

125 FERC ¶ 61,109  
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.

Alliance Pipeline L.P.

Docket No. RP08-624-000

ORDER ACCEPTING TARIFF SHEETS

(Issued October 28, 2008)

1. On September 15, 2008, Alliance Pipeline L.P. (Alliance) filed revised tariff sheets<sup>1</sup> proposing to revise section 2.3 of its General Terms and Conditions (GT&C) to establish a mechanism for implementing and prioritizing waivers of the hydrocarbon dewpoint specification in section 2.1(b) of its GT&C. Alliance proposes an effective date of November 1, 2008, for the revised sheets. As discussed below, the Commission accepts the proposed tariff sheets to become effective November 1, 2008.

**Alliance's Filing**

2. Revised section 2.3(b) provides that Alliance will waive the hydrocarbon dewpoint specification in section 2.1(b) on a non-discriminatory, first-come first-served basis. Pursuant to section 2.3(b), Alliance will grant waivers if operating conditions permit the blending of gas subject to any waivers with other receipts in a manner which allows Alliance to maintain prudent and reliable operations. If Alliance grants more than one waiver under section 2.3(b), it will determine the priority on a first-come, first-served basis.

3. Section 2.3(b)(1) contains the first such waiver Alliance proposes to grant, which applies to a proposed new receipt point in North Dakota. Section 2.3(b)(1) also identifies the maximum volumes eligible for the first waiver, the hydrocarbon dewpoint specification at the new receipt point, and specific restrictions for gas tendered at that

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<sup>1</sup> Original Sheet No. 209A, First Revised Sheet Nos. 209, 229 and 278 and Second Revised Sheet No. 230, to its FERC Gas Tariff, Original Volume No. 1.

receipt point. Alliance states the Commission previously approved tariff provisions that enable pipelines to blend gas receipts of varying gas quality attributes to allow shippers to take full advantage of multiple sources of gas for transportation on integrated pipelines.<sup>2</sup>

4. Alliance states the new receipt point will facilitate the first large-volume natural gas delivery system out of the Bakken Shale Formation in the presently capacity-constrained Williston Basin producing region in Eastern Montana and Western North Dakota. In short, a proposed cryogenic plant with compression for residue gas and associated expansion of existing gathering facilities will allow the transportation downstream and processing of Bakken Shale “dense phase” high Btu natural gas at Alliance’s non-jurisdictional affiliate’s, Aux Sable Liquid Products LP (Aux Sable) processing plant near Chicago, Illinois. Alliance contends its proposal will stimulate the overall rate of development of the Bakken Shale, allow producers to access the Chicago market and increase the availability of domestic energy sources to consumers. Alliance states that under current operating conditions, it can receive limited quantities of “dense phase” gas in North Dakota since it can blend those quantities with upstream receipts without adverse operational impact. Alliance submits it will also grant additional hydrocarbon dewpoint specification waivers on a non-discriminatory basis under section 2.3(b), if operating conditions permit the successful blending of additional gas at the time any shipper requests such subsequent waivers. Alliance asserts it reserves the right to impose any necessary restrictions on subsequent waivers granted under section 2.3(b), pursuant to the non-discriminatory standards provided therein.

5. Alliance identifies the new receipt point on First Revised Sheet No. 278 as “Pecan North Dakota.” Alliance states that heretofore the only receipt point on Alliance since its December 2000 in-service date is the interconnection at the U.S./Canada border with its upstream Canadian affiliate; it now proposes to revise section 15.4 of its GT&C to establish priority of service provisions for more than one receipt point on the U.S. portion of its pipeline system.

6. Alliance includes in its filing a nonconforming firm transportation service agreement which Alliance will execute with Pecan Pipeline (North Dakota), Inc. (Pecan North Dakota) for transportation to any of its existing delivery points.<sup>3</sup> Alliance requests that the Commission approve the nonconforming service agreement as non-discriminatory. Alliance reiterates it will consider additional requests for gas quality

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<sup>2</sup> See *Southern Natural Gas Company*, 124 FERC ¶ 61,188 (2008); see also *El Paso Natural Gas Co.*, Docket No. RP08-407-000, letter order dated July 3, 2008.

<sup>3</sup> Alliance states the transportation service from the Pecan North Dakota receipt point is expressly tied to the hydrocarbon dewpoint gas quality specification waiver.

specification waivers and, in the event it grants such waivers, will enter into additional nonconforming transportation agreements which it will file with the Commission for approval. Alliance states that since gas quality specification waivers will be available to all shippers on a first-come, first-served basis under the tariff, this proposal does not present a risk of undue discrimination. Alliance further states that under the first-come, first-served principle, the Pecan North Dakota receipt point will have the highest priority for hydrocarbon dewpoint gas quality specification waivers. Section 2.3(b) provides the Pecan North Dakota receipt point hydrocarbon dewpoint gas quality specification waiver shall not be subsequently prorated if Alliance receives additional gas quality specification waiver requests and cannot blend both the Pecan North Dakota receipts and the volumes subsequently requested. Furthermore, continues Alliance, it may suspend temporarily or terminate permanently the Pecan North Dakota hydrocarbon dewpoint gas quality specification waiver and any subsequent similar waivers if operational considerations no longer permit receiving gas which fails to meet the hydrocarbon dewpoint level in section 2.1(b) of its GT&C.

7. In addition, Alliance notes that the negotiated rate agreement with Pecan North Dakota, except for the hydrocarbon dewpoint gas quality specification waiver, does not contain negotiated terms or conditions of service. Alliance asserts it will provide the Pecan North Dakota waiver and future gas specification waivers under revised section 2.3(b) if, and only if, the Commission approves the tariff provision as just and reasonable and finds the first-come, first served approach for such waivers is not inconsistent with the anti-discrimination provisions of section 4 of the Natural Gas Act.

8. If the Commission approves this filing, Alliances agrees to implement the Pecan North Dakota receipt point waiver and any similar future gas specification waivers for other receipt points. Alliance requests that the Commission expressly find here, that execution of such nonconforming transportation agreement, and the plan to execute similar transportation agreements from other receipt points requiring similar waivers, is not unduly discriminatory or preferential under these circumstances. Alliance asserts that the waiver in Pecan North Dakota agreement is (1) available to all shippers on a first-come, first-served basis under the proposed tariff revisions, and (2) expressly subject to either temporary suspension or permanent termination to the extent necessary to ensure prudent and reliable operations on Alliance's system.

9. Alliance also states that its transportation rates from the Pecan North Dakota receipt point to Chicago delivery points are negotiated rates consistent with the terms of its FERC Gas Tariff and Commission policy. These rates are found on *pro forma* Original Sheet No. 15 that Alliance will file at least 30 days prior to the in-service date from the Pecan North Dakota receipt point. Alliance will also file, at least 30 days prior to the in-service date, the executed firm transportation agreement with Pecan North Dakota and the tariff sheet required by 18 C.F.R. § 154.112.

10. Based on its eight years of experience, Alliance believes that in specific instances, based on system configuration, flows, and the gas components involved, it can permit waivers of its existing hydrocarbon dewpoint specifications, in section 2.1 of its GT&C, without adversely affecting the integrity and safety of pipeline facilities, service to existing shippers, or delivery obligations to downstream entities or interconnecting pipelines. Alliance stresses that such waivers provide the possibility of new shippers at U.S. receipt points tendering gas from “dense phase” gathering facilities which otherwise could not be transported on any U.S. pipeline. Alliance agrees to periodically review its system operations to identify situations where it may be appropriate to grant additional waivers.

11. Alliance stresses it will accept gas under the Pecan North Dakota waiver as long as it can continue to provide service to its shippers and prudently maintain and safely operate its system. If, at any time, Alliance determines the above conditions cannot be met, it will suspend the waiver and not accept the Pecan North Dakota “dense phase” natural gas. Alliance submits it will provide prompt notice of such determination to Pecan North Dakota by telephone and email and will post notice on the “Critical Operations Notices” section of its electronic bulletin board. If operating conditions require it, Alliance will file revised tariff sheets reflecting changes in section 2 of its GT&C, including sections 2.1 and 2.3.

### **Notice and Interventions**

12. The Commission noticed Alliance’s filing on September 18, 2008. Interventions and protests were due September 29, 2008, as provided in section 154.210 of the Commission’s regulations.<sup>4</sup> Pursuant to Rule 214,<sup>5</sup> all timely filed motions to intervene and any motions 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. On September 29, 2008, the following parties filed motions: (1) Integrys Gas Group<sup>6</sup> filed a motion to intervene and comments; (2) Iberdrola Renewables, Inc. (Iberdrola) filed a motion to intervene and protest; (3) Pecan North Dakota filed a motion to intervene and comments; and (4) Aux Sable filed a motion to intervene and comments in support.

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<sup>4</sup> 18 C.F.R. § 154.210 (2008).

<sup>5</sup> 18 C.F.R. § 385.214 (2008).

<sup>6</sup> The members of Integrys Gas Group for purposes of this motion are North Shore Gas Company (North Shore), The Peoples Gas Light and Coke Company (Peoples Gas) and Wisconsin Public Service Corporation (Public Service).

13. The Integrys Gas Group supports Alliance's efforts to accept additional gas supplies on its system since Alliance will only accept nonconforming gas if it can blend the gas and maintain "prudent and reliable" operations on its system. The Integrys Gas Group asks that if Alliance cannot accept gas at the Pecan North Dakota point because it can not blend the gas to an acceptable quality level, but it can accept gas at a lower priority point because that gas is closer to specification, would the Pecan North Dakota point priority mean that no nonconforming gas could flow at the lower priority point? The Integrys Gas Group asserts that clarification would be useful.

14. Pecan North Dakota urges the Commission to promptly approve Alliance's filing. Pecan North Dakota states production in the Bakken Shale is currently constrained by limited pipeline take-away capacity, which clearly jeopardizes the continued rate of development in one of the most promising new producing basins in the U.S. Pecan North Dakota emphasizes its Prairie Rose Project,<sup>7</sup> through its interconnection with Alliance, will provide the first direct access out of the Bakken Shale to major downstream interstate pipeline systems. That access, Pecan North Dakota states, is dependent upon Alliance's ability to waive the hydrocarbon dewpoint specification in its tariff, given the exceptionally high liquefiable hydrocarbons content of the Prairie Rose Project's "dense phase" gas stream.

15. Aux Sable fully supports its affiliate Alliance's filing and urges the Commission to approve it expeditiously and without modification. Aux Sable states the new Pecan North Dakota receipt point will, for the first time, allow delivery of large volumes of Bakken Shale "dense phase" gas production to the Chicago market. Aux Sable avers this rich gas will blend with Alliance's existing gas stream and then undergo processing at its plant thereby ensuring it meets all downstream gas quality requirements.

16. Iberdrola fully supports the introduction of new gas receipt opportunities on the Alliance system,<sup>8</sup> but argues Alliance's hydrocarbon dew point gas specification waiver proposal, as highlighted by the pre-arranged deal with Pecan North Dakota, is unduly

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<sup>7</sup> The Prairie Rose Project is Pecan North Dakota's construction of cryogenic and compression facilities and related pipeline expansion to interconnect its non-jurisdictional gathering facilities with Alliance in North Dakota.

<sup>8</sup> Iberdrola states it does not protest or otherwise take any position at this time on Pecan North Dakota's "Petition for Declaratory Order" in Docket No. CP08-475-000.

discriminatory and contrary to Commission precedent.<sup>9</sup> Iberdrola asserts Alliance's proposal results in Pecan North Dakota, with whom Alliance privately negotiated this preferential waiver without opportunity for other shippers to participate, being the only shipper with a valuable first-priority right to deliver nonconforming gas into Alliance's system ahead of every other existing and potential shipper for the next ten years. Iberdrola asserts that if Alliance can accommodate gas that deviates from its tariff-based standards upstream of the Aux Sable plant,<sup>10</sup> as Alliance contends, then all existing and potential shippers should have the opportunity to benefit from that flexibility through an open and fair process. Iberdrola contends that if Alliance can accommodate at least 80 MMcf/day of such nonconforming gas upstream of the Aux Sable processing plant on a consistent basis, the non-discriminatory solution is to make such a waiver available on a *pro rata* basis to all customers at all receipt points upstream of the Aux Sable processing plant.

17. Iberdrola requests that the Commission require Alliance to support its statement that it can receive limited quantities of "dense phase" gas in North Dakota because those quantities can be blended with upstream receipts without adverse operational impact, with actual data, so the Commission and Alliance's other shippers can understand exactly what Alliance promised Pecan North Dakota.

18. Iberdrola states the Commission held that Alliance is free to recalculate its cost of service and raise existing customers' rates at its discretion.<sup>11</sup> Iberdrola argues that since

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<sup>9</sup> See *Rockies Express Pipeline LLC*, 119 FERC ¶ 61,069, at P 51 (2007) (*Rockies Express*) (holding that "any disparate treatment among shippers regarding gas quality specifications must be justified by legitimate operating conditions on the pipeline" and that the issue of contract timing "is not a legitimate operating condition" for purposes of establishing priority rights to delivery nonconforming gas into an interstate pipeline).

<sup>10</sup> Iberdrola notes this processing plant is owned by an Alliance affiliate, Aux Sable. Iberdrola asserts the Commission should ensure that Alliance's proposed waiver to Pecan North Dakota would not permit Aux Sable to reap any improper benefits, due to its affiliate relationship with Alliance, through Pecan North Dakota's arrangements with Alliance and Aux Sable. Iberdrola expresses concern that the value of the waiver to the Alliance corporate family, if it is directed to Aux Sable instead of Alliance, will not be properly credited to existing Alliance shippers.

<sup>11</sup> Iberdrola states this holding is currently subject to appeal at the U.S. Court of Appeals for the District of Columbia Circuit. See *Alliance Pipeline L.P.*, 121 FERC ¶ 61,309 (2007), *reh'g denied*, 122 FERC ¶ 61,250 (2008), *appeal docketed*, No. 08-1195 (D.C. Cir. May 16, 2008).

Alliance files annual rate filings to reflect changes to its existing customers' rates, the Commission should (1) ensure in this proceeding that Alliances' proposed arrangements with Pecan North Dakota do not cause Alliance's existing customers to subsidize service to Pecan North Dakota, and (2) require Alliance to credit all revenues received from Pecan North Dakota against the cost of service used to calculate pre-existing shippers' rates.

19. Finally, Iberdrola asserts it is unclear from the filing whether Alliance granted Pecan North Dakota higher gas quality point rights than it granted to pre-existing shippers. Iberdrola requests the Commission require Alliance to clarify Pecan North Dakota's primary delivery point rights, as set forth in Appendix A of Alliance's proposed service agreement with Pecan North Dakota. Iberdrola states Alliance requires it and other shippers to allocate their delivery point capacity rights to specific points. Iberdrola contends it is not clear that Alliance required Pecan North Dakota to make a similar allocation.

20. On October 14, 2008, Alliance and Pecan North Dakota filed answers to the protests and comments. Since the answers clarify the issues raised in the protests and comments, they will be discussed below.

### **Discussion**

21. The Commission recognizes that the Pecan North Dakota pipeline is part of a larger project designed to bring "dense phase" high Btu natural gas from the Bakken Shale Formation to market, and for Alliance to accommodate such gas on its system, it requires a waiver of the hydrocarbon dewpoint specifications in Alliance's tariff. Iberdrola argues, however, that revisions proposed by Alliance are unduly discriminatory because Alliance gave Pecan North Dakota a valuable, first-in-time right to the hydrocarbon dewpoint waiver, whereas other shippers were not given the opportunity to seek such a waiver. Based upon the information provided by Alliance and Pecan North Dakota in their answers, the Commission finds that the proposed hydrocarbon dewpoint waiver provision and the related service agreement with Pecan North Dakota are just and reasonable and not unduly discriminatory. In addition, Iberdrola's argument that Pecan North Dakota somehow received preferential treatment is without merit.

22. As Alliance and Pecan North Dakota state in their answers, each element of Pecan North Dakota's request was based on publicly available material that every existing and potential shipper has had access to over the initial eight years of Alliance's operations. Alliance and Pecan North Dakota state that Alliance has had 188,000 Mcf per day of completely unsubscribed firm capacity from the commencement of its operations. Alliance and Pecan North Dakota state that Alliance's tariff from the inception has authorized Alliance to grant waivers of gas quality specifications on a nondiscriminatory basis, where operating conditions permit, and does not preclude Alliance from exercising

such discretion on a first-come/first-served basis. Alliance and Pecan North Dakota state that the tariff from the inception has authorized Alliance to consider the installation of new receipt points.

23. Alliance and Pecan North Dakota state that during the nearly eight years prior to Pecan North Dakota's request for transportation service, Iberdrola has not requested, or otherwise expressed interest, in any portion of the 188,000 Mcf per day of unsubscribed capacity, a waiver of the tariff's hydrocarbon dewpoint specifications, or a new point of receipt to permit the introduction of domestic production into the Alliance system. Alliance states that perhaps even more fatal to Iberdrola's discrimination claim (and more troublesome than its lack of knowledge about the availability of capacity or gas quality specification waivers), is Iberdrola's failure to allege, much less identify, any real interest in Bakken Shale reserves or production or ongoing marketing activities in the area. Alliance states that Iberdrola has not even approached Alliance to begin the process under section 32 of the GT&C, "Construction of Interconnection Facilities," to allow Alliance to attach new gas supplies from any U.S. sources. Alliance asserts that Iberdrola lacks standing to object to an arrangement between Alliance and Pecan North Dakota, a valid market participant with demonstrated results and concrete plans related to actual production from the Bakken Shale formation.

24. Based on current contract levels and operating conditions, the recent levels of the hydrocarbon dewpoint of upstream Canadian receipts and factoring in anticipated Pecan North Dakota volumes under the proposed waiver, Alliance states that it is confident that, assuming those factors do not materially change, it can grant additional hydrocarbon dewpoint specification waivers in the future. Alliance states that the parameters of future waivers which can be granted depends on the volumes requested and the extent to which those volumes deviate from the specifications in section 2.1(b) of the GT&C. Alliance states that it will continue to assess its ability to grant additional hydrocarbon dewpoint waivers and, as indicated in the September 15, 2008 filing, will consider all requests for such waivers on a nondiscriminatory basis.

25. Integrys asks if Alliance cannot accept gas at the Pecan North Dakota point because it cannot successfully blend the gas, but it can accept gas at a lower priority point because that gas is closer to specification, would the Pecan North Dakota point priority mean that no nonconforming gas could flow at the lower priority point? In its answer, Alliance states that it cannot provide a precise answer to Integrys' request for clarification in advance of knowing the particulars of any additional waivers subsequently granted with a lower priority than Pecan North Dakota. Alliance states that if, hypothetically, operating conditions are such that Alliance is required to reduce, suspend or terminate the Pecan North Dakota waiver and, at the same time, Alliance concludes that it is operationally able to provide transportation of gas subject to lower priority hydrocarbon dewpoint specification waivers, no purpose would be served by suspending or denying lower priority waivers in section 2.3(b). In those circumstances,

Alliance states that it will transport the lower priority volumes. Alliance notes that it retains the independent ability under section 2.3(a) to grant waivers of all gas quality specifications in a not unduly discriminatory manner. The Commission finds that this response adequately addresses Integrys' concerns.

26. Iberdrola requested that Alliance clarify whether it granted Pecan North Dakota higher quality delivery point rights than it granted to pre-existing shippers. Alliance states that the draft Firm Transportation Agreement included in the September 15, 2008 filing in this proceeding, which Pecan North Dakota will execute prior to the in-service date of transportation service, lists all potential delivery points on the Alliance system. Alliance states that Pecan North Dakota has not yet elected primary delivery points on Alliance. Alliance states that once those elections are made, delivery points and capacities will be listed in Appendix A of the Pecan North Dakota firm transportation agreement, limited to available capacity at those points. Alliance states that Pecan North Dakota will not displace any existing shippers' delivery point rights and the aggregate delivery point capacity under all elected points will reflect 150 percent of Pecan North Dakota's Contracted Capacity. Alliance states that level of delivery point capacity is authorized by section 4.3 of Rate Schedule FT-1. In addition, Alliance states that all existing shippers on Alliance, including Iberdrola, have aggregate delivery point capacity equal to 150 percent of their Contracted Capacity. Alliance concludes that Pecan North Dakota's delivery point capacity will be no more favorable than other shippers' entitlements, nor will it supplant other shippers' previously designated primary delivery point capacities. The Commission finds that this response adequately addresses Iberdrola's concerns.

27. Finally, Iberdrola's assertion that some form of revenue crediting should be required because Alliance's existing customers will subsidize the proposed service to Pecan North Dakota is without merit. When the Pecan North Dakota pipeline becomes operational, Pecan North Dakota will pay negotiated rates like all other shippers on the Alliance system. As with all its shippers, Alliance derives the negotiated rates based on certain rate principles including that reservation rates are calculated on a per unit of capacity basis and that the actual reservation rates are calculated based upon the higher of the sum of all contract capacities or 1,325 MMcf/day.<sup>12</sup> As Alliance states, the Pecan North Dakota capacity will be added to the total system rate design determinants used to derive the FT-1 negotiated rates, generating a rate reduction for Iberdrola and all other pre-existing shippers on Alliance. Alliance states that the current level of contracted capacity is 1325 MMcfd, matching the existing upstream Canadian pipeline certificated capacity and the Pecan North Dakota Contracted Capacity will increase the aggregate to 1405 MMcfd once the projected level of Pecan North Dakota volumes come on line.

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<sup>12</sup> See the rate principles attached to the Pecan North Dakota FT Agreement.

Alliance states that the use of aggregate contracted capacities for rate design purposes not only completely and effectively insulates Iberdrola (and all of Alliance's negotiated rate shippers) from any prospect that service to Pecan North Dakota would be subsidized by them, but also provides a real benefit to the pre-existing shippers in the form of a rate reduction. In addition, Alliance states that under the terms of an Interconnection Agreement with Alliance, Pecan North Dakota will pay all interconnection, metering, and other costs associated with the new receipt point. Alliance states that Iberdrola's request for revenue crediting reflects a mistaken belief that the Pecan North Dakota interconnection capital costs would be borne by Alliance and reflected in rates.

The Commission orders:

The tariff sheets listed in footnote No. 1 are accepted to become effective November 1, 2008.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.