 was published in the *Federal Register* on March 17, 2015 (80 Fed. Reg. 13,839). No motions to intervene, adverse comments, or protests were filed.

### **Findings**

At a hearing held on the date of issuance noted above, there was received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein.

The Commission issued a statement of policy (Policy Statement) to provide guidance as to how proposals for certificating new construction will be evaluated.<sup>4</sup> It provides that a pipeline must financially support a project without relying on subsidization from its existing customers. It also established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. Specifically, the Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences.

Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on

---

<sup>4</sup> *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement) 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), further *clarified*, 92 FERC ¶ 61,094 (2000).

economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

As discussed above, the threshold requirement for pipelines proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Since the Ramsey Residue Line was already constructed and in-service when DBM Pipeline acquired it, there are no construction costs that could be subsidized by its customers. Accordingly, the threshold no-subsidy requirement under the Certificate Policy Statement has been met. In addition, DBM Pipeline will not take customers from any other pipeline or replace capacity that customers are currently using on another pipeline. Therefore, there will be no adverse impact on other pipelines in the region or their captive customers because the proposal is not intended to replace the existing customer's service on other pipelines. Also, no pipeline company or its customers has protested DBM Pipeline's application.

Further, since the line was already constructed when DBM Pipeline acquired it, there are no identifiable adverse impacts on landowners, communities, or the environment. Therefore, consistent with the Certificate Policy Statement and section 7(c) of the NGA, the public convenience and necessity requires approval of DBM Pipeline's application, subject to the conditions set forth in this order.

The Commission takes seriously any company's failure to comply with the requirements for Commission approval prior to providing jurisdictional transportation service or to take jurisdictional facilities out of service. The Commission will take appropriate enforcement action if, in its discretion, it determines such action is warranted. However, no further action against DBM Pipeline is warranted at this time.<sup>5</sup> Yet, DBM Pipeline is reminded that, in the future, if it does business which requires Commission authorization, it must submit required filings to obtain requisite authorizations on timely bases or face possible enforcement sanctions by the Commission.

## **Rates**

### **Initial Rates**

---

<sup>5</sup> See, E.g., Clark Fork & Blackfoot, L.L.C. and EnCana Border Pipelines Limited, 115 FERC ¶ 61,131 at P 13 (2006).

DBM Pipeline proposes to provide firm transportation (Rate Schedule FT) and interruptible transportation (Rate Schedule IT) services under Part 284 of the Commission's regulations at cost-based recourse rates, and also requests the authority to offer service at negotiated rates. DBM Pipeline asserts that it used the full system capacity of 275,000 Dth per day to design its firm and interruptible transportation rates and that the billing determinants are developed assuming all capacity will be utilized under Rate Schedule IT. DBM Pipeline states that it currently anticipates only interruptible transportation service for its customers. If there is a demand for firm transportation service, DBM Pipeline states that it would conduct an open season to ensure that firm transportation capacity is allocated in a not unduly discriminatory manner.

DBM Pipeline derived its initial Rate Schedule FT and IT recourse transportation rates using a straight fixed-variable cost classification based on the cost of the Ramsey Residue Line already in service. The FT and IT recourse rates are designed using a full design capacity of 275,000 Dth per day, and a first year cost of service of \$1,989,097 based on actual plant in-service cost. For Rate Schedule FT, DBM Pipeline proposes a maximum reservation charge of \$0.6028 per Dth and a zero commodity charge. For Rate Schedule IT, DBM Pipeline proposes a maximum commodity charge of \$0.0198 per Dth based on 100 percent load factor of its FT rate.<sup>6</sup>

A review of DBM Pipeline's proposed cost of service, allocation, and rate design finds that they reasonably reflect current Commission policy. Therefore DBM Pipeline's proposed recourse rates as initial rates for service on its pipeline are accepted. Further, DBM Pipeline's request for negotiated rate authority is approved, as conditioned below.

### **Fuel**

DBM Pipeline does not propose any fuel retainage rate because there are no compressors located on the Ramsey Residue Line. All compression for the Ramsey Residue Line is provided for by the Ramsey Plant. DBM Pipeline also does not have a provision or language in its *pro forma* tariff addressing Lost and Unaccounted For (LAUF) gas. In its April 27 Response to Staff Data Request, DBM Pipeline states that it believes LAUF on the Ramsey Residue Line is nominal given its small length and that it is a new pipeline. DBM Pipeline further asserts that any LAUF gas on the system will be accounted for pursuant to Section 3 of the General Terms and Conditions (GT&C) of its *pro forma* tariff as volumes transported on the Ramsey Residue Line will be determined based on actual metered volumes at the delivery point. DBM Pipeline states that transportation volumes will then be allocated to shippers based on their allocation of

---

<sup>6</sup> The IT rate of \$0.0198 is also applicable to the Overrun Rate.

volumes processed at the Ramsey Plant and that metered volumes at the delivery point will already reflect LAUF and obviate the need to collect LAUF separately.<sup>7</sup>

DBM Pipeline's proposal for LAUF gas is found to be reasonable. Fuel and LAUF retention rates are typically established through limited NGA section 4 filings, where parties have an opportunity to examine the data used to derive the projected fuel rate and review the reconciliation data. In the instant filing, DBM Pipeline uses actual delivered metered volumes for billing purposes. These volumes reflect LAUF gas and reduce the need to maintain deferred accounts and reconciliation adjustments.<sup>8</sup>

Shippers may dispute any quantities of gas delivered by DBM Pipeline pursuant to Section 3.3 of the GT&C and request that DBM Pipeline adjust any prior period measurements or billings to reflect the resolution of any disputes relating to receipts and deliveries.<sup>9</sup> Additionally, as there is no language in Section 3 of the GT&C or elsewhere in the *pro forma* tariff addressing LAUF, DBM Pipeline is directed to add language addressing LAUF to Section 3 of the GT&C.

### **Rate Changes and Three-Year Filing Requirements**

Consistent with Commission precedent, DBM Pipeline is required to file a cost and revenue study at the end of its first three years of FERC jurisdictional service to justify its existing cost-based firm and interruptible recourse rates.<sup>10</sup> In its filing, the projected units of service should be no lower than those upon which DBM Pipeline's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.<sup>11</sup> DBM Pipeline's cost and revenue study should be filed through the

---

<sup>7</sup> DBM Pipeline Data Response at p. 10.

<sup>8</sup> Shippers are also protected by their NAESB rights to challenge the measurement of actual receipts and deliveries and billing of the retained quantities. If disputed bills are not resolved through the NAESB process, shippers have the right to file a complaint with the Commission. These NAESB procedures satisfy the Commission's policy requiring reconciliation procedures for fuel tracker mechanisms. *See ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 22 (2005) and *Trunkline Gas Co. LLC*, 135 FERC ¶ 61,019, at P 29 (2011).

<sup>9</sup> DBM Pipeline's *pro forma* FERC Gas Tariff, GT&C Section 3.

<sup>10</sup> *Bison Pipeline, LLC*, 131 FERC ¶ 61,013, at P 29 (2010); *Ruby Pipeline, LLC*, 128 FERC ¶ 61,224, at P 57 (2009); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 34 (2008).

<sup>11</sup> 18 C.F.R. § 154.313 (2014).

eTariff portal using a Type of Filing Code 580. In addition, DBM Pipeline is advised to include, as part of the eFiling description, a reference to Docket No. CP15-104-000, and the cost and revenue study.<sup>12</sup> After reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to investigate whether the rates remain just and reasonable. In the alternative, in lieu of this filing, DBM Pipeline may make a NGA general section 4 rate filing to propose alternative rates for transportation to be effective no later than three years after the FERC jurisdictional in-service date.

## **Tariff Issues**

### **GT&C Section 2 – Quality of Gas**

GT&C Sections 2.1 and 2.2 of DBM Pipeline's *pro forma* tariff set forth its gas quality and interchangeability standards. On June 15, 2006, the Commission issued its *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*.<sup>13</sup> Paragraph 45 of the *Policy Statement* states that the Commission intends to apply its new policy on gas quality and interchangeability in its review of *pro forma* tariffs filed as part of section 7(c) certificate applications. Specifically, paragraph 45 states that applicants: (1) should ensure that their Exhibit P *pro forma* tariffs include general terms and conditions addressing quality and interchangeability; (2) should include relevant information about the gas quality and interchangeability specifications of interconnecting pipelines and of the competing pipelines serving customers to be served directly by the new entrant as well as the relevant information about the gas supplies to be received by the new entrant for transportation or storage; and (3) must show how they derived gas quality and interchangeability specifications stated in their *pro forma* tariffs.

DBM Pipeline has complied with Part (1) of this policy statement by including gas quality and interchangeability standards in its *pro forma* tariff, but the specifications are broad and fail to meet the Commission's Policy Statement that states that a pipeline's gas quality provisions must be set forth in its tariff with specificity and must be based on technical requirements.<sup>14</sup> In fact, the Commission stated in the Policy Statement that it was concerned that general merchantability provisions could conflict with *specific* gas quality and interchangeability provisions. While the Commission's Policy Statement did not prohibit merchantability provisions, the breadth of DBM Pipeline's gas quality specifications fails to include any real objective procedures for implementing gas quality standards on its system other than stating the gas

---

<sup>12</sup> *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

<sup>13</sup> 115 FERC ¶ 61,325 (2006) (Policy Statement).

<sup>14</sup> Policy Statement at P 1.

tendered shall be of “merchantable quality” and shall conform to the most stringent quality specifications adopted by the receiving pipeline(s).

Therefore, when DBM Pipeline files actual tariff records in accordance with the ordering paragraphs herein, it should include relevant information about the gas quality and interchangeability specifications of interconnecting pipelines as well as competing pipelines serving customers to be served directly by DBM Pipeline. DBM Pipeline must also include relevant information about the gas supplies to be received by DBM Pipeline for transportation. In addition, DBM Pipeline should provide objective gas quality and interchangeability specifications that can be supported by operational and engineering data.

### **GT&C Section 5 - Priority of Services and Curtailment**

GT&C Section 5.2 sets forth curtailment priorities if DBM Pipeline is unable to make deliveries or receive gas in accordance with scheduled quantities. DBM Pipeline proposes to curtail service in the following order: Rate Schedule IT from the lowest to highest price followed by Rate Schedule FT on a pro rata basis. DBM Pipeline has not included Authorized Overrun in the curtailment priorities. DBM Pipeline is directed to revise GT&C Section 5.2 to include Authorized Overrun in the same curtailment priority as Rate Schedule IT, consistent with Commission policy that authorized overrun and IT services should have the same scheduling and curtailment priority.<sup>15</sup>

### **GT&C Section 13 - Negotiated Rates**

GT&C Section 13 sets forth DBM Pipeline’s negotiated rate provisions, pursuant to the Commission’s Alternative Rate Policy Statement.<sup>16</sup> Although GT&C Section 13.1 states, in part, that “Transporter and Shipper may negotiate a rate for service under *any Rate Schedule* contained in this Tariff,” DBM Pipeline only mentions that “[t]ransporter’s maximum Rate Schedule FT rate as shown on Transporter’s Statement of Rates and Charge (“Recourse Rate”) is available for any Shipper that does not desire to negotiate a rate with Transporter.” DBM Pipeline is directed to modify GT&C Section 13.1 to allow

---

<sup>15</sup> See *Sierrita Gas Pipeline LLC*, 147 FERC ¶ 61,192, at P 73 (2014); see also *Central New York Oil and Gas Co., LLC*, 114 FERC ¶ 61,105, at P 9 (2006) (citing *CNG Transmission Corp.*, 81 FERC ¶ 61,346, at 62,592 (1997); and *Tennessee Gas Pipeline Co.*, 62 FERC ¶ 61,250, at 62,676 (1993)).

<sup>16</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996); *clarification granted*, 74 FERC ¶ 61,194 (1996), *order on reh’g*, 75 FERC ¶ 61,024 (1996). *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh’g and clarification*, 114 FERC ¶ 61,042 (2006).

shippers using interruptible service the option to use the maximum Rate Schedule IT rate if they do not desire to negotiate a rate with DBM Pipeline.

In order to comply with the Alternative Rate Policy Statement and the Commission's decision in *NorAm Gas Transmission Co.*,<sup>17</sup> DBM Pipeline is directed to file any negotiated rate contracts within 30 days after the issuance of this order. Commission policy also requires that if a pipeline files a tariff record reflecting the terms of a negotiated rate agreement, the tariff record summary must fully describe the essential elements of the transaction, including the name of the shipper, the negotiated rate, the type of service, the receipt and delivery points applicable to the service and the volume of natural gas to be transported. DBM Pipeline must disclose all consideration received that is associated with the agreement.<sup>18</sup> DBM Pipeline must also affirm that the affected service agreements do not deviate in any material respect from the form of service agreement in DBM Pipeline's *pro forma* tariff. DBM Pipeline is required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in any other separate agreements that survive the execution of the service agreement.

In addition, DBM Pipeline must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future section 4 or 5 rate case. DBM Pipeline will also be required to insert the phrase "negotiated rate" in section 3.2 of its Rate Schedule IT consistent with similar language found in section 3.2 of Rate Schedule FT.

#### **GT&C Section 14 - Force Majeure and Reservation Charge Crediting**

DBM Pipeline's definition of *force majeure* in GT&C Section 14.1 provides in part that:

The phrase "Force Majeure", as used in these General Terms and Conditions, shall mean, without limitation, an act of God, terrorism, lightning, storm, fire, explosion, accident, unusual casualty, strike, lockout, labor dispute, civil dispute, civil disturbance or labor slow down; freezing of gas lines or gas wells; breakdown or damage to gas supply facilities or gas transportation facilities; *orders or acts of civil authority which are complied with in good faith*; or any

---

<sup>17</sup> 152 FERC ¶ 61,003, at P 7; *see also NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 (1996).

<sup>18</sup> Where the price term of the negotiated rate agreement is a formula, the formula should be fully set forth in the tariff record. *See Bison Pipeline, LLC*, 131 FERC ¶ 61,013, at P 46 (2010).

other cause, whether or not of the same class or kind specifically enumerated above and whether or not foreseen or foreseeable, which is not reasonably within the control of the party claiming Force Majeure; provided, however, that an adverse change to the expected economic benefits or costs associated with the party's continued performance of its obligations under a Transportation Agreement shall not constitute an event of Force Majeure for either Transporter or Shipper. *Orders and acts of civil authority as used herein shall include, without limitation, any regulation, direction, order or request (whether valid or invalid) made by any governmental authority or person acting for a governmental agency, as well as the act or failure or refusal to act, whether rightfully or wrongfully done, of any governmental agency, authority, officer, or court charged with the interpretation, enforcement, or administration of any applicable law, rule or regulation, which act or failure or refusal to act effectively delays issuance of, or denies to either party, any permit, license, or approval reasonably necessary for the construction, development, operation, or repair of any facilities necessary or the performance of the Transportation Agreement.* [Emphasis added]

DBM Pipeline's existing definition of *force majeure* is overly broad and could include circumstances that are not both unexpected and outside the pipeline's control in conflict with established Commission policy. The Commission has considered similar tariff provisions which included in the definition of *force majeure* all interruptions of service required by governmental actions in several cases. The Commission explained that outages resulting from governmental actions may be treated as resulting from a *force majeure* event only when the governmental requirement pertains to matters which are not reasonably in the pipeline's control and are unexpected. As the Commission has recently clarified,<sup>19</sup> outages of primary firm service resulting from one-time, non-recurring government requirements may be considered outside the pipeline's control and thus eligible for treatment as *force majeure* events. However, outages necessitated by compliance with government standards concerning regular, periodic maintenance a pipeline must perform in the ordinary course of business to ensure the safe operation of the pipeline are reasonably within the pipeline's control and thus cannot be treated as *force majeure* events. Accordingly, to the extent a pipeline's existing tariff treats all outages for testing, repair, and maintenance to comply with governmental orders as *force majeure* events, it is over-inclusive and in conflict with Commission policy.<sup>20</sup>

---

<sup>19</sup> *TransColorado Gas Transmission Co.*, 144 FERC ¶ 61,175, at PP 35-44 (2013) and *Gulf South Pipeline Co.*, 144 FERC ¶ 61,215, at PP 31-34 (2013).

<sup>20</sup> *Gas Transmission Northwest LLC*, 141 FERC ¶ 61,101, at P 49 (2012) and *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216, at P 88 (2012).

The inclusion of orders or acts of civil authority in this definition of *force majeure* can be interpreted as extending to all outages attributable to government requirements, including outages necessitated by compliance with government standards concerning the regular, periodic maintenance activities a pipeline must perform in the ordinary course of business to ensure the safe operation of the pipeline. Such an interpretation is contrary to Commission policy that outages attributable to government action may only be treated as *force majeure* events if the government action is both outside the pipeline's control and unexpected.

Accordingly, it is found that the inclusion of these instances in the definition of *force majeure* in section 14.1 conflicts with Commission precedent. Therefore, DBM Pipeline is directed to modify section 14.1 to either remove this language or revise it to be consistent with Commission policy concerning *force majeure* provisions.

Additionally, there is no mention of the crediting of reservation charges either in GT&C Section 14 or elsewhere in the tariff. In general, the Commission requires all interstate pipelines to provide some level of reservation charge credits whenever the pipeline is unable to schedule reserved primary firm service during both *force majeure* and non-*force majeure* outages. When the interruption in service is the result of a *force majeure* event, i.e., an event that is "not only uncontrollable, but also unexpected," the pipeline must provide partial reservation charge credits.<sup>21</sup> When the interruption is the result of a non-*force majeure* event, the pipeline must provide shippers a full reservation charge credit.<sup>22</sup> Partial credits may be provided pursuant to: (1) the No-Profit method under which the pipeline gives credits equal to its return on equity and income taxes starting on Day 1, or (2) the Safe Harbor method under which the pipeline provides full credits after a short grace period when no credit is due (*i.e.*, 10 days or less).<sup>23</sup> The Commission has stated that pipelines may also use some other method which achieves equitable sharing in the same ballpark as the first two methods.<sup>24</sup> Therefore, DBM

---

<sup>21</sup> *North Baja v. FERC*, 483 F.3d 819, 823, approving the Commission's policy of defining *force majeure* events as events that are not only uncontrollable but also unexpected. See also *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,088, *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by*, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006).

<sup>22</sup> See, e.g., *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by*, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006).

<sup>23</sup> *Id.*

<sup>24</sup> *Northern Natural Gas Co.*, 141 FERC ¶ 61,221, at P 20 (2013).

Pipeline must revise its proposed tariff to provide reservation charge credits consistent with Commission policy<sup>25</sup> and the discussion in this order.

### **GT&C Section 21 – Requests for Service**

GT&C Section 21.2 provides that DBM Pipeline may hold an open season any time there is a request for available firm capacity and that DBM Pipeline will set forth the terms of the open season, including criteria for evaluating bids, in the open season notice. Pipelines are required to post available capacity on their websites.<sup>26</sup>

The proposed tariff language is overly broad and may be unduly discriminatory. If a shipper requests firm service at the maximum recourse rate and the capacity is available, pipelines *must* contract with those shippers. If a pipeline wishes to reserve capacity such that the capacity is not immediately available or only available for a limited term, such reservations *must* be provided for as part of the tariff.<sup>27</sup> Pipelines also should provide details about bidding and awarding of requests for capacity. DBM Pipeline is directed to clarify the availability of capacity and, if it intends to reserve capacity, add additional information on the right to reserve capacity and open season to its tariff.

### **GT&C Section 22 - Right of First Refusal**

#### **a. Shipper's Notice of Intent to Exercise ROFR**

GT&C Section 22.1 sets forth the eligibility requirements for Firm Transportation Agreements to include a regulatory right of first refusal (ROFR)<sup>28</sup> and for shippers to retain capacity at the expiration of their service agreements to which the ROFR applies. The ROFR provisions in Section 22 include the timeline for the steps of the ROFR process, starting with DBM Pipeline's posting of the availability of capacity for bid no later than 180 days prior to the expiration of the shipper's Firm Transportation Agreement. DBM Pipeline's timeline, however, fails to include the first step in the ROFR process – a shipper's notice to DBM Pipeline that it intends to exercise its ROFR. The Commission has stated that, under ROFR procedures, a shipper must provide notice to the pipeline stating whether or not it is interested in renewing its contract.<sup>29</sup> Such

---

<sup>25</sup> See, e.g., *Iroquois Gas Transmission System, L.P.*, 145 FERC ¶ 61,233 (2013) and the tariff provisions accepted in the delegated order issued June 4, 2014 in Docket Nos. RP13-1041-001 and RP13-1041-002.

<sup>26</sup> 18 C.F.R. § 284.13(d)(1) (2014).

<sup>27</sup> See *Columbia Gulf Transmission Co.*, 118 FERC ¶ 61,194 (2007).

<sup>28</sup> 18 C.F.R. § 284.221(d)(2)(ii) (2014).

<sup>29</sup> See *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,295, at P 20 (2003).

notice is given within a reasonable period before the contract expires, normally six months to a year. At that time, the shipper would not have to make a final decision, unless it was certain it would not renew its contract. Therefore, consistent with this policy, the Commission directs DBM Pipeline to modify GT&C Section 22.1 to provide for a shipper's notice to DBM Pipeline. The shipper's notice would be prior to the posting of the capacity for bid, and would thus necessitate modifying the timeline for the remaining steps in the ROFR procedures in GT&C Section 22.

**b. Clarification as to When a Shipper Must Elect to Retain Less than the Full Amount of Its Expiring Capacity**

Although GT&C Section 22.1 states, in part, that “a shipper may elect to retain a portion of its Transportation Quantity subject to ROFR rights,” GT&C Section 22.1 does not clearly indicate when such election may be made. GT&C Section 22.3 states that the shipper “shall have twenty-five (25) days after receiving notice to notify Transporter as to whether it will match the Highest Bid in terms of price, quantity and duration” and that “[i]f the Shipper fails to match the offer presented by Transporter, Transporter shall enter into a Firm Transportation Agreement with the Person submitting the competing offer.”

The Commission finds that although GT&C Section 22.3 gives a shipper the right to match bids for the capacity, GT&C Section 22.3 does not expressly indicate whether the ROFR bid matching process is for the shipper's entire transportation capacity or only the portion it elects to retain as set forth in GT&C Section 22.1. Furthermore, GT&C Section 22 does not contain any language that expressly indicates *when*, in the ROFR bid matching process, the shipper can make an election to retain only a portion of its transportation quantity. The Commission's long-standing policy is that election is not required until the service provider has notified the existing shipper of the best bid(s) received from third parties for all or a portion of the expiring capacity.<sup>30</sup> Therefore, DBM Pipeline is directed to clarify GT&C Section 22.3 to provide that a shipper does not have to elect how much capacity it will seek to retain through the ROFR process until after receiving notification from DBM Pipeline as to the best offer(s) for its expiring capacity, and may notify DBM Pipeline of its intent to match the best offer(s) for all or a volumetric portion of its capacity. DBM Pipeline must also make any additional revisions of GT&C Section 22 necessary for consistency with this directive.

**GT&C Section 25 - North American Energy Standards Board  
(NAESB)**

---

<sup>30</sup> See, e.g., *Transcontinental Gas Pipe Line Corp.*, 101 FERC ¶ 61,267, at P 26 (2002).

DBM Pipeline adopted the Business Practices and Electronic Communications Standards of NAESB Wholesale Gas Quadrant's (WGQ) Version 2.0.<sup>31</sup> DBM Pipeline states that it has identified those standards incorporated by reference in GT&C Section 25. DBM Pipeline also states that those standards not incorporated by reference by DBM Pipeline have also been identified, along with the tariff record in which they are located. However, the table identifying standards not incorporated by reference in Section 25 is incomplete. Therefore, DBM Pipeline is directed to modify Section 25 to either include the missing NAESB standards by reference, or identify, in the table, where the standards not incorporated by reference are located in its tariff.

In the event an updated version of the NAESB WGQ standards is adopted by the Commission prior to DBM Pipeline filing its actual tariff record, DBM Pipeline is directed to modify Section 25 consistent with the then current version.

### **Waiver Requests**

#### **NAESB**

DBM Pipeline requests waiver or extension of time applicable to certain website requirements and NAESB standards that require interstate natural gas pipelines to maintain an internet website (1) that complies with informational posting requirements adopted by the Commission, and (2) that provides shippers with certain interactive features, such as the ability to schedule service and engage in capacity release transactions through the website.

Specifically, DBM Pipeline states that the Commission has permitted a number of pipelines to operate more limited websites that do not comply with all of the website formatting standards adopted by NAESB.<sup>32</sup> While DBM Pipeline has maintained that it will develop and maintain an informational postings website that complies with applicable NAESB formatting standards, it may, however, decide to develop a more limited website. DBM Pipeline also requests an extension of time to comply with those Commission policies and NAESB standards that require pipelines to provide interactive features through their websites. DBM Pipeline states that while it may elect to provide such interactive features through its website, it may also determine that such features are unnecessary.<sup>33</sup>

---

<sup>31</sup> *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-V, FERC Stats. & Regs. ¶ 31,332 (2012).

<sup>32</sup> Citing, *MarkWest New Mexico, L.L.C.*, Docket No. RP13-27-000 (Nov. 9, 2012) (delegated letter order).

<sup>33</sup> DBM Pipeline states that features such as nominations and scheduling can be

DBM Pipeline's requests for a limited website and an extension of time with respect to the implementation of website requirements and related NAESB standards until 180 days after a shipper requests that DBM Pipeline make such standards available are granted.

### **Affiliate Standards of Conduct**

DBM Pipeline states that it expects to structure its operations in such a manner that it will not be subject to the affiliate standards of conduct set forth in Part 358 of the Commission's regulations. DBM Pipeline states that if Delaware Basin Midstream is the only affiliate that contracts for transportation service on the Ramsey Residue Line and Delaware Basin Midstream only markets volumes processed at the Ramsey Plant, then Delaware Basin Midstream would not qualify as an "affiliate that engages in marketing functions" by virtue of the gathering/processing exclusion set forth in 18 C.F.R. §358.3(c)(2)(iv)(2014). Thus, DBM Pipeline would not be subject to the standards of conduct because it would not provide service to any affiliate that engages in marketing functions. If, however, Delaware Basin Midstream were to market volumes not processed at the Ramsey Plant, or if DBM Pipeline were to provide service to other affiliates that did not qualify for any exclusion, DBM Pipeline would be required to comply with the standards of conduct. DBM Pipeline states that compliance would be challenging and costly, since DBM Pipeline does not currently have any employees of its own. Because establishing compliance with these standards would create additional expenses and regulatory burdens, DBM Pipeline requests waiver of the standards of conduct applicable to the separation of functions, information sharing prohibitions, and no-conduit (18 C.F.R. §§ 358.5, 358.6, and 358.7(a) (2014)).

Based on the information provided in DBM Pipeline's filing, i.e., its small size, limited operations, and lack of staff, a partial waiver of the standards of conduct under Order No. 717 is granted.<sup>34</sup> Specifically, the obligations to comply with the independent functioning requirement of section 358.5, and the information access and non-disclosure provisions of section 358.6 and 358.7(a) are waived. DBM Pipeline must notify the Commission if there is any change in circumstances in its operations that might affect its waiver.

---

performed informally without the use of a website platform. DBM Pipeline also states that such activities will likely be relatively few and limited and are entirely incidental to the processing services provided at the Ramsey Plant.

<sup>34</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,107 (2011).

### **Filing Requirements**

DBM Pipeline's *pro forma* tariff records include headers. The Commission no longer requires headers on tariff records.<sup>35</sup> However, if a company wishes to include headers on tariff records, the information therein must not be contrary to other Commission requirements or information provided by the company to the Commission. Furthermore, the tariff record headers submitted by DBM Pipeline are incorrect in that the Commission requires that the identification contained thereon read "FERC NGA Gas Tariff" not "FERC Gas Tariff" as the headers submitted by DBM Pipeline currently read.<sup>36</sup> DBM Pipeline is directed to reflect these corrections when it files its actual tariff records.

### **Environment**

Environmental review of this proposal under section 380.4 of the Commission's regulations confirms that the acquisition and blanket authority requested under Part 157 qualify as categorical exclusions under section 380.4(a)(27).

### **Blanket Certificates**

DBM Pipeline requests a Part 284, subpart G blanket certificate in order to provide open-access transportation to third parties, and filed a *pro forma* Part 284 tariff to provide its open-access services. DBM Pipeline is granted a Part 284 blanket certificate.

DBM Pipeline requests a Part 157, subpart F blanket certificate, giving it NGA section 7 authority to automatically, or after prior notice, perform certain activities related to the construction, acquisition, abandonment, replacement, and operation of pipeline facilities. Because DBM Pipeline will become an interstate pipeline with the issuance of a certificate to operate and maintain the subject facilities, DBM Pipeline is granted a Part 157, Subpart F blanket certificate.

This action is taken under 18 C.F.R. § 375.308 and it is ordered that:

(A) A certificate of public convenience and necessity is issued to DBM Pipeline under section 7(c) of the NGA, authorizing it to operate the Ramsey Residue Line, as described and conditioned herein, and as more fully described in the application.

---

<sup>35</sup> See *Kinetica Energy Express, LLC*, 144 FERC ¶ 61,159, at P 21 (2013).

<sup>36</sup> See *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* (August 12, 2013) (*Implementation Guide*) p. 7, available at <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>.

(B) A blanket construction certificate is issued to DBM Pipeline under Subpart F of Part 157 of the Commission's regulations.

(C) A blanket transportation certificate is issued to DBM Pipeline under Subpart G of Part 284 of the Commission's regulations.

(D) The certificate authorization issued in Ordering Paragraph (A) is conditioned upon DBM Pipeline's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions in Parts 154, 157, and 284, and the applicable requirements of section 157.20 of the regulations.

(E) DBM Pipeline's initial rates and the language contained in its *pro forma* tariff are approved, as conditioned and modified in this order.

(F) DBM Pipeline is directed to file actual tariff records implementing the changes discussed in the body of this order within 30 days of the date of this order. That filing should be made as a compliance filing under filing code type 580 and will be assigned an RP docket. It will be processed separately from the instant certificate proceeding in Docket No. CP15-104-000.

(G) Within three years after its FERC jurisdictional service commences, as discussed herein, DBM Pipeline must make a filing to justify its existing cost-based firm and interruptible recourse rates. DBM Pipeline's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, DBM Pipeline is advised to include as part of the eFiling description, a reference to Docket No. CP15-104-000 and the cost and revenue study.<sup>37</sup>

(H) DBM Pipeline's requests for waiver of and/or extension of time for certain website requirements and affiliate standards of conduct of the Commission's regulations are granted, subject to the conditions discussed in the body of this order.

(I) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 CFR § 385.713(2014).

John M. Wood

---

<sup>37</sup> *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

Acting Director  
Division of Pipeline Certificates  
Office of Energy Projects