

123 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Rio Grande Pipeline Company

Docket No. IS08-168-000

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

(Issued April 25, 2008)

1. On March 26, 2008, Rio Grande Pipeline Company (Rio Grande) submitted a tariff filing with a cost-of-service justification that proposes to cancel a joint rate and establish a local rate for the transportation of liquefied petroleum products on its pipeline system.¹ Rio Grande proposes an April 1, 2008, effective date and requests waiver of the 30-day notice requirement of section 6(3) of the Interstate Commerce Act under 18 C.F.R. § 341.14 (2007). P.M.I. Trading Limited (PMI) protested the tariff filing. As detailed below, the Commission accepts and suspends Rio Grande's FERC Tariff No. 11 to become effective April 1, 2008, 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.

Rio Grande's Filing

2. Rio Grande proposes to cancel a joint movement with MAPL, a former affiliate, and establish a new local tariff rate in proposed FERC Tariff No. 11, which cancels FERC Tariff No. 10. Rio Grande states it will no longer have joint tariff movements/rates with MAPL and has modified its tariff to remove or eliminate references to such rates or volume commitments. Rio Grande proposes to establish a new local rate, based on a cost-of-service showing, for the entire length of its system to

¹ Rio Grande's pipeline system originates at an interconnection with Mid-America Pipeline Company, LLC (MAPL) at Lawson Jct., Texas, and terminates at the U.S./Mexico International Border near El Paso, Texas, at an interconnection with PEMEX.

replace its portion of the canceled joint rate. Rio Grande states that FERC Tariff No. 11 is filed under 18 C.F.R. ¶ 342.4(a) (2007), Cost of Service Rates, and in accordance with 18 C.F.R. Part 346 (2007), Oil Pipeline Cost-of-Service Filing Requirements. Rio Grande submitted cost, revenue, and throughput data, consisting of 15 pages in addition to Rio Grande's transmittal letter, supporting the proposed new rate of 184.00 cents per barrel.

3. Rio Grande requests waiver of the 30-day notice requirement of section 6(3) because the volume commitment contract that was the basis for the rate previously filed has expired and the joint rate concurrence has been rescinded effective March 31, 2008.

Intervention and Protest

4. A motion for permission to file an intervention and protest 12 days out of time was submitted by PMI on April 22, 2008. PMI states its delay in filing was occasioned by administrative and logistical difficulties in obtaining and coordinating the internal review of both Rio Grande and MAPL's companion filings.² PMI, a subsidiary of PEMEX, states it manages international sales and purchase transactions involving natural gas liquids, petroleum and petrochemical products, and it supplies and receives these commodities to and from PEMEX and other various customers, suppliers, and markets world-wide. PMI states it is a former transportation contract holder on Rio Grande's system, and currently purchases LPG on a delivered basis at the U.S.-Mexico border from BP Products North America, Inc. (BP) and Enterprise Products Operating LLC (Enterprise), both of whom are current shippers on Rio Grande and on MAPL, Rio Grande's former affiliate, an upstream interconnected LPG pipeline. Under the terms of its purchase arrangements exceeding 14,000 barrels per day, PMI states it must reimburse BP and Enterprise for 100 percent of the upstream pipeline transportation charges. Therefore, PMI states it is an actual beneficial user of both the Rio Grande and MAPL systems and a true party of economic interest. PMI states its intervention and protest are in the public interest, and acceptance of its protest cannot prejudice any party as the Commission has yet to issue any order on Rio Grande's filing.

5. PMI's "Verified Statement of Economic Interest" attached to its protest, attests that PMI will be impacted by Rio Grande's filing because it is essentially a rate increase for PMI as PMI is the party which pays the transportation rates under commercial

² MAPL made a similar filing to establish a new local rate replacing its portion of the canceled joint movement with Rio Grande in Docket No. IS08-182-000 on March 31, 2008, five days after Rio Grande's instant filing.

arrangements with current shippers on Rio Grande that provide for a direct passthrough of 100 percent of Rio Grande's tariffed rates. Therefore, PMI argues, it has shown it has a substantial economic interest in this proceeding and standing to protest. The Commission concludes that PMI's contractual arrangements with BP and Enterprise establish its standing to protest Rio Grande's filing. Accordingly, the Commission grants intervention and accepts PMI's protest.

6. PMI states that Rio Grande (and MAPL in Docket No. IS08-182-000) filed to cancel its joint settlement rate and establish a new local transportation rate to disaggregate into two pieces a long-standing joint, volume-incentive rate movement that had been performed for approximately 12 years. PMI states that it had an agreement with Rio Grande that would end the earlier of ten years after first flow or once PMI reached a specified aggregate transportation volume, and that it fulfilled its volume obligation in less than ten years. As a result, states PMI, the agreement technically expired sometime around April 2005, but that it continues to receive volumes from BP and Enterprise. PMI states that as a result of the proposed rate in Rio Grande's filing, its total rate will increase by approximately 50 percent. PMI opposes the rate increase and requests the Commission suspend the proposed rates, subject to refund, and set the instant docket for hearing.

7. In particular, PMI states that Rio Grande's proposed rate increase has no apparent justification whatsoever. PMI notes Rio Grande publicly conceded that it would be unable subsequently to cost-justify the settlement rate of \$1.26/bbl established in 1996 if the Commission did not approve Rio Grande's request to write up its rate base to reflect the acquisition premium associated with the purchase price for pipeline facilities.³ Therefore, as the Commission denied Rio Grande's request to write-up its rate base in 1996, PMI states Rio Grande cannot justify a \$1.84/bbl rate now, especially after its facilities have been depreciated for nearly 12 additional years.

8. PMI states it cannot discern the proposed cost-of-service rates from the instant filing, and that due to the absence of workpapers, testimony and explanatory material, PMI asserts that Rio Grande has not demonstrated a substantial divergence between Rio Grande's actual costs and the revenues that would result from the application of the index rate and, further, that absent the proposed rate increase, Rio Grande's index rate would be unjust and unreasonable.

³ Docket No. OR97-1-000, page 8 of Rio Grande's Petition for Declaratory Order. *See, also, Rio Grande Pipeline Company*, 100 FERC ¶ 61,022 (2002).

9. PMI states Rio Grande's filing raises numerous issues of material fact with respect to Rio Grande's claimed actual costs and proposed rate levels, including, but not limited to, the appropriate: (1) return on equity and debt; (2) capital structure; (3) income tax allowance; (4) depreciation rate; (5) operation and maintenance allowance; (6) rate base for the pipeline; (7) throughput levels; (8) cost allocation; and (9) rate design. PMI also notes that Rio Grande does not disclose whether it used a DCF methodology to calculate its proposed return on equity. If so, PMI states the Commission must evaluate Rio Grande's filing to ensure that Rio Grande is in compliance with the Commission's recent Policy Statement regarding proxy group compensation used in the DCF calculation.⁴

Discussion

10. The Commission finds that Rio Grande 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. As stated above, the Commission grants waiver of the 30-day notice requirement to allow Rio Grande's proposed tariff to become effective on less than 30 days' notice. The issues in this case pertain to the data and methods that Rio Grande uses to determine its proposed rate and the resolution of these factual disputes will have a rate impact on shippers using Rio Grande'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.

11. 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 Rio Grande's cost-of-service rate proposal and proposed cancellation of the joint service and new tariff rate may be resolvable by settlement. Therefore, the Commission will hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter.⁵ 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.⁶ If

⁴ *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (issued April 17, 2008).

⁵ See 18 C.F.R. § 343.5 (2007).

⁶ 18 C.F.R. § 385.603 (2007).

the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.⁷

12. The Commission is troubled in this case by the extremely short notice of its filing provided by Rio Grande and the lateness of PMI's request to intervene, and the scant justification in both instances. The Commission hereby serves notice that in the future in oil pipeline cases it will look closely at the sufficiency of the justification given for requests to file on short notice and requests to intervene out of time.

Suspension

13. Based upon a review of the filing, the Commission finds that Rio Grande'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 FERC Tariff No. 11 for filing and suspend it, to be effective April 1, 2008, 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, Rio Grande's FERC Tariff No. 11 is accepted for filing and suspended, to become effective April 1, 2008, 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 Rio Grande's filing.

(C) 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.

⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 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.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), 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.

(E) 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.