

153 FERC ¶ 61,363  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Cameron Interstate Pipeline LLC

Docket No. RP16-184-000

ORDER ACCEPTING TARIFF RECORDS SUBJECT TO CONDITIONS

(Issued December 30, 2015)

1. On November 12, 2015, Cameron Interstate Pipeline LLC (Cameron) submitted proposed tariff records<sup>1</sup> to revise (i) its reservation charge crediting provisions and (ii) the form of firm and interruptible transportation service agreements to reflect Cameron's new street address and to eliminate obsolete language relating to a disclaimer of liability. Cameron requests that these proposed tariff revisions be effective December 31, 2015. The Commission accepts the revised tariff records listed in the Appendix to this order to be effective December 31, 2015, subject to conditions. In addition, pursuant to section 5 of the Natural Gas Act (NGA), the Commission requires that Cameron either file revisions to its tariff concerning *force majeure*, scheduling priority, and curtailment to conform to Commission policy, as discussed in this order, or explain why it should not be required to do so.

**Details of the Filing**

2. On June 19, 2014, the Commission approved Cameron's application to construct and operate new pipeline facilities that transport and deliver gas to the Cameron LNG terminal for liquefaction and export.<sup>2</sup> Cameron states that it expects to complete those facilities and initiate service in 2017. Cameron further states that, in the interim, Cameron and its long-term firm transportation customers that will receive service through the new facilities have agreed upon revised procedures for crediting reservation charges in the event that Cameron is unable to deliver firm primary contract quantities that the

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<sup>1</sup> See Appendix.

<sup>2</sup> *Cameron LNG, LLC*, 147 FERC ¶ 61,230 (2014).

customer has scheduled. Cameron states that these procedures are set forth in the proposed section 8.10.9 of the General Terms and Conditions (GT&C) of its tariff. Cameron contends that consistent with the Commission's policy concerning reservation charge credits, revised section 8.10.9 distinguishes between *force majeure* and non-*force majeure* situations.<sup>3</sup> Cameron further states that, in a *force majeure* situation, firm transportation customers will receive full reservation charge credits after a 10-day "safe harbor" period<sup>4</sup> consistent with the Commission's policy that requires a sharing of the risks of *force majeure* events between a pipeline and its customers.<sup>5</sup> Cameron states that it will provide full reservation charge credits in non-*force majeure* situations.<sup>6</sup> Cameron further states that proposed section 8.10.9 provides that the credits will be measured by the quantity of primary firm service that the customer schedules, but that it is unable to deliver. Cameron states that, in situations in which Cameron gives advance notice of the unavailability of service, firm customers would be entitled to a reservation charge credit in a quantity equal to the average of the preceding seven days' daily quantities nominated and confirmed to the customer's primary delivery point.<sup>7</sup> Finally, Cameron states that revised section 8.10.9 sets forth exceptions to the obligation to provide reservation charge credits if the failure to deliver gas results from the conduct of the customer or a downstream point operator.

3. Cameron is also proposing to modify sections 9.0 and 10.0 of its tariff to update the service agreements for service under Rate Schedules FT and IT. Cameron states that it is updating the agreements to reflect its new street address and remove an obsolete provision from both service agreements that addresses potential claims against Cameron's parent company and other affiliates. Cameron contends that given its status as a limited liability company and the protections available under Delaware law, the express language in section 7.1 of the service agreements is no longer required.

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<sup>3</sup> *Natural Gas Supply Assoc., et al.*, 135 FERC ¶ 61,055, at P 16, *order on reh'g*, 137 FERC ¶ 61,051 (2011).

<sup>4</sup> The safe harbor period may be shorter than 10 days, if Cameron could, in the exercise of due diligence, have sooner remedied the *force majeure* situation.

<sup>5</sup> *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819, 823 (D.C. Cir. 2007) (*North Baja v. FERC*), *aff'g*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005).

<sup>6</sup> *See Petal Gas Storage, L.L.C.*, 126 FERC ¶ 61,199, at P 25 (2009).

<sup>7</sup> *Southern Natural Gas Co.*, 135 FERC ¶ 61,056 (2011).

### **Notice of Filing and Interventions**

4. Public notice of the filing was issued on November 16, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2015)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2015), 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 adverse comments or protests were filed.

### **Discussion**

5. The Commission accepts the revised tariff records listed in the Appendix to this order subject to conditions to become effective December 31, 2015. As discussed below, this order directs Cameron to revise one aspect of its proposed reservation charge crediting provisions in GT&C section 8.10.9. In addition, the Commission initiates a section 5 investigation as to whether Cameron's existing (1) definition of *force majeure* in GT&C section 8.21.1, (2) use of the term curtailment in existing GT&C sections 8.10.1 and 8.21.3, and (3) scheduling and curtailment priorities for Authorized Overrun Service (AOS) in sections 8.6.1(c), 8.6.1(d), and 8.10.2 are unjust and unreasonable and must be modified. Accordingly, the Commission directs Cameron either to file tariff language concerning these matters consistent with current Commission policy, or explain why it should not be directed to do so.

### **Reservation Charge Crediting Proposal**

6. The Commission finds that Cameron's proposal under NGA section 4 to revise its reservation charge crediting provisions in GT&C section 8.10.9 is generally consistent with Commission policy. However, the Commission requires Cameron to clarify its proposed exemptions from the requirement to provide reservation charge credits. Cameron's proposed section 8.10.9(b) provides, in part, that:

Exceptions. Pipeline shall not be obligated to credit the Reservation Charge when Pipeline's failure to deliver gas to Shipper as provided above in (a) results from:

(i) the conduct or operations of Shipper or the downstream point operator of the facilities at a Primary Delivery Point including, but not limited to:

(A) damage or malfunction of the downstream point operator's facilities; or

(B) the inability of the downstream point operator to receive gas at Shipper's contract delivery pressure (if any) or Pipeline's mainline pressure;

7. The Commission requires Cameron to revise section 8.10.9(b)(i) to clarify that the conduct of others that would permit a reduction in credits must be a party "not controlled" by Cameron. The Commission has found that it is reasonable for a pipeline's tariff to include an exemption from providing full reservation charge credits where its failure to provide service during a non-*force majeure* outage is due to the conduct of the upstream or downstream operator of facilities at a receipt or delivery point, if those operators are outside the control of the pipeline. However, the Commission has required the pipeline to clarify that the conduct of others that would permit an exemption from credits must be by a party "not controlled by the pipeline."<sup>8</sup> Accordingly, the Commission requires Cameron to make a similar revision to section 8.10.9(b)(i).

8. The Commission has also found that, when a third parties' facilities are affected by the *force majeure* event but the pipeline was ready and able to perform service, it is reasonable for the pipeline to be exempted from providing credits. However, the Commission has held that, when both the pipeline's facilities and the facilities of third parties are affected by the *force majeure* event, then the pipeline could not have provided service regardless of the situation on interconnecting facilities, and therefore the pipeline must provide partial credits in order to share the risk of the *force majeure* event. The Commission has accordingly required pipelines to limit exemptions related to events affecting the facilities of third parties to situations where the failure to deliver was due solely to the conduct of others.<sup>9</sup> Therefore, Cameron is directed to limit its proposed exemptions to outages due "solely" to the inability of third parties to deliver or receive natural gas on their facilities.

#### **Definition of Force Majeure**

9. Cameron's existing GT&C section 8.21.1 defining *force majeure* events provides, in part, that:

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<sup>8</sup> *TransColorado Gas Transmission Co.*, 139 FERC ¶ 61,229, at P 45 (2012), *order on reh'g*, 144 FERC ¶ 61,175, at P 55 (2013) (*TransColorado*).

<sup>9</sup> *Enable Gas Transmission, LLC*, 152 FERC ¶ 61,052, at PP 133-134 (2015) (citing *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224 (2012), *order on reh'g*, 144 FERC ¶ 61,215, at P 68 (2013) (*Gulf South*) and *TransColorado*, 139 FERC ¶ 61,229, *order on reh'g*, 144 FERC ¶ 61,175 at P 59).

Relief from Liability. A party shall not be liable in damages to the other to the extent its performance is affected by an event of force majeure. Force majeure is defined to mean any act, omission or circumstance, *whether foreseeable or not*, occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy or terrorism, wars, blockades, insurrections, riots, epidemics, landslides, land subsidence, lightning, earthquakes, hurricanes, fires, storms, floods, washouts, and evacuation due to the threat of any of the foregoing arrests and restraints of rules and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, line freezeups, *the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause*, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of Good Utility Practice, reasonable care and due diligence such party is unable to prevent or overcome.  
[Emphasis added]

10. The Commission has defined *force majeure* outages as events that are both “unexpected and uncontrollable.”<sup>10</sup> However, Cameron includes in its existing definition of *force majeure* events “whether foreseeable or not.” Accordingly, Cameron’s existing tariff includes *force majeure* events which are foreseeable and, therefore, conflicts with the Commission’s definition of *force majeure*.

11. Further, Cameron’s existing definition of *force majeure* events also includes “the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means.” Cameron’s existing tariff language conflicts with Commission policy because it can be interpreted to include regular, periodic maintenance activities required to comply with government actions as *force majeure* events. The Commission has clarified the basic distinction as to whether outages resulting from governmental actions are *force majeure* or non-*force majeure* events.<sup>11</sup> The Commission found that 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, including the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) integrity management

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<sup>10</sup> *Tennessee Gas Pipeline Co.*, Opinion No. 406, at 61,088, 76 FERC ¶ 61,022 (1996), *order on reh’g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997); *North Baja v. FERC*, 483 F.3d 819, 823.

<sup>11</sup> *TransColorado*, 144 FERC ¶ 61,175, at PP 35-43, and *Gulf South, LP*, 141 FERC ¶ 61,224 at PP 28-47, *order on reh’g*, 144 FERC ¶ 61,215 at PP 31-34.

regulations, are non-*force majeure* events requiring full reservation charge credits. Outages resulting from one-time, non-recurring government requirements, including special, one-time testing requirements after a pipeline failure, are *force majeure* events requiring only partial crediting.<sup>12</sup>

12. Cameron's definition of *force majeure* which includes both foreseeable events and "the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means" is unjust and unreasonable, because it appears to define all outages which are foreseeable or resulting from government action as *force majeure* events, contrary to the Commission policy described above. Accordingly, the Commission requires Cameron, pursuant to NGA section 5, either to modify the definition of *force majeure* so that it will not include foreseeable events or 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, or explain why it should not be required to do so.

13. However, Cameron may include in its filing to comply with this order, a provision permitting partial reservation charge crediting for a transitional period of two years for outages resulting from orders related to pipeline's maximum allowable operating pressure (MAOP) issued by PHMSA pursuant to section 60139(c) of Chapter 601 of Title 49 of the United States Code added by section 23 of the Pipeline Safety, Regulatory and Job Creation Act of 2011 consistent with Commission policy. As the Commission explained in *Gulf South*,<sup>13</sup> section 60139(c) provides that PHMSA must require the pipeline owner or operator to reconfirm the MAOP of each pipeline segment for which it currently has insufficient records to confirm that MAOP as expeditiously as economically feasible, and PHMSA must determine what interim actions are appropriate to maintain safety until a MAOP may be reconfirmed. The Commission found that outages resulting from such PHMSA orders would be one-time, non-recurring events distinguishable from the routine, periodic maintenance which the Commission has held must be treated as non-*force majeure* events for which full reservation charge credits must be given. Accordingly, the Commission permitted pipelines to treat such outages for a transitional two-year period in the same manner as *force majeure* events for which only partial reservation charge credits are required.

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<sup>12</sup> See *Algonquin Gas Transmission, LLC*, 153 FERC ¶ 61,038, at P 104 (2015).

<sup>13</sup> *Gulf South*, 141 FERC ¶ 61,224 at PP 28-47; *Gulf Crossing Pipeline LLC*, 141 FERC ¶ 61,222 (2012), *order on reh'g*, 145 FERC ¶ 61,021 (2013); *Texas Gas Transmission, LLC*, 141 FERC ¶ 61,223 (2012), *order on reh'g*, 145 FERC ¶ 61,100 (2013).

### Authorization to Curtail

14. Existing GT&C section 8.21.3 provides, in part, that:

Scheduling of Maintenance. Pipeline shall have the right to curtail, interrupt, or discontinue service in whole or in part on all or a portion of its system from time to time to perform *routine or major repair and maintenance* on Pipeline's system as necessary to maintain the operational capability of Pipeline's system or to comply with applicable regulatory requirements. Pipeline shall exercise due diligence to schedule routine repair and maintenance so as to minimize disruptions of service to Shippers and shall provide reasonable notice of the same to Shippers. [Emphasis added]

15. Accordingly, Cameron has the “right to *curtail*, interrupt, or discontinue service in whole or in part on all or a portion of its system from time to time to perform *routine or major repair and maintenance*. [Emphasis added]” The reference to curtailment in this provision is unjust and unreasonable. The Commission only permits pipelines to “curtail” service in an emergency situation or when an unexpected capacity loss occurs after the pipeline has scheduled service, and the pipeline is therefore unable to perform the service which it has scheduled.<sup>14</sup> As the Commission held in a 1993 order addressing similar tariff language:<sup>15</sup>

[T]he Commission has found that routine repair and maintenance is not an emergency situation or an unexpected loss of capacity. Therefore, it should be planned through scheduling and should not disrupt confirmed service. [The pipeline] should modify its tariff accordingly.

However, the term “routine or major repairs and maintenance” in GT&C section 8.21.3 is not limited to such an emergency situation or an unexpected loss of capacity.

16. Further, existing GT&C section 8.10.1 provides, in part, that:

Pipeline shall have the right to curtail transportation services, in whole or in part, on all or a portion of its system at any time for reasons of

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<sup>14</sup> Portland Natural Gas Transmission Sys., 76 FERC ¶ 61,123 (1996); Ryckman Creek Resources, LLC, 136 FERC ¶ 61,061, at P 68 (2011).

<sup>15</sup> *Algonquin LNG, Inc.*, 64 FERC ¶ 61,173, at 62,528 (1993), cited in *Avoca Natural Gas Storage*, 68 FERC ¶ 61,045, at 61,155, n.38 (1994).

*Force Majeure or when, in Pipeline's sole judgment, capacity or operating conditions so require or it is desirable or necessary to make modifications or operating changes to its system. [Emphasis added]*

However, as discussed above, Commission policy only permits pipelines to “curtail” service in an emergency situation or when an unexpected capacity loss occurs after the pipeline has scheduled service, and the pipeline is therefore unable to perform the service which it has scheduled. The proposed language permits Cameron to curtail scheduled service in non-emergency situations, including making modifications or operating changes to its system when it is desirable or necessary “in its sole judgement.”

17. The Commission accordingly finds that GT&C sections 8.10.1 and 8.21.3 are unjust and unreasonable to the extent that they authorize Cameron to issue a curtailment order terminating service outside of the normal scheduling process in order to perform activities where there are no emergency circumstances or unexpected capacity loss which make it necessary to disrupt confirmed service in order to perform the activities. In fact, curtailing such confirmed service would be contrary to the separate requirement in section 8.21.3 that Cameron exercise due diligence to schedule routine repair or maintenance so as to minimize disruptions of service and provide reasonable notice to shippers. Therefore, Cameron, pursuant to NGA section 5, is directed to modify sections 8.10.1 and 8.21.3 to remove the authorization to “curtail” service to activities where there are no emergency circumstances or unexpected capacity loss to be consistent with the Commission policy discussed above, or explain why it should not be required to do so.

### **Scheduling and Curtailment Priorities**

18. Cameron’s existing sections 8.6.1(c) and 8.6.1(d) provide that gas nominated for transportation utilizing AOS service will be scheduled before gas nominated for interruptible transportation service is scheduled pursuant to section 8.6.1(f). Similarly, Cameron’s existing GT&C sections 8.10.2(c) and 8.10.2(d) provide that AOS service at primary and secondary points will be curtailed after IT service has been curtailed pursuant to sections 8.10.2(a) and 8.10.2(b). Those provisions are contrary to Commission policy. The Commission has repeatedly held that AOS service and IT service are both interruptible services and must be treated as having equal priority for both scheduling and curtailment purposes.<sup>16</sup> Therefore, the Commission finds that the

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<sup>16</sup> See, e.g., *Alliance Pipeline L.P.*, 153 FERC ¶ 61,195 (2015); *Petal Gas Storage, L.L.C.*, 142 FERC ¶ 61,119, at P 54 (2013); *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224, at P 72 (2009); *MoBay Storage Hub LLC*, 126 FERC ¶ 61,241, at P 19 (2009); and *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at P 340 (2006).

scheduling and curtailment priorities for AOS service set forth in sections 8.6.1 and 8.10.2 are unjust and unreasonable.

19. Accordingly, pursuant to section 5 of the NGA, Cameron is directed to file tariff records which treat AOS service and IT service as having equal priority for both scheduling and curtailment purposes consistent with Commission policy, or explain why it should not be required to do so.

20. Finally, Cameron's existing GT&C sections 8.10.2(e) and 8.10.2(f) provide that secondary firm service will be curtailed before primary firm service. However, this scheduling priority is inconsistent with our policy that once scheduled, all firm service is assigned the same priority for curtailment purposes, irrespective of whether capacity is utilized on a primary or secondary basis.<sup>17</sup> Accordingly, pursuant to section 5 of the NGA, we direct Cameron either to revise its tariff to be consistent with Commission policy, or explain why it should not be required to do so.

### **Conclusion**

21. For the foregoing reasons, the Commission finds that Cameron's proposed and existing tariff provisions are inconsistent with the Commission's reservation charge crediting and curtailment policies. Therefore, the Commission directs Cameron, within thirty days of the date of this order, to file revised proposed tariff records and, pursuant to NGA section 5, either to file tariff records revising its existing tariff provisions to conform to Commission policy concerning reservation charge crediting, scheduling priority, and curtailment; or explain why it should not be required to do so, as discussed above.

### **The Commission orders:**

(A) The tariff records listed in the Appendix to this order are accepted to become effective December 31, 2015, subject to conditions, as discussed in this order.

(B) Cameron is directed to file revised tariff records, within thirty (30) days of the date of this order, revising proposed reservation charge crediting provisions in GT&C section 8.9.10, as discussed above.

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<sup>17</sup> Order No. 636-B, 61 FERC ¶ 61,272, at 62,013 (1992).

(C) Cameron is directed, pursuant to NGA section 5, to revise its *force majeure* definition in GT&C section 8.21.1; its curtailment tariff provisions in GT&C sections 8.10.1 and 8.21.3; and its scheduling and curtailment priorities in GT&C sections 8.6.1 and 8.10.2, consistent with the discussion in this order, or explain why it should not be required to do so.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix**

**Cameron Interstate Pipeline, LLC**

**FERC NGA Gas Tariff**

**Cameron Interstate Pipeline, LLC FERC Gas Tariff**

Tariff Records Conditionally Accepted Effective December 31, 2015

[Section 8.10 - GTC, Curtailment, 2.0.0](#)

[Section 9.0 - Service Agreement for Rate Schedule FT, 8.0.0](#)

[Section 10.0 - Service Agreement for Rate Schedule IT, 5.0.0](#)