

112 FERC ¶ 61,147  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Bridger Pipeline, LLC

Docket No. IS05-397-000

ORDER ACCEPTING AND SUSPENDING TARIFFS,  
SUBJECT TO REFUND AND CONDITIONS, AND ESTABLISHING  
A HEARING AND SETTLEMENT PROCEDURES

(Issued July 29, 2005)

1. On June 30, 2005, Bridger Pipeline, LLC (Bridger) submitted a tariff filing with a cost-of-service justification that proposed to increase certain rates for the transportation of crude oil on its pipeline system.<sup>1</sup> Bridger proposes a July 15, 2005, effective date. Nexen Marketing USA, Inc. (Nexen), protested the tariff filing. As detailed below, the Commission accepts and suspends the tariff supplements<sup>2</sup> to become effective July 15, 2005, subject to refund, and sets this matter for hearing and settlement judge procedures. The hearing will be held in abeyance pending the outcome of the settlement process.

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<sup>1</sup> Bridger transports Canadian crude oil from the U.S./Canadian border near Raymond, Sheridan County, Montana (International Boundary) southward to Baker, Fallon County, Montana. Bridger also gathers crude from oil fields along its system.

<sup>2</sup> Supplement No. 5 to FERC Tariff No. 3, Supplement No. 5 to FERC Tariff No. 4, Supplement No. 4 to FERC Tariff No. 5, Supplement No. 4 to FERC Tariff No. 9 and Supplement No. 5 to FERC Tariff No. 10. The instant tariff supplements include Montana origin points at the International Boundary; Poplar Station in Roosevelt County, South Poplar Station in Richland County, Richey Station and Glendive Station in Dawson County; and Cabin Creek Station in Fallon County. The instant tariff supplements' Montana destination points include Poplar Station, Richey Station, and Baker Station, and also Alexander Station, McKenzie County, North Dakota (via a joint tariff with Belle Fourche Pipeline).

### **Bridger's Filing**

2. Bridger proposes to increase certain interstate rates based on a cost-of-service showing. Bridger states that, in accordance with 18 C.F.R. Part 346 of the Commission's regulations, it submitted cost, revenue, and throughput data supporting the revised rates. Bridger claims that the increased rates are required because, as its supporting schedules show, there is a substantial divergence between the actual costs experienced by the carrier and the revenues resulting from application of the oil pipeline annual cost increase index, as required by 18 C.F.R. § 342.4(a) of the Commission's regulations. Bridger states expenses have risen due to increased route operating costs, increased regulatory and internal requirements with respect to safety, an aggressive internal inspection and repair program and construction of a new receipt terminal.

3. Bridger states it used calendar year 2004 as the base period, which is adjusted for known and measurable changes for the 2005 test period. Bridger calculates a cost of service of \$5,888,874 for the test period. According to Bridger, test period revenue under the current ceiling rates projects to approximately \$3,371,287, resulting in an under-recovery of approximately \$2,517,587 per year or 42.75 percent. Under the proposed rates, Bridger's filing indicates it would over-recover its test period cost of service by \$7,593.

4. In addition to the rate increases, Bridger proposes an additional receipt point, South Poplar Station, a newly constructed station on two of its tariff supplements.<sup>3</sup> In order to provide service from this receipt point to shippers as soon as possible, Bridger requests waiver of the 30-day notice requirement. Finally, Bridger states that because there have been no recent movements of certain specified viscosities of crude petroleum (regarding sulfur content percentage) from the International Boundary to Baker, it is canceling these services on Supplement No. 5 to FERC Tariff No. 4.

### **Intervention, Protest, and Response**

5. A motion for permission to file a protest one day out of time was submitted by Nexen on July 18, 2005. Nexen states that as the result of an electronic error the wrong document was filed electronically on time, and that it was not able to resubmit its protest until after the close of the Commission's business on July 15. On July 25, 2005, Bridger responded to Nexen's protest. In its response, Bridger contends that Nexen's protest should be dismissed both on procedural and substantive grounds. Procedurally, Bridger

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<sup>3</sup> Supplement No. 5 to FERC No. 3 and Supplement No. 4 to FERC No. 5.

argues that Nexen has not shown good cause for its out-of-time filing; that Nexen lacks standing to protest the proposed changes to Bridger's F.E.R.C. No. 4 and certain movements in F.E.R.C. Nos. 3 and 5; and that Nexen's certificate of service was partially defective, in that it was apparently not received at the fax of one of its attorneys. Nexen had attempted to file its protest within the time set forth in the Commission's regulations, and through error, it had submitted the wrong document. Moreover, Bridger was able to file its response to Nexen's protest timely notwithstanding the non-receipt of the faxed protest by one of its attorneys. As to Bridger's claim that Nexen lacks standing to protest certain parts of Bridger's filing, and that the protest should be dismissed on substantive grounds, the Commission finds that these issues may be explored in the hearing subsequently ordered. Therefore, since granting the motion to file the protest out of time at this point will not disrupt or delay the proceeding, nor be particularly disadvantageous to Bridger, the Commission grants Nexen's motion to file its protest one day out of time.

6. Nexen opposes the rate increase and requests the Commission suspend the filing's proposed rates, subject to refund, and set the instant docket for hearing. In addition, Nexen objects to Bridger's proposal to deny shipments of crude oil with a sulfur content of more than 0.20 percent by weight.

7. In particular, Nexen states that Bridger's tariff supplements increase rates by as much as 218 percent and questions the prudence of the costs leading to the rate increases. Nexen claims that Bridger's proposed tariff supplements might be improperly subsidizing new shipments from the newly installed South Poplar Station .

8. Nexen notes that the financial data provided in the instant filing indicates Bridger's operating expenses excluding depreciation represent over 46 percent of its total cost of service in the base period and over 63 percent in the test period. By constructing a proxy group of comparable companies with which to compare Bridger's operating expenses as a percentage of cost of service and revenues to industry norms, Nexen found these percentages inordinately high when compared to most other pipeline operations which suggests that Bridger's operating expenses are overstated.

9. Nexen questions the accuracy of Bridger's depreciation expense account, claiming the 20 percent increase in the test period relative to the base period is improperly high as Bridger's total carrier property in service only increases by 14 percent in the test year. Also, Nexen states that Bridger provides no explanation of why it chose a lifespan of 22 years for the pipeline, which appears short because of the U.S.'s increasing imports of Canadian crude.

10. Nexen states that because the industry standard for determining whether crude oil is "sweet" or "sour" is whether it contains in excess of 0.50 percent sulfur by weight,

Bridger's proposal to require that all crude oil tendered for shipment have a sulfur content of 0.20 percent by weight or less is not only unreasonable, but might also be designed to confer a discriminatory benefit to affiliates of Bridger. Nexen claims that Bridger may be using the sweet crude of nonaffiliated shippers to enhance the value of the sour crude tendered by its affiliates.

### **Discussion**

11. The Commission finds that Bridger has made an adequate initial showing that its filing meets the requirements of a cost-of-service filing, under 18 C.F.R. § 346.1 of the Commission's regulations based on the cost figures provided in its filing. The Commission for good cause shown grants waiver of the 30-day notice requirement to allow Bridger's proposed tariff supplements to become effective on less than 30 days' notice. The issues in this case pertain to the data and methods that Bridger uses to determine its proposed rates, as well as the propriety of its new sulfur requirement. The resolution of these factual disputes will have a rate impact on shippers using Bridger's pipeline system. However, there is insufficient data at this time to resolve these disputes. Therefore, the Commission will establish hearing procedures to examine all the issues raised by the filing.

12. The Commission has, however, consistently encouraged parties to resolve disputes of this nature through settlement, and is of the view that formal settlement procedures may lead to a resolution of this case. The issues in this case related to the support for Bridger's cost-of-service rate proposal and proposed cancellation of service and new receipt point may be resolvable by settlement. Therefore, the Commission will hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter. To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>4</sup> If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.<sup>5</sup>

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<sup>4</sup> 18 C.F.R. § 385.603 (2005).

<sup>5</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 219-2500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at [www.ferc.gov/legal/oalj/bio/judges.htm](http://www.ferc.gov/legal/oalj/bio/judges.htm).

### **Suspension**

13. Based upon a review of the filing, the Commission finds that Bridger's tariff filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, pursuant to section 15(7) of the Interstate Commerce Act, the Commission will accept the tariff supplements listed in footnote no. 2 for filing and suspend them, to be effective July 15, 2005, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

#### **The Commission orders:**

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly section 15(7) thereof, Bridger's instant tariff supplements listed in footnote no. 2 are accepted for filing and suspended, to become effective July 15, 2005, subject to refund and subject to further order of the Commission.

(B) Pursuant to the authority contained in the Interstate Commerce Act, particularly sections 13(1) and 15(1) thereof, and the Commission's regulations, a hearing is established to address the issues raised by Bridger's filing.

(C) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief Administrative Law Judge, for the purpose pursuant to 18 C.F.R. § 375.302 (2005), shall convene a prehearing conference in this proceeding to be held within 20 days of the issuance this order in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held to clarify the positions of the participants, and for the ALJ to establish any procedural dates for the hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and the Commission's Rules of Practice and Procedure.

(D) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(F) Within 60 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.