

157 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

WBI Energy Transmission, Inc.

Docket No. RP17-164-000

ORDER ON TARIFF FILING

(Issued December 8, 2016)

1. On November 8, 2016, WBI Energy Transmission, Inc. (WBI Energy) filed pursuant to section 4 of the Natural Gas Act, 15 U.S.C. § 717c (2012) (NGA), tariff records to establish procedures to determine reservation charge credits when primary firm service is interrupted under any of WBI Energy's firm rate schedules.¹ WBI Energy states that its filing is consistent with the Commission's practice to permit pipelines to bring their tariffs into compliance with Commission policy which has been articulated in individual proceedings. WBI Energy requests that the tariff records be accepted effective December 9, 2016. The Commission accepts the tariff records, as discussed below.

Proposal

2. WBI Energy files to revise its current reservation charge crediting mechanism under Rate Schedules FT-1 (firm transportation), FTN-1 (firm no-notice) and FS-1 (firm storage). WBI Energy states that the proposed changes are largely taken from tariff provisions approved for other pipelines. WBI Energy states that the crediting procedures distinguish between service interruptions attributable to a non-*force majeure* and *force majeure* events. WBI Energy proposes to provide full reservation charge credits for outages of primary firm service. WBI Energy states that it is electing to use the "Safe Harbor" method for providing partial reservation charge crediting during *force majeure* events as defined in section 25 of its General Terms and Conditions. After a grace period of ten consecutive days, WBI Energy will provide daily reservation charge credits.

3. According to WBI Energy, the quantity eligible for reservation charge credits is based on shipper's scheduled primary firm quantities, no-notice quantities, and gas deliveries or withdrawals. When notice of an outage is posted during the Timely Nomination Cycle, credits will apply to quantities nominated in the Timely Nomination Cycle. When notice of an outage is posted any time after the Timely Nomination Cycle,

¹ See Appendix.

credits are based on the shipper's scheduled quantity for that day adjusted for non-notice quantities. When notice of an outage is posted before the Timely Nomination Cycle, credits will be based on the shipper's usage during the preceding seven days. For each rate schedule, WBI Energy proposes what it terms reasonable exceptions to be consistent with Commission policy. These include exceptions for (1) nominated quantities which the shipper subsequently nominates for delivery to a secondary point, (2) quantities the shipper did not nominate during the Timely Nomination cycle which WBI Energy cannot schedule in a subsequent nomination cycle because of bumping restrictions, (3) quantities delivered at a primary point which are allocated to other shippers under the pre-determined allocation method for that delivery point, (4) quantities that could not be scheduled or delivered due solely to the conduct of others not controllable by WBI Energy, (5) quantities not accepted at a primary receipt point because of gas quality issues, (6) quantities not delivered at a primary delivery point due to scheduled maintenance mutually coordinated between WBI Energy and the shipper, (7) quantities not delivered due to outages required to comply with orders by the Pipeline and Hazardous Materials Safety Administration pursuant to section 60139(c) of Title 49 of the United States Code, Chapter 601 for a two-year period, and (8) failure of Rate Schedule FTN-1 shippers to have requisite amount of natural gas in storage.

4. The rate schedule changes establish the reservation rate to be used in calculating reservation charge credits. WBI Energy states that for replacement shippers in capacity release, the applicable reservation rate will be the lower of the releasing shipper's or replacement shipper's reservation rate. WBI Energy also proposes rate schedule provisions to address extended service interruptions for seasonal delivery usage, re-nomination procedures, and alternative crediting mechanisms.

Notice, Interventions and Responsive Pleadings

5. Public notice of the subject filing was issued on November 15, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2016). Pursuant to Rule 214, 18 C.F.R. § 385.214, all timely filed 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. Northern States Power Company (Northern States) filed a protest objecting that WBI Energy's proposal removes existing Commission-approved credit provisions from its tariff and replaces those provisions with provisions that are "more favorable to WBI."² Northern States cites a *Williston* 1995 Order in which the Commission rejected an attempt by WBI Energy's predecessor to change its reservation charge crediting

² Northern States Protest at 1.

mechanism. The Commission stated that “although there is no requirement that a pipeline grant reservation charge credits for service interruptions, once the pipeline’s tariff includes such a provision, it has the burden of showing that removal of the crediting provision is appropriate.”³ Northern States asserts that, as was the case in 1995, WBI Energy has failed to provide adequate justification for removing the existing reservation charge crediting provisions from Rate Schedules FT-1, FTN-1, and FS-1, which provide a full credit of the reservation charge when WBI suspends service for any reason. On that basis, Northern States requests that the Commission reject WBI Energy’s proposed replacement tariff provisions.

Discussion

7. The Commission accepts WBI Energy’s filing of revisions to its rate schedules to adopt reservation charge crediting provisions consistent with the Commission’s current reservation charge crediting policies. In *Natural Gas Supply Association*, the Commission restated its reservation charge crediting policy and encouraging interstate pipelines to review their tariffs to determine whether they were in compliance with that policy, and, if not, make an appropriate filing to come into compliance.⁴

8. Under the Commission’s reservation charge crediting policy, the Commission requires all interstate pipelines to provide reservation charge credits to their firm shippers during both *force majeure* and non-*force majeure* outages. The Commission requires pipelines to provide full reservation charge credits for outages of primary firm service caused by non-*force majeure* events, where the outage occurred due to circumstances within the pipeline’s control, including planned or scheduled maintenance.⁵ The Commission also requires the pipeline to provide partial reservation charge credits during *force majeure* outages, so as to share the risk of an event for which neither party is responsible.⁶ Partial credits may be provided pursuant to (1) the No-Profit method under

³ Protest at 3 (citing *Williston Basin Interstate Pipeline Co.*, 70 FERC ¶ 61,369, *order on reh’g*, 71 FERC ¶ 61,372, at 62,461-62,462 (1995) (*Williston*)).

⁴ *Natural Gas Supply Association*, 135 FERC ¶ 61,055, at P 2, *order on reh’g*, 137 FERC ¶ 61,051 (2011).

⁵ *Algonquin Gas Transmission, LLC*, 143 FERC ¶ 61,082 (2013), *order on reh’g*, 153 FERC ¶ 61,038 (2015) (*Algonquin*); *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), *clarified*, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006). The Commission’s reservation charge crediting policies were affirmed in *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819, 823 (D.C. Cir. 2007).

⁶ The Commission has defined *force majeure* outages as events that are both

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., ten days or less).⁷

9. Northern States asks the Commission to reject the filing on the basis of the Commission's 1995 order. However, the Commission has developed its current reservation charge crediting policy extensively since then.⁸ Northern States fails to identify any provision in the current filing that is inconsistent with the Commission's current policy, and the Commission finds that WBI Energy's proposed reservation charge crediting provisions are consistent with current policy.

10. Northern States cites *Kern River* as allowing a pipeline to retain non-uniform reservation charge crediting provisions because the rate schedules resulted from individually negotiated contracts.⁹ However, in this proceeding, the pipeline is not seeking to retain provisions in individually negotiated contracts and Northern States has not identified any agreement in which the pipeline has agreed to such provisions with a particular customer.

11. In sum, the Commission rejects the protest and accepts WBI Energy's tariff records implementing revisions to the reservation charge crediting provisions in its FT-1, FTN-1 and FS-1 rate schedules, effective December 9, 2016.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

unexpected and uncontrollable. Opinion No. 406, 76 FERC ¶ 61,022 at 61,088.

⁷ Or some other method that achieves equitable sharing reasonably equivalent to the two specified methods.

⁸ See *Algonquin*, 153 FERC ¶ 61,038 and cases cited therein at P 4 nn. 9-10.

⁹ *Kern River Gas Transmission Co.*, 132 FERC ¶ 61,111, at P 16 (2010) (*Kern River*).

Appendix

WBI Energy Transmission, Inc.
FERC NGA Gas Tariff
Third Revised Volume No. 1

Tariff Records Accepted Effective December 9, 2016

- [Sheet No. 25, , 2.0.0](#)
- [Sheet No. 25A, , 0.0.0](#)
- [Sheet No. 25B, , 0.0.0](#)
- [Sheet No. 25C, , 0.0.0](#)
- [Sheet No. 25D, , 0.0.0](#)
- [Sheet No. 33, , 1.0.0](#)
- [Sheet No. 33A, , 0.0.0](#)
- [Sheet No. 33B, , 0.0.0](#)
- [Sheet No. 33C, , 0.0.0](#)
- [Sheet No. 33D, , 0.0.0](#)
- [Sheet No. 44, , 1.0.0](#)
- [Sheet No. 44A, , 0.0.0](#)
- [Sheet No. 44B, , 0.0.0](#)
- [Sheet No. 44C, , 0.0.0](#)