

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wyoming Interstate Company, Ltd.

Docket No. RP06-147-000

ORDER ON NON-CONFORMING SERVICE AGREEMENTS

(Issued January 18, 2006)

1. On December 19, 2005, Wyoming Interstate Company (WIC) filed three Firm Transportation Service Agreements (FTSA) and two Precedent Agreements (PA) for the Commission's review and information as potential non-conforming service agreements, and related tariff sheets¹ reflecting those agreements. As discussed below, the Commission accepts the proposed tariff sheets, to be effective January 19, 2006 as requested, and clarifies the operation of a surcharge exemption provision of the FSAs.

Background

2. WIC states that it reviewed all its FSAs and form of service agreements, in light of the Commission's material deviation policies. As a consequence, WIC identified provisions in several contract provisions that are not specifically provided for in its tariff or form of service agreement and that may be considered non-conforming provisions. In some cases, WIC requested certain shippers to revise their FSAs to remove the subject provisions and, in many cases, the agreements have been revised. Where WIC concluded that it will be unable to revise a non-conforming agreement, WIC has submitted such an agreement for Commission review. In the instant filing, WIC states that its discussions with the shippers regarding the potential non-conforming provisions have failed to result in revised agreements. Accordingly, WIC is submitting these agreements as potential non-conforming provisions for Commission review.

Instant Filing

3. WIC's filing consists of the following FSAs and PAs: (1) an FSA with Cantera Gas Company (Cantera) executed in 1999 and extending through November 30, 2012,

¹ Fifth Revised Sheet No. 1, Second Revised Sheet No. 103, Second Revised Sheet No. 104, and First Revised Sheet No. 117 to WIC's FERC Gas Tariff, Second Revised Volume No. 2.

with a current maximum daily quantity (MDQ) of 158,900 dth per day (FTSA No. 41064); (2) an FTSA with Devon Energy Production Company (Devon) executed in 1999 and extending through November 30, 2012, with a current MDQ of 71,700 dth per day (FTSA No. 41065); (3) an FTSA with Devon executed in 2001 and extending through November 30, 2013, with a current MDQ of 55,000 dth per day (FTSA No. 41090); (4) Medicine Bow Loop Transportation PA with Devon dated July 13, 2000 and amended on September 1, 2000, relating to FTSA No. 41090; and (5) Medicine Bow Loop Transportation PA Cantera dated July 12, 2000 and amended on September 20, 2000, relating to FTSA No. 41089.

4. WIC also submitted revised tariff sheets to reference the above FSAs, to delete an expired agreement, to reflect a revised shipper's name, and to delete the negotiated rate tariff sheets previously filed for these agreements.

5. WIC states that the three FSAs, noted above, were entered into as part of the underlying market support for the Medicine Bow Lateral and Medicine Bow Loop projects, and those transactions have been reflected in its tariff as negotiated rate transactions since that time. WIC maintains that the negotiated rate components under these FSAs have not changed, but the FSAs themselves contain several provisions that are not in the *pro forma* form of service agreement contained in its tariff.

6. WIC also states that the two PAs were entered into as part of the underlying market support for the Medicine Bow Loop project, prior to construction of the project. WIC further states the terms of the PAs have been incorporated into the FSAs and remain in effect for the term of the related FSA. WIC asks the Commission to state that it is no longer necessary to submit PAs whose terms and conditions have been memorialized in a subsequent transportation service agreement.

Notice, Interventions and Protests

7. Notice of WIC's filing was issued on December 27, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations.² Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this state of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. On January 4, 2006, the Indicated Shippers filed a protest.³

² 18 C.F.R. § 154.210 (2005).

³ The Indicated Shippers are BP Energy Company, BP America Production Company, Chevron Natural Gas, a division of Chevron U.S.A., Inc.

8. The Indicated Shippers protest a provision in the FTSA's exempting the shippers from future surcharges that may apply to services under the FTSA's. The provision requires shippers to pay WIC's normal fuel, Lost and Unaccounted (L&U), and other existing surcharges, but provides that these shippers shall not be liable for any future surcharges that are the result of a WIC request for such surcharge authority.⁴

9. The Indicated Shippers argue that such a provision requires one set of shippers to subsidize another set of shippers because it could allow WIC to shift to non-exempt shippers the costs associated with a new surcharge from which other shippers are exempt under negotiated rate agreements.

10. The Indicated Shippers note that the Commission has established that if a pipeline agrees to discount a surcharge as part of a negotiated rate contract, the pipeline should bear the burden of the discount and should not shift the forgone revenue to other shippers.⁵ The Indicated Shippers also assert that the Commission also determined that if a pipeline imposes a fixed surcharge, and the pipeline's actual costs exceed the revenue that the pipeline receives from the surcharge, the pipeline cannot collect the unrecovered costs from the shippers that pay the fixed surcharge or from other shippers.⁶ Therefore, the Indicated Shippers ask that the Commission clarify that WIC must absorb any future surcharge costs that WIC would forgo collecting from exempt shippers, absent the exemption, and WIC cannot reallocate such costs to non-exempt shippers.

Discussion

11. The Commission requires that pipelines file all agreements that contain material deviations from their form of service agreements.⁷ Upon review of WIC's filing, the Commission accepts the non-conforming service agreements and the revised tariff sheets referencing said non-conforming service agreements, subject to the clarification discussed below.

12. Under Commission policy, parties can enter into a negotiated rate agreement, where a pipeline can agree to exempt a shipper from any surcharge. However, there is no

⁴ See Note 1(B) in Exhibit B; WIC's transmittal letter at p. 6. WIC explains that the provision was added to ensure the underlying economics of these negotiated rate arrangements, so that the Medicine Bow Lateral shippers would not be affected if WIC filed for a subsequent surcharge.

⁵ Citing *Transwestern Pipeline Co.*, 102 FERC ¶ 61,183, at P 11 (2003).

⁶ Citing *Texas Eastern*, 99 FERC ¶ 61,383, P 34 (2202) and *Texas Eastern*, 101 FERC ¶ 61,120, P 34 (2002).

⁷ 18 C.F.R. § 154.1(b), (d) (2005).

discount adjustment for negotiated rates. Accordingly, under a negotiated rate agreement, a pipeline is responsible for the cost of any rate exemption.

13. In *Transwestern*,⁸ for example, the Commission affirmed that a pipeline must bear the cost burden of any negotiated rate discount, and cannot shift costs associated with such a cost exemption to non-exempt shippers. Therefore, WIC's revised tariff sheets are accepted subject to WIC absorbing the cost of any future surcharge exemption that it provides in the subject FTSA's.

14. With respect to WIC's request that the Commission clarify whether a PA needs to be filed where a subsequent transportation service agreement memorializes the PA, the Commission's regulations require the filing of any contract or executed service agreement that deviates materially from the form of service agreement in the tariff.⁹ The Commission has also held that the entire agreement of the parties shall be reflected in the service agreement, so that there are no potentially conflicting provisions in other agreements between the two parties.¹⁰ If the pipeline complies with these requirements, there would be no need to file the PA, since it would be fully superseded by the filed service agreement.

The Commission orders:

(A) WIC's revised tariff sheets, referenced in footnote 1, are hereby accepted, to be effective January 19, 2006, as discussed above.

(B) The non-conforming service agreements are accepted, subject to the conditions set forth in this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ *Transwestern Pipeline Co.*, 102 FERC ¶ 61,183 (2003).

⁹ 18 C.F.R. § 154.1(b), (d) (2005).

¹⁰ See *East Tennessee Natural Gas Co.*, 107 FERC ¶ 61,197 at P 14-15 (2004).