

125 FERC ¶ 61,394  
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.

CCPS Transportation, LLC

Docket No. IS09-74-000

ORDER ACCEPTING TARIFF

(Issued December 31, 2008)

1. On December 1, 2008, CCPS Transportation, LLC (CCPS) filed FERC Tariff No. 25 proposing to modify Item 6(b) of its Rules and Regulations tariff to add a Pipeline Batch Verification Procedure. CCPS explains that the purpose of the new provision is to discourage the practice of shippers nominating excessive volumes on CCPS so that they can obtain larger allocations on CCPS during times of prorationing. CCPS states that such shippers often do not use their entire allocations. CCPS also seeks a waiver of section 341.14 of the Commission's regulations<sup>1</sup> to permit the tariff to become effective on short notice on December 22, 2008.
2. Frontier Oil and Refining Company (Frontier) filed a motion to intervene and a protest. Frontier asserts that FERC Tariff No. 25 would have an adverse effect on its ability to obtain space on CCPS during prorationing, thus impairing its ability to supply its El Dorado, Kansas refinery with Canadian crude oil. Frontier also contends that FERC Tariff No. 25 does not address the underlying problem, which is the method used under the CCPS prorationing policy for allocating capacity. Frontier asks the Commission to reject the tariff or, in the alternative, to suspend it for the maximum seven-month period permitted by the Interstate Commerce Act (ICA) and to institute an investigation.

---

<sup>1</sup> 18 C.F.R. § 341.14 (2008), which requires a statement in detail of the unusual circumstances or emergency situation that supports the requested waiver.

3. As discussed below, the Commission accepts FERC Tariff No. 25 to become effective January 1, 2009, and denies the request for a waiver to allow the tariff to become effective on less than 30 days' notice.

### **Description of Filing**

4. CCPS's proposal provides that, to discourage over-nominations, the Batch Verification Procedure will require shippers to identify the batch of petroleum on an upstream connecting pipeline that corresponds to the batch nominated for transportation on CCPS. If a shipper fails to identify the batch or fails to tender barrels, the shipper will forfeit the associated line capacity for the month. When a shipper has forfeited its capacity in a month of prorationing, the pipeline will simultaneously notify all shippers that have nominated in the month to inform them of the unused capacity. CCPS further states that it will post the quantity of unused capacity on the Shipper Information System, which is a website available to all shippers. According to CCPS, the simultaneous notice to the shippers will afford them an equal opportunity to obtain the capacity on a first come first serve basis. The filing also makes two minor tariff changes that are unchallenged. CCPS seeks a waiver of section 341.14 of the Commission's regulations<sup>2</sup> to allow the tariff to become effective on less than 30 days' notice so that CCPS can apply the new provision to January 2009 nominations.

### **Frontier's Protest**

5. Frontier argues that FERC Tariff No. 25 does not accomplish the purpose claimed by CCPS. Frontier explains that CCPS has prorated the pipeline during all but four months since November 2006 and continuously since September 2007. Frontier also points out that CCPS recognized as early as October 2006 that its allocation process does not work effectively during times of prorationing.<sup>3</sup> Frontier states that Enbridge proposed to remedy this by synchronizing the nomination process, with CCPS nominations due one month before Enbridge Mainline (Mainline) nominations. However, Frontier emphasizes that Enbridge did not implement this proposal.

6. Frontier also cites a November 10, 2008 letter in which CCPS stated, "We have been experiencing situations where Enbridge declares apportionment for a given month,

---

<sup>2</sup> 18 C.F.R. § 341.14 (2008).

<sup>3</sup> Frontier states that, on October 31, 2006, Enbridge held a shippers meeting where it admitted that "the gap between deadlines for [nominations] for Enbridge mainline and [nominations] for connecting systems such as Spearhead causes batches to be stranded on the Enbridge system if apportionment occurs on a connecting system." Motion to Intervene and Protest of Frontier Oil and Refining Company, Ex. 1.

and then volumes fail to materialize or are redirected last minute.”<sup>4</sup> In Frontier’s view, CCPS’s prorationing policy creates incentives for shippers to nominate more than they intend to ship, but Frontier argues that FERC Tariff No. 25 does not change the underlying problem, which is the method by which CCPS allocates capacity in times of proration.

7. Frontier states that FERC Tariff No. 25 requires CCPS shippers to identify the batches of crude petroleum on the Mainline that are destined for subsequent transportation on CCPS. Frontier explains that nominations on the Mainline -- the only access point to CCPS -- are due before nominations are due for CCPS, so a shipper should have an identifiable batch on the Mainline that it plans to deliver to CCPS to fulfill its allocation. Frontier contends that CCPS is attempting to force shippers to match their batches on the Mainline to their allocated space on CCPS, and if the batches are not identified, or if the shipper does not deliver the entire allocated quantity of crude petroleum, CCPS will offer the capacity to other shippers on a first come first serve basis.

8. Frontier argues that CCPS rewards shippers that over-nominate by giving them access to additional space. Frontier observes that nominations on CCPS during recent prorationing periods have been five to six times the capacity of the pipeline, which has resulted in over 95 percent prorationing of New Shipper nominations. Frontier claims that this incentive to inflate nominations, in addition to being discriminatory, creates the second problem claimed by CCPS, which is that shippers fail to use their entire allocation, leading to unused capacity and other logistical problems on the pipeline system. Frontier reiterates that FERC Tariff No. 25 does nothing to solve the underlying problem of CCPS’s allocation procedure.

9. Frontier next argues that FERC Tariff No. 25 is discriminatory and violates ICA section 3(1). Frontier explains that, because the proposed new provision requires a shipper to submit a nomination for the Mainline before the deadline for nominations on CCPS, only those shippers with sufficient volumes already in the Mainline will be able to fill unused capacity on CCPS, and the only shippers with available volumes will be shippers with significant refinery, storage, and other assets off the Mainline.

10. Frontier also challenges CCPS’s request that the provisions of FERC Tariff No. 25 take effect on 20 days’ notice, rather than the statutory 30-day period. Frontier states that CCPS’s only justification for this request is that the shortened notice period would “provide administrative certainty in advance of the nomination date.” Frontier submits that this justification is insufficient to support a shortened notice period.

---

<sup>4</sup> *Id.* Ex. 2.

### **CCPS's Response and Frontier's Answer**

11. CCPS filed a response to Frontier's motion to intervene and protest. CCPS argues that Frontier's protest relates to aspects of CCPS's tariff that have not been modified and thus are not at issue in this proceeding. CCPS further contends that the Batch Supply Verification Procedure is not unduly discriminatory because it would not prevent Frontier from using the additional space made available as a result of the new procedure.

12. Frontier filed an answer to CCPS's response. Frontier maintains that the procedure proposed in FERC Tariff No. 25 will have a significant effect on the operation of the pipeline's prorating policy and must be examined in connection with that policy. Frontier claims that FERC Tariff No. 25 is essentially an addendum to the prorating policy because it applies only during times of prorating and because a shipper awarded the unused capacity will have increased its historical shipments, thereby benefitting in subsequent months.

### **Commission Analysis**

13. The Commission accepts FERC Tariff No. 25 to become effective on January 1, 2009, and denies CCPS's request for a waiver to permit the tariff to become effective on less than 30 days' notice.

14. Frontier argues that CCPS should amend its Rules and Regulations to address the underlying problem, which Frontier contends is a proration policy that rewards over-nominations, rather than simply addressing its negative financial effects the over-nominations have on CCPS. However, Frontier mischaracterizes the purpose of this filing. CCPS's allocation and prorating provisions are not before the Commission in this filing. The proposed Pipeline Batch Verification Procedure does not reward over-nominations, but rather imposes a financial non-performance penalty equal to the transportation rate on all volumes the shipper fails to deliver.

15. Frontier claims that FERC Tariff No. 25 does nothing "to discourage...shippers nominating excessive volumes" or "to discourage...failing to use the entire allocation." In fact, FERC Tariff No. 25 is intended to discourage shippers from nominating excessive volumes to CCPS in order to obtain a larger allocation in times of prorating *and* then failing to use the entire allocation. The proposed Pipeline Batch Verification Procedure will discourage a shipper from over-nominating by ensuring that every nomination for transportation on the CCPS line is physically supported by a barrel already in the Mainline.

16. Additionally, FERC Tariff No. 25 is not discriminatory as Frontier claims. CCPS states that in the event a shipper does not verify its batch or fails to deliver its tender, CCPS will offer the unused capacity on a first come first serve basis to the remaining

shippers that nominated for transportation on CCPS. CCPS will notify the shippers of the unused capacity via email and the Shipper Information System. This policy is fair because when a shipper forfeits its volumes, the barrels already have been nominated for transportation on CCPS as the tariff requires. Thus, any shipper with a nomination on CCPS will have the right to the available capacity.

17. The Commission denies CCPS's request for special permission to permit this tariff to become effective on less than 30 days' notice. CCPS states that the shortened notice period would afford it administrative certainty in advance of the nomination date. According to section 341.14 of the Commission's regulations,<sup>5</sup> "the applicant must state in detail any unusual circumstances or emergency situation that supports the requested waiver." CCPS's claim that it seeks administrative certainty is insufficient to support its request for a waiver of the 30-day notice requirement.

The Commission orders:

(A) FERC Tariff No. 25 is accepted to become effective January 1, 2009.

(B) Within 10 days of the date of this order, CCPS must file a correction supplement to FERC Tariff No. 25 reflecting the January 1, 2009 effective date.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>5</sup> 18 C.F.R. § 341.14 (2008).