

157 FERC ¶ 61,129
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rockies Express Pipeline LLC

Docket Nos. RP16-1301-000
RP16-1301-001

ORDER REJECTING TARIFF RECORDS

(Issued November 18, 2016)

1. On September 30, 2016, and Supplemented on October 20, 2016,¹ Rockies Express Pipeline LLC (Rockies Express) filed tariff records² along with supporting work papers to reflect an interim adjustment (Interim Filing) to its Fuel and Lost and Unaccounted for (FL&U) reimbursement percentages and its Electric Power Cost (EPC) charges pursuant to sections 38 and 40 of the General Terms and Conditions (GT&C) of Rockies Express' FERC Gas Tariff. Specifically, Rockies Express proposed changes to its FL&U reimbursement percentages and EPC charges for Rate Schedules ITS, FTS and BHS. Additionally, Rockies Express proposed changes to the FL&U reimbursement percentage applicable to Rate Schedule PAWS and the re-determination of fuel percentages for the Meeker and Cheyenne Booster Facilities, the Meeker to Cheyenne Expansion Facilities and the Seneca Lateral Facilities. As discussed below, the Commission rejects the tariff records and the interim adjustment to Rockies Express' FL&U reimbursement percentages and EPC charges as unjust and unreasonable, without prejudice to Rockies Express filing a new proposal addressing the concerns discussed below.

¹ On October 20, 2016, Rockies Express submitted an *errata* to its Interim Filing under Docket No. RP16-1301-001 revising and replacing the previously proposed Rate Schedule for Pooling and Wheeling Service (PAWS) (Supplemental Filing). Rockies Express states that the proposed correction is made in order to ensure consistency with section 5.1 of Rate Schedule PAWS, under which the rate for Pooling Service is not subject to a charge for FL&U. Supplemental Filing at 2.

² See Appendix.

I. Background

2. Rockies Express submits the instant Interim Filing to reconcile its FL&U percentages and EPC charges for the 12-month period ending July 31, 2016, with rates to be effective November 1, 2016. Rockies Express explains that the proposed FL&U percentages and EPC charges are comprised of two parts: (1) the current FL&U reimbursement percentages and EPC charges for the forecasted period beginning November 1, 2016 and (2) the Unrecovered FL&U percentages and EPC charges reimbursement established to amortize the Deferred Account balances accumulated during the 12-month period ending July 31, 2016.³

3. For example, Rockies Express proposes the following increases in its total FL&U rate percentages for Rate Schedules ITS, FTS and BHS as follows: from 0.30 to 0.65, an increase of 117 percent for zone 1 to zone 1 deliveries; from 0.48 to 1.31, an increase of 172 percent for zone 1 to zone 2 deliveries and from 0.72 to 1.60, an increase of 122 percent for zone 1 to zone 3 deliveries. Also, Rockies Express proposes the following increases in its total EPC charges for Rate Schedules ITS, FTS and BHS as follows: from \$0.0000 to \$0.0035 for zone 1 to zone 1 deliveries; from \$0.02450 to \$0.0483, an increase of 97 percent for zone 1 to zone 2 deliveries and from \$0.03200 to \$0.0552, an increase of 73 percent for zone 1 to zone 3 deliveries.

4. Rockies Express requests that the Commission grant waiver of all of its regulations necessary for the tariff records to become effective November 1, 2016.⁴

II. Notice, Interventions and Responsive Pleadings

5. Public notice of the Rockies Express' Interim Filing was issued on October 2, 2016 providing for motions to intervene, comments and protests to be filed on or before October 12, 2016. Public notice of Rockies Express' Supplemental Filing was issued on October 24, 2016 providing for motions to intervene, comments and protests to be filed on or before November 1, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁵ Pursuant to Rule 214,⁶ all timely filed

³ Interim Filing at 1.

⁴ On September 30, 2016, Rockies Express initially requested Commission action on less than 30-day notice, by October 21, 2016, to provide sufficient time for Rockies Express shippers to adjust gas supply quantities under the new FL&U rate percentages and EPC charges for November business. However, Rockies Express submitted the Supplemental Filing on October 20, 2016, which changed the statutory action date to November 18, 2016. *See supra* note 1.

⁵ 18 C.F.R. § 154.210 (2016).

motions to intervene and any unopposed motion 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.

6. On October 12, 2016, BP Energy Company, ConocoPhillips Company, and Shell Energy North America (US), L.P. (jointly, Indicated Shippers) filed a protest. Rockies Express filed an Answer to Indicated Shippers' protest on October 20, 2016. On October 25, 2016, Indicated Shippers and Rockies Express filed answers, respectively.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept Indicated Shippers' and Rockies Express' answers because they provided information that assisted us in our decision-making process.

A. Indicated Shippers' Protest

8. In its protest, Indicated Shippers state that the workpapers included with the current filing are inconsistent with the workpapers submitted with Rockies Express' annual FL&U reimbursement percentages and EPC charges filing in Docket No. RP16-702-000 and the proposed percentages and charges have increased substantially with no explanation.⁷ Specifically, Indicated Shippers state that (1) there are inconsistencies between the information regarding compressor usage and system throughput provided in Rockies Express' earlier filing in Docket No. RP16-702-000, and what was presented in the present filing, even though both filings share five months of data;⁸ (2) Rockies Express provides no explanation for why its Expansion annual volumes decreased, while paradoxically its Expansion compressor fuel use increased;⁹ (3) there are further inconsistencies in the information provided in the RP16-1301 filing as it relates to the Electric Power Cost shown for the Arlington Compressor Station with no explanation provided by Rockies Express;¹⁰ and (4) the filing shows a very significant increase in

⁶ 18 C.F.R. § 385.214 (2016).

⁷ Indicated Shippers Protest at 1 (citing *See Rockies Express Pipeline LLC*, 154 FERC ¶ 61,240 (2016)).

⁸ *Id.* at 3.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6.

fuel use and system throughput but lacks an explanation for these significant changes.¹¹ Indicated Shippers contend that given the inconsistencies between the filings and within the Interim Filing, the Commission should deny Rockies Express' Interim Filing because it has not been shown to be just and reasonable.¹²

9. For example, Indicated Shippers point to the Julesburg Compressor Station electric costs, which increased from \$89,076 for the 12-month period ending December 31, 2015 to \$5,731,725 for the 12-month period ending July 31, 2016.¹³ Indicated Shippers argue that a change of this magnitude requires further examination by the Commission. Specifically, Indicated Shippers ask that the Commission query whether the proposed rates represent a new level of system fuel use and throughput, or whether Rockies Express will be engaged in a new cycle of one year with high rates, followed by a year of low rates to true-up a future over-recovery.

10. Indicated Shippers suggest that the Commission seek explanations for the inconsistencies and require Rockies Express to demonstrate that there is no subsidization of negotiated fuel rate agreements by recourse rate shippers.¹⁴ Indicated Shippers suggest that Rockies Express demonstrate through calculation, the effect of negotiated fuel rate contracts under its proposed FL&U reimbursement percentages and EPC charges, in order to ensure that recourse rate shippers will not be subsidizing the rates paid under negotiated rate contracts.¹⁵

B. Rockies Express Initial Answer to Protest

11. In its answer, Rockies Express states that the primary purpose of the Interim Filing was to address “significant under-recoveries that Rockies Express has recently experienced of its total system fuel usage (excluding L&U volumes) as well as electric power usage for the seven months ending July 2016 compared to the forecasted levels contained in its recent annual FL&U reimbursement percentages and [EPC] charges filing made on March 1, 2016 in Docket No. [RP16-702-000]”.¹⁶ Rockies Express states that

¹¹ *Id.*

¹² *Id.* at 2.

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Rockies Express Initial Answer at 3.

the forecasted fuel usage underlying the fuel rates and power charges established in Docket No. RP16-702-000 has resulted in a significant under-recovery compared to what Rockies Express has actually experienced through July 2016.¹⁷ Rockies Express states the significant under-recoveries in both the fuel collection and EPC charges demonstrate the need for the Interim Filing. Further, Rockies Express contends that a delay in the proposed adjustment to FL&U reimbursement percentages and EPC charges will likely lead to continuing and increasing under-recoveries that will result in even greater increases in the next annual filing.¹⁸ Rockies Express goes on to state that it sought to reset these rates and charges now in order to avoid a more dramatic increase in 2017.

12. Rockies Express argues that Indicated Shippers' protest is based on a misunderstanding of the Interim Filing and Indicated Shippers' aversion to rising FL&U rate percentages and EPC charges resulting from market forces, which it asserts are outside of its control.¹⁹ Rockies Express states that the Interim Filing reflects an updated *forecast* for both the FL&U amounts and power costs as well as system throughput for a 12-month period beginning August 1, 2016,²⁰ because Rockies Express has observed higher actual system throughput than it had forecasted in Docket No. RP16-702-000. Due to the operational experience gained since making the RP16-702-000 filing, Rockies Express argues that the forecasts contained in the Interim Filing are necessarily different from those in RP16-702-000 for the overlapping months, which discrepancies Indicated Shippers pointed out in their answer.

13. Rockies Express also objects that Indicated Shippers' conclusions about cross-subsidization of fuel usage are based on a flawed analysis that fails to account for the effect that non-Expansion throughput has on Expansion fuel use.²¹ Rockies Express asserts that total Zone 1 fuel is allocated between the Expansion and non-Expansion shippers according to the level of throughput for both shipper groups; and therefore, one cannot necessarily infer that a decrease in Expansion throughput should necessarily result in a decrease in Expansion fuel. Rockies Express states that even though the forecasted Expansion throughput declined in the instant filing, the Expansion shippers have been

¹⁷ *Id.*

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 5.

²⁰ Rockies Express notes that page 2 of the Interim Filing contained an erroneous date reference which stated that the forecast period began November 1, 2016, rather than August 1, 2016. *Id.* at 6 n.4.

²¹ *Id.* at 7.

allocated a smaller portion of a larger total forecasted Zone 1 fuel, which yields a higher forecasted fuel in the instant filing compared to Rockies Express' filing in Docket No. RP16-702-000.²²

14. Rockies Express goes on to state that Indicated Shippers erroneously compare actual and forecast power costs as it relates to the power costs shown for the Arlington Compressor Station. Rockies Express states that Appendix F of the Interim Filing shows the actual expenses incurred in August 2015 while Appendix D shows the forecast expenditures for August 2016; therefore, the alleged inconsistencies result from a misreading of the appendices of two different years and which are not inconsistent at all.²³ In sum, Rockies Express maintains that its filing though complex and fully supported but may have been misunderstood, and that there is no under-recovery of fuel from negotiated rate agreements under the proposed FL&U rate percentages and EPC charges, and thus there is no subsidization.²⁴

C. Indicated Shippers' Reply to Rockies Express Initial Answer

15. Indicated Shippers state that Rockies Express' Answer fails to provide a more accurate and complete basis to support the Interim Filing as just and reasonable.²⁵ First, Indicated Shippers point out that the information contained in the Appendices filed in Rockies Express' Interim Filing were not clearly marked as forecasts of projected system use, and should be amended to reflect this, if these Appendices are truly projections of future use.²⁶ Further, they argue that labeling the months in the "projected" appendices would provide for a more transparent filing that would allow the Commission and Rockies Express' customers to compare historical, actual throughput with projected throughput, thereby enabling a better examination of the accuracy of Rockies Express' projections.²⁷ Also, according to Indicated Shippers, Rockies Express' Answer does not explain all the inconsistencies in the filing. Indicated Shippers maintain that more information is needed to ensure that the proposed rates are just and reasonable.

²² *Id.* at 8.

²³ *Id.* at 8-9.

²⁴ *Id.* at 11.

²⁵ Indicated Shippers Answer at 2.

²⁶ *Id.* at 3.

²⁷ *Id.*

16. More fundamentally, however, Indicated Shippers note that Rockies Express has failed to explain why its projections in the Interim Filing are justifiable under the Commission's regulations or under Rockies Express' tariff, or why the projections in the Interim Filing are any more accurate than the projections it provided in the RP16-702-000 filing, which have proven to be largely inaccurate. As noted above, there is no apparent way to compare Rockies Express' historical throughput in the instant filing to its projected throughput in the RP16-702-000 filing. Indicated Shippers point out that the Commission's regulations require that "where the fuel reimbursement percentage is calculated based on estimated activity over a future period, the period must be defined and the estimates used in the calculation must be justified."²⁸ They further point out that the Commission's regulations require a pipeline to provide a narrative to explain the calculation of any adjusting factor.²⁹ Indicated Shippers contend that Rockies Express' failure to enumerate specifically the estimates that underlie its projections, to justify those estimates, which it used to generate the proposed FL&U rate percentages and EPC charges, and to provide a narrative explanation of the adjustments, violates these regulatory requirements, and renders its proposed FL&U rate percentages and EPC charges unjust and unreasonable.

17. Indicated Shippers also state that Rockies Express' tariff similarly requires that any adjustments to the base period quantities for gas fuel and receipt quantities be based upon estimates that are known and measurable with reasonable accuracy.³⁰ According to Indicated Shippers, Rockies Express' has failed to justify its adjustments to base period quantities in its proposed FL&U rate percentages and EPC charges, thereby rendering its proposed FL&U rate percentages and EPC charges unjust and unreasonable.

18. Finally, Indicated Shippers state that Rockies Express provided no specific explanation for why its projected throughput levels increased 32 percent from one filing to the next, or a clear exposition of its methodology for calculating its projections. Without such an explanation of the inputs for and the methods behind the calculation of the proposed FL&U rate percentages and EPC charges, Indicated Shippers argue that the Interim Filing must be denied because it fails to conform to the regulations and tariff so as to establish that the proposed rates are just and reasonable.

²⁸ Indicated Shippers' Answer at 5 (citing 18 C.F.R. § 154.403(d)(3)(ii) (2016)).

²⁹ *Id.* at 5-6 (citing 18 C.F.R. § 154.403(d)(1)(vi) (2016)).

³⁰ *Id.* at 6 & n.7.

D. Rockies Express' Reply to Indicated Shippers' Answer

19. Rockies Express' reply to Indicated Shippers' Answer reiterates prior arguments, states that rejection of the filing will only result in a greater increase in the fuel rates in its next fuel filing, and adds over the seven months ending July 2016, it has had to purchase almost 2,000,000 Dth of gas to ensure sufficient linepack is available to meet customer deliveries as a result of the significant ongoing fuel under-recoveries.³¹

20. Rockies Express argues that there is no benefit to Rockies Express to propose an artificial increase in its tracker rates as any over-recoveries by the pipeline will be addressed by the tracker's true-up mechanism. Rockies Express also argues that the Interim Filing followed the same format for identifying months via numbers and without including years, as it has done in the past; thus the subject filing is as clear as past filings were, according to Rockies Express.

21. According to Rockies Express, it is attempting to readjust the rates now in order to avoid a more dramatic increase in 2017.³² Rockies Express therefore requests that the Commission reject the relief requested by the Indicated Shippers and approve the Interim Filing and allow the proposed rates to go in to effect on November 1, 2016.

III. Discussion

22. Pursuant to sections 38.3 and 40.3 of Rockies Express GT&C, Rockies Express must file annual adjustments to its FL&U rate percentages and EPC charges to be effective April 1 of each year. Rockies Express may, however, submit an interim filing at its discretion. Rockies Express's filing must be consistent with the applicable regulations and its tariff, and sufficiently clear so that all assumptions, interrelationships, and sources of data are understood. For the reasons set forth below, we find that Rockies Express has not offered sufficient clarity with respect to its projections and its proposed adjustments or sufficient justification for these projections and adjustments, and thus we reject the tariff records proposed herein without prejudice to Rockies Express filing a new proposal addressing the concerns discussed below.

³¹ As discussed below, Rockies Express, however, does not explain how its purchase of linepack has relevance for its FL&U reimbursement percentage calculation.

³² Rockies Express reiterates that it has been forced to purchase gas to meet customer deliveries as a result of the significant ongoing fuel under-recoveries. Rockies Express states that it may be compelled to continue this practice if the Interim Filing is delayed or denied, thereby increasing the cost exposure of the shippers. *Id.* at 5 n.11.

23. Here, Rockies Express has not adequately supported its request of the interim FL&U reimbursement percentages and EPC charges. The Commission's regulations require that where the fuel reimbursement percentage is calculated based on estimated activity over a future period, *the period must be defined and the estimates used in the calculation must be justified.*³³ Similarly, Rockies Express' tariff requires that any adjustments to the base period quantities for gas fuel and receipt quantities be based upon estimates that are known and measurable with reasonable accuracy. Rockies Express is proposing significant increases in its FL&U reimbursement percentages and EPC charges. However, Rockies Express' only explanation for making the Interim Filing is a vague reference to market forces and operational experience. It is unclear from Rockies Express' Interim Filing and multiple answers how it derived, let alone justifies, the estimates and the adjustments used to calculate the FL&U reimbursement percentages and EPC charges. The Commission agrees with Indicated Shippers that Rockies Express' failure to specifically enumerate the estimates that underlie its projections, failure to justify those estimates, and failure to provide a narrative explanation of all the adjustments made, does not satisfy the Commission's regulations³⁴ or Rockies Express' tariff.

24. We also note that, while Rockies Express points to its purchase of almost 2,000,000 Dth of gas to ensure sufficient linepack, purchases of linepack and operational purchases and sales are not ordinarily implicated in fuel usage. Without further explanation, Rockies Express' mention of this linepack purchase in its answer would appear irrelevant. If Rockies Express has possibly suffered losses that are not recoverable as fuel or as lost-and-unaccounted-for gas, these circumstances should be addressed outside of the fuel tracking mechanism. Further, the allegation that the expansion shippers should not be subsidizing the negotiated rate shippers has not been squarely addressed in any detail. Such support would also be required of any subsequent interim or annual FL&U reimbursement percentages and EPC charges filing Rockies Express may choose to make.

25. We also agree with Indicated Shippers' suggestion that labeling the months in the "projected" appendices would provide for a more transparent filing, which would allow the Commission and Rockies Express' customers to more easily compare historical, actual throughput with projected throughput, thereby enabling a better examination of the accuracy of Rockies Express' projections. Sections 38.2(C) and 40.2(B) of Rockies Express' GT&C define the "Base Period" used to derive its FL&U percentages and EPC charges, respectively, as the twelve (12) months of the most recently available actual experience, not more than four (4) months prior to the commencement of a new Recovery

³³ 18 C.F.R. § 154.403(d)(3)(ii) (emphasis added).

³⁴ 18 C.F.R. § 154.403(d)(1) (2016).

Period. In its application, Rockies Express identifies the twelve months of the base period as Month 1 through Month 12. Such identification makes it difficult to evaluate Rockies Express' projections. We note that in future FL&U reimbursement percentages and EPC charges filings, Rockies Express should instead clearly identify the actual months of activity reflected in its "Base Period" supporting information, in particular to identify the month and year more specifically in future FL&U reimbursement percentages and EPC charges filings.

26. Based on our review of Rockies Express' interim and supplemental filings, as well as the protest and answers filed in this proceeding, the Commission concludes that Rockies Express has not met the requirements of its tariff and of section 154.403(d)(1) and (3) of the Commission's regulations. Accordingly, the Commission rejects the Interim Filing, as supplemented, without prejudice. In any subsequent interim or annual filing Rockies Express must provide adequate clarity and support consistent with the regulations and its tariff, as discussed in this order.

The Commission orders:

The proposed tariff records listed in the Appendix to this order that reflect an interim adjustment to Rockies Express' FL&U percentages and EPC charges are hereby rejected.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Rockies Express Pipeline LLC
FERC NGA Gas Tariff
Tariffs

Tariff Records Rejected in Docket No. RP16-1301-000

[CURRENTLY EFFECTIVE RATES, Currently Effective Rates - ITS/FTS/BHS FL&U, 11.0.0](#)

[CURRENTLY EFFECTIVE RATES, Currently Effective Rates - ITS/FTS/BHS Power Cost Tracker, 4.0.0](#)

[Incremental Fac. Rates, Cheyenne Booster Facilities, 9.0.0](#)

[Incremental Facil. Rates, Meeker Booster Facilities, 5.0.0](#)

[Incremental Facil. Rates, Seneca Lateral Incremental Rates, 1.0.0](#)

Tariff Record Rejected in Docket No. RP16-1301-001

[PAWS, Currently Effective Rates - PAWS, 5.0.0](#)