

153 FERC ¶ 61,362
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Alliance Pipeline L.P.

Docket Nos. RP16-240-000
RP16-254-000
RP16-268-000
RP16-289-000

ORDER ACCEPTING CERTAIN TARIFF RECORDS,
AND REJECTING OTHER TARIFF RECORDS

(Issued December 30, 2015)

1. On November 30, 2015, Alliance Pipeline L.P. (Alliance) filed tariff records¹ in Docket No. RP16-240-000 to implement new negotiated rate service agreements for service under Rate Schedule FT-1. Alliance subsequently filed revised tariff records on November 30, December 1, and December 8, 2015 in Docket Nos. RP16-254-000, RP16-268-000, and RP16-289-000 to correct errors in the original filing. The Commission accepts certain of the tariff records to become effective December 1, 2015, and rejects other tariff records, as discussed below.

Background

2. On May 29, 2015 in Docket No. RP15-1022-000, Alliance filed to remove Authorized Overrun Service (AOS) from its tariff and instead provide any service to firm shippers above their contractual entitlements pursuant to its IT rate schedule. Alliance also proposed to remove the requirement that it credit IT revenues to its shippers.

¹ See Appendix.

3. On June 30, 2015, the Commission issued an order accepting and suspending the Docket No. RP15-1022-000 tariff records, subject to refund, and establishing a hearing.² The Commission stated that although Alliance characterized its NGA section 4 filing as seeking to eliminate certain tariff provisions due to the expiration of the legacy contracts, the filing was for all intents and purposes akin to a general section 4 rate case.³ The Commission found that Alliance's proposals raised complex rate and tariff issues and set for hearing all issues related to the proposed elimination of AOS, IT revenue crediting, and the maintenance of its existing recourse rates. The Commission also directed Alliance to submit cost and revenue information for the most recent 12-month period available, including all the schedules required for submission of a general section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations.

4. Several parties sought rehearing, and urged the Commission to resolve as soon as possible the propriety of the attempted elimination of AOS by Alliance. On November 19, 2015, in Docket No. RP15-1022-001 (November 19 Order), the Commission issued an order on rehearing rejecting Alliance's proposal to remove AOS as a service under Rate Schedule FT-1. The Commission also directed Alliance to modify sections of its General Terms and Conditions (GT&C) of service to give AOS the same scheduling and curtailment priorities as interruptible transportation service.⁴

5. In Docket No. RP16-240-000 Alliance filed revised Tariff Sheets 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 to cancel old expiring contracts and to list the essential terms of various new FT contracts. Tariff Sheet No. 19 listed a new BP Canada Energy [Marketing] Corp. (BP) contract without AOS in lieu of an existing BP contract with AOS. Then, in Docket No. RP16-254-000, Alliance filed to correct a company name (TAQA North Ltd.) on Tariff Sheet No. 20. Subsequently, in Docket No. RP16-268-000, Alliance filed to revise Sheet No. 20 yet again, to show the correct reservation charge for the contracts listed on that sheet. Finally, in Docket No. RP16-289-000, Alliance filed to correct BP's name on Sheet No. 19 by adding the word "Marketing," but that sheet still reflected only the BP contract without AOS instead of the still extant, unexpired BP contract with AOS. The status of these BP contracts is the subject of the discussion below.

² *Alliance Pipeline L.P.*, 151 FERC ¶ 61,271 (2015).

³ *Alliance Pipeline L.P.*, 151 FERC ¶ 61,271 (2015).

⁴ *Alliance Pipeline L.P.*, 153 FERC ¶ 61,195, at P 55-56 (2015).

Public Notice, Interventions and Protests

6. Public notices of Alliance's subject November 30 filing and subsequent corrective filings were issued on December 1, 2, and 9, 2015. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2015)) of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2015), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the 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.

7. On December 14, 2015, BP Canada Energy Marketing Corp. (BP) filed a protest in Docket Nos. RP16-240-000 and RP16-289-000, stating that Alliance, in its November 30 filing (and as subsequently corrected), fails to recognize, and purports to terminate BP's existing Contract No. US5025P-12. BP argues that this purported termination of its contract is contrary to the Commission's November 19 Order, and is inconsistent with the plain language of what Alliance claims is a superseding contract executed by BP Canada.⁵

8. BP points out that, as a member of Indicated Shippers, it sought expedited rehearing to resolve the fate of AOS under Alliance's tariff, and that Pecan Pipeline (North Dakota), Inc. (Pecan), issued a similar request, and that Alliance also urged the Commission to summarily resolve the AOS issue.⁶ The Commission did so in its November 19 Order. BP states that Alliance now appears to attempt to do indirectly precisely what the Commission found Alliance lacked contractual authority to do: terminate the AOS rates in Contract No. US5025P-12.

9. BP recounts that Alliance tendered to BP for signature numerous documents in September 2015 to support Alliance's restructured services, and that subsequently, Alliance tendered several transportation service agreements, one of which was a contract for capacity in the amount of 0.079 MMcf/day, the same quantity stated in Contract No. US5025P-12. BP states that it never requested any agreement that would replace Contract No. US5025P-12 and that it made clear it never sought to terminate or supersede its existing AOS contract, when Alliance proffered the unsolicited contract during a busy transactional period. BP appends a copy of the allegedly superseding contract to its protest, and points out that the contract's section 5, titled "Superseded Agreements" reads

⁵ BP Protest at 1-2.

⁶ BP Protest at 4.

as follows: “This Firm Transportation Agreement supersedes and cancels as of the effective date hereof the following agreements: N/A, N/A.”⁷

10. BP states that it returned an executed copy of the unsolicited new contract on or about October 28, 2015, but shortly thereafter on November 9, 2015, it sent written notice to Alliance stating that the contract for 0.079 MMcf/day was executed in error. BP states that it contacted Alliance again after the November 19 Order to determine how to nominate AOS pursuant to Contract No. US5025P-12 subsequent to the November 19 Order’s decision. BP states that Alliance, on November 23, 2015, advised BP that Alliance considered the contract had been “converted” to the new contract and AOS was no longer contractually available to BP, whereupon BP sent a letter to Alliance contesting this claim.⁸

11. BP asserts it has been unable to nominate any volumes under its contract in the face of Alliance’s refusal, and that matching capacity contracted by a BP affiliate on Alliance Canada has also become stranded as a consequence. BP states that it has been unable to resolve this matter informally with Alliance and requests prompt Commission action to prevent Alliance from continuing to deny BP service.⁹

Discussion

12. The Commission finds that Contract No. US5025P-12 remains valid, and that the contract tendered to BP by Alliance on October 23, 2015 for the amount of 0.079 MMcf/day, identified in the tariff filing as Contract No. 1000467,¹⁰ was never a superseding contract, has been rescinded by BP as an error, and is contrary to the Commission’s rehearing decision in the November 19 Order, which preserved the contractual AOS rate of Alliance’s AOS shippers.

13. The November 19 Order promptly addressed the requests of Alliance, BP and other shippers, to resolve the status of AOS prior to December 1, 2015. The Commission did this by preserving the contractual AOS rate but according AOS the same scheduling

⁷ BP Protest at Exhibit C.

⁸ BP Protest at 5-6.

⁹ BP Protest at 6-7.

¹⁰ Alliance November 30, 2015 Filing at First Revised Sheet No. 19.

and curtailment priority as interruptible transportation service.¹¹ To allow a new transportation agreement that does not include AOS where the new agreement was expressly executed as inapplicable for consideration as a superseding agreement, and was rescinded soon thereafter as having been executed in error, would contravene the November 19 Order's preservation of the negotiated AOS rate for shippers like BP with transportation agreements that contained negotiated rates for AOS. The transportation agreement allegedly being treated by Alliance as a replacement contract twice contains the abbreviation for "not applicable" in the fill-in-the-blank space for listing any superseded agreements.¹² Thus, by its own terms, the contract cannot replace an existing contract. Finally, in the subject November 30 filing, Alliance misnamed BP in attempting to list the allegedly superseding contract in its tariff.¹³ This mistake adds further weight to the invalid status of the new contract, which BP erroneously executed, but with the saving notation that it should not be considered as superseding its AOS agreement. This rush of filings and unsolicited contract executions may have reflected the confusion about the status of AOS prior to the November 19 Order. In any event, no such confusion should remain concerning the parties' AOS contract rights which has now been resolved by the November 19 Order.

14. The Commission, therefore, grants waiver of its 30-day notice requirement and directs Alliance to file tariff records reinstating Contract No. US5025P-12, effective December 1, 2015, within 15 days of this order, and rejects those tariff records that seek to supersede or terminate that contract.

¹¹ *Alliance Pipeline L.P.*, 153 FERC ¶ 61,195, at PP 55-56 (2015).

¹² BP Protest at 5.

¹³ Alliance omitted the word "Marketing" from BP Canada Energy Marketing Corp.'s name in its original filing of tariff records on November 30, 2015 in Docket No. RP16-240-000, and filed a revised tariff record (Substitute Revised Sheet No. 19) to correct the name on December 8, 2015 in Docket No. RP16-289-000. As discussed herein, Alliance must now further revise that tariff record within 15 days to re-instate BP's Contract No. US5025P-12, effective December 1, 2015. The other unopposed corrections are incorporated in the tariff records shown as accepted in the Appendix to this order.

The Commission orders:

As set forth in the Appendix, certain tariff records proposed by Alliance in the filings in the captioned dockets are accepted, another accepted subject to re-filing within 15 days, and others are rejected as shown in the Appendix, consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix
Alliance Pipeline L.P.
FERC NGA Gas Tariff
Alliance L.P. Database

Tariff Records Accepted Effective December 1, 2015

Docket No. RP16-240-000

[Sheet No. 11, Essential Elements of Negotiated Rate Transactions 1/ 4/, 17.0.0](#)

[Sheet No. 12, , 9.0.0](#)

[Sheet No. 13, , 14.0.0](#)

[Sheet No. 14, , 9.0.0](#)

[Sheet No. 16, , 27.0.0](#)

[Sheet No. 17, , 20.0.0](#)

[Sheet No. 18, , 2.0.0](#)

[Sheet No. 21, , 0.0.0](#)

Docket No. RP16-268-000

[Sheet No. 20, , 0.2.0](#)

Tariff Records Accepted Effective December 1, 2015, Subject to Condition

Docket No. RP16-240-000

[Sheet No. 15, , 11.0.0](#)

Docket No. RP16-289-000

[Sheet No. 19, , 1.1.0](#)

Tariff Records Rejected

Docket No. RP16-240-000

[Sheet No. 19, , 1.0.0](#)

[Sheet No. 20, , 0.0.0](#)

Docket No. RP16-254-000

[Sheet No. 20, , 0.1.0](#)