126 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Belle Fourche Pipeline Company — Docket No. IS09-92-000

Bridger Pipeline LLC — Docket No. IS09-93-000

(Not Consolidated)

ORDER ON TARIFFS AND ESTABLISHING INVESTIGATION

(Issued January 16, 2009)

1. On December 17, 2008, in Docket No. IS09-92-000, Belle Fourche Pipeline Company (Belle Fourche) filed Supplement No. 14 to FERC No. 108 to provide a new pipeline interconnection to enable a new service and cancel an existing service. Also on December 17, 2008, in a related filing in Docket No. IS09-93-000, Bridger Pipeline LLC (Bridger) filed FERC No. 15 to provide new service. The new service on both pipelines was made possible by the construction of a new pipeline between Skunk Hill Junction, North Dakota on Belle Fourche's system and Fryburg Station, North Dakota on the Little Missouri Pipeline system, which is also owned by Bridger.[1] Both Belle Fourche and Bridger request the Commission permit their tariffs to become effective December 22, 2008, upon four days' notice. For the reasons discussed below, the Commission will accept the tariff filed by Belle Fourche, effective December 22, 2008, as requested. The Commission will accept and suspend Bridger's tariff, also effective December 22, 2008, but subject to refund and Bridger providing cost justification for the initial rate. The Commission will also initiate an investigation into Belle Fourche's and Bridger's practices pursuant to sections 15(1) and 15(7) of the Interstate Commerce Act (ICA).

[1] The new pipeline built by Bridger is known as the Heart River Line. The Little Missouri Pipeline runs from Fryburg Station to Baker Station, Montana.

Belle Fourche's Filing in Docket No. IS09-92-000

2. Belle Fourche filed its tariff supplement in compliance with 18 C.F.R. § 342.2(b).[2] Belle Fourche filed Supplement No. 14 to FERC No. 108 to provide initial rates for new service, made possible by the construction of the new Heart River Line, from various points of origin to Skunk Hill Junction, which is located in Billings County, North Dakota. Belle Fourche states that, as noted in the tariff, service to Skunk Hill Junction may be provided through displacement if there are sufficient offsetting nominations. In accordance with the provisions of 18 C.F.R. § 342.2(b), Belle Fourche attached a sworn affidavit that the new rates have been agreed to by at least one non-affiliated shipper who intends to use the new service.

3. In addition, Belle Fourche cancels its displacement service offered from the various points of origin to Baker Station, Fallon County, Montana, and the associated Note 3. Belle Fourche asserts that no shippers have requested service to Baker Station pursuant to this tariff in recent history. In addition, Belle Fourche states that with the service being provided to Skunk Hill Junction, it will no longer need to provide service to Baker Station entirely by displacement. Belle Fourche states it will now provide service to Baker Station pursuant to its new FERC No. 14 (from various points of origin in North Dakota to Skunk Hill Junction), Bridger's FERC No. 15 (from Skunk Hill Junction to Fryburg Station, Billings County, North Dakota) and Bridger's FERC No. 8 (Fryburg Station to Baker Station, over Bridger's Little Missouri Pipeline). Belle Fourche also adds a new note to explain where shippers can get information about service to Baker Station.

4. Belle Fourche requests permission, pursuant to Section 6(3) of the ICA and section 341.14 of the Commission's regulations for waiver of the 30-day notice requirement. Belle Fourche states that the tariff is being filed with an effective date of December 22, 2008, upon four days' notice. Belle Fourche submits that shippers had requested that Belle Fourche provide this new service to Skunk Hill Junction from various points of origin in North Dakota. Belle Fourche states that it would like to offer these services to shippers as soon as possible. Therefore, Belle Fourche contends that special permission is necessary.

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[2] Section 342.2(b) provides that a carrier can justify an initial rate for new service by filing a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question, provided that if a protest to the initial rate is filed, the carrier must justify the rate by filing cost, revenue, and throughput data supporting the rate as required by Part 346 of the Commission's regulations.

Bridger's Filing in Docket No. IS09-93-000

5. Bridger filed its FERC No. 15 in compliance with 18 C.F.R. § 342.2(b). Bridger also states that it filed FERC No. 15 to provide an initial rate for new service, made possible by the construction of the Heart River Line from Skunk Hill Junction, located in Billings County, North Dakota, to Fryburg Station, Billings County, North Dakota, to interconnect with Bridger's Little Missouri Pipeline which runs to Baker Station, Montana. Bridger states that the rate for this transportation will be $0.93 per barrel. In addition, Bridger states that Option No. 1 of Item No. 70 (Gauging, Testing and Deductions) of Bridger's Rules and Regulations tariff, FERC No. 2, shall apply to this movement. Option No. 1 states that a deduction of two-tenths of one percent (0.2%) will be made to cover evaporation, interface losses, and other normal losses during transportation. Bridger states that in accordance with the provisions of 18 C.F.R. § 342.2(b), it has attached a sworn affidavit that the new rate has been agreed to by at least one non-affiliated shipper who intends to use the service in question.

6. Bridger requests permission, pursuant to Section 6(3) of the ICA and section 341.14 of the Commission's regulations for waiver of the notice requirement. Bridger filed the tariff with a proposed effective date of December 22, 2008, that provides four days' notice. Bridger asserts that shippers had requested this new service from Skunk Hill Junction to Fryburg Station. Bridger submits it would like to offer these services to shippers as soon as possible. Therefore, Bridger contends that special permission from the Commission is necessary.

Protests

7. Enserco Energy, Inc. (Enserco) and Nexen Marketing U.S.A. Inc. (Nexen) filed protests to both Belle Fourche's filing in Docket No. IS09-92-000 and Bridger's filing in Docket No. IS09-93-000. Because Enserco's and Nexen's protests are similar in both proceedings they will be consolidated here for purposes of brevity.

Enserco

8. Enserco is a marketing company specializing in the optimization of energy assets in the western and mid-continent regions of the U.S. and Canada. Enserco's Crude Oil Services Group purchases, aggregates and transports Rocky Mountain area crude oil lease production to area refineries or other markets and is a past, current, and future shipper on the interstate, common carrier, pipeline systems of Belle Fourche and Bridger, and a potential shipper for the new service. Accordingly, Enserco asserts that it has a substantial economic interest in this proceeding that cannot be adequately represented by any other party.

9. Enserco protests both filings to the extent that the timing of the filings and initiation of the services precluded shippers other than affiliates and the unnamed "non-

affiliated" shipper from obtaining service on the new pipeline that provides a significant new interconnection between two interstate pipeline systems, i.e. the Belle Fourche Pipeline and Bridger's Little Missouri Pipeline, to move crude oil to markets south. Enserco requests the Commission set this proceeding for hearing, exercise its jurisdiction under ICA section 12 to investigate Belle Fourche's and Bridger's practices here and ensure all shippers have an opportunity for equal access to Belle Fourche's and Bridger's common carrier facilities. It also requests the Commission require Belle Fourche and Bridger to file cost of service, revenue and throughput data to properly justify the rates for the new service.

10. Enserco states Bridger's proposed new tariff provides an interconnection between two affiliated pipelines, Belle Fourche's North Dakota System and Bridger's pipeline segment known as the Little Missouri line, originating at Fryburg, North Dakota, and ending at Baker Station, Montana. Enserco maintains the Belle Fourche pipeline provides transportation between locations in Billings, Golden Valley, McKenzie and Stark Counties, North Dakota to Baker Station, Montana, and Treetop Station and Alexander Station, North Dakota. Enserco adds that Bridger's Little Missouri segment provides transportation from Fryburg Station, North Dakota, to Baker Station, Montana. Enserco states that Belle Fourche's Supplement No. 14 to FERC No. 108 establishes a new destination point for this interconnection at Skunk Hill Junction with Bridger's new pipeline and cancels the Baker Station, Montana destination. Enserco states that Belle Fourche and Bridger were separate and not connected prior to the construction of the new Heart River Line and the filing of FERC No. 15 and Belle Fourche's Supplement No. 14 to FERC No. 108. Enserco states that prior to the filing, Belle Fourche and Bridger each offered Baker Station, Montana destinations from their respective points of origin.

11. Enserco avers the significance of its protest is that lack of timely notice for purposes of nominations to Belle Fourche's new Skunk Hill destination point for further shipment to Bridger's new pipeline thereby precluding Enserco from obtaining access at the inception of Bridger's new service. This fact in turn affects Enserco's future use of the new pipeline service as well as its share of prorated capacity on Bridger's Little Missouri Line, which connects Fryburg Station, the final destination point of the new service, to Baker Station, replacing the route that Belle Fourche now cancels.

12. Enserco states that Bridger and Belle Fourche filed the respective tariffs on December 17, 2008, and served subscribers by U.S. Mail. Enserco states that it did not receive notice of the filing until on or after December 22, 2008, when it received its service copy in the mail. Enserco states this was three days after nominations were due for the new service under both Bridger's and Belle Fourche's regular nominations cycle for transportation movements to take place in January 2009. Enserco states the Commission posted both tariff filings on e-Library on December 22, 2008, about the same time that Enserco received the tariff filings via U.S. mail. Thus, Enserco submits the first notice received by Enserco of the availability of service under Bridger's new

tariff and for Belle Fourche's new destination point at Skunk Hill (and associated cancellation of the displacement service to Baker, Montana) was not until the day the new service went conditionally into effect and at least three days after the nominations were due to be tendered.

13. Enserco asserts the tariff filings gives no justification for the request for a shortened notice period, does not identify any shipper that requested the service, and do not identify the one “unaffiliated” shipper that is said to have agreed to the rate. Enserco also concludes that it is not clear how Bridger plans to apply its prorationing policy to the new pipeline segment.

14. Enserco contends that absent discovery, it lacks adequate factual information to challenge the basis for the filing. Therefore, at a minimum, Enserco asserts the Commission should require Belle Fourche and Bridger to file cost, revenue and throughput data supporting such rates as required by Part 346 of the Commission’s regulations.

15. Enserco argues that the Commission should also require Bridger to clarify how it will apply its prorationing policy to the new segment. Enserco states that nominations on pipelines are typically done by segment, and Enserco presumes that would be done here for purpose of applying the prorationing policy to the new line. It is Enserco's position that any nominations or physical volumes moved under this new service should be categorized as “new” shipper volumes and should not be categorized as existing/historical shipper volume. In addition, Enserco submits the Commission should require Bridger to provide shippers with adequate information to verify their allocations under Bridger's prorationing policy to ensure that all similarly situated shippers are treated alike.

Nexen

16. Nexen protests the tariffs because they are an integral part of an arrangement through which the True Companies, which own Bell Fourche and Bridger, are able to discriminate against any shipper other than its own crude oil marketing affiliate. Nexen is a crude oil, natural gas, and natural gas liquids marketing company of crude oil operations throughout the rocky mountain and Midwest regions of the United States. Nexen purchases crude oil from North Dakota and Montana and transports that crude oil to refining centers throughout the Rocky Mountains and Midwest. In order to do so, Nexen must use the pipeline systems that are owned and operated by the True Companies. Nexen states that it is therefore a direct competitor with the True Companies marketing affiliate, Eighty-Eight Oil LLC (Eighty-Eight).

17. Nexen asserts it is fundamentally unfair for a pipeline to arrange new origins and destinations that are designed to exclude companies from competing with its own marketing affiliate. Nexen contends it is also contrary to the antidiscrimination

provisions of sections 2 and 3(1) of the ICA. Nexen notes that Bridger refused to permit it to reconnect a Lease Automated Custody Transfer (LACT) facility[3] that it previously operated but then disconnected when Bridger took the Little Missouri Line out of service. Without the LACT facility, Nexen asserts that it is precluded from delivering any crude oil at Fryburg Station for shipment to Baker Station. Nexen asserts that Bridger refused Nexen's request to reconnect its LACT facility, even though it recently permitted Eighty-Eight, its own crude oil marketing affiliate, with who Nexen is in direct competition, to construct a LACT facility at Fryburg Station. Nexen argues that Belle Fourche and Bridger filed the tariffs at issue establishing new origins and destinations that will permit Eighty-Eight to transport even more crude oil from Fryburg Station to Baker Station to the exclusion of Nexen and other crude oil marketers. Nexen's submits that the Commission should not permit the patent discrimination that the tariffs engender. Nexen requests the Commission to suspend the tariffs, investigate the lawfulness of the tariffs, and impose appropriate remedies.

Belle Fourche's and Bridger's Answers

18. Belle Fourche and Bridger filed answers to Enserco's and Nexen's protests. Because the responses are similar, we will again consolidate them here. Belle Fourche and Bridger assert that Nexen has no substantial economic interest in either tariff and its protests should not be allowed. They argue that Nexen does not ship on either pipeline and has not manifested any intention to become a shipper on either system. Moreover, Belle Fourche and Bridger assert the fact that Nexen is a competitor of their affiliate does not confer standing. They contend Nexen's protest concerns a request to connect a LACT facility to Bridger's Little Missouri Line, a separate system with its own tariff. Belle Fourche and Bridger submit the protest is irrelevant to the new rates they propose to establish. Belle Fourche and Bridger assert there is available capacity on both systems and if Nexen desires capacity on either system it is free to submit a nomination. Belle Fourche and Bridger also clarify that the LACT facility that Nexen operated occurred under a prior owner of the Little Missouri Line and that Nexen did not operate a LACT facility at Fryburg Station or ship on the Little Missouri Line while it was owned by Bridger. They state Bridger reactivated the idled Little Missouri Line in 2006 at the request of its affiliate, Eighty-Eight and that Eighty-Eight installed a LACT facility at Fryburg Station. Belle Fourche and Bridger submit that Nexen's request to install a LACT facility in 2008 was not flatly denied but rather Nexen was told that there were issues concerning the installation. Belle Fourche and Bridger state that a common carrier is not required to permit interconnection upon demand.

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[3] This refers to the equipment and facilities required at a lease site to enable custody transfer. In this instance, since the equipment is not at a lease site it should more properly be termed ACT.

19. Belle Fourche and Bridger assert that Enserco also has not shown a substantial economic interest in the tariff filings at issue. Belle Fourche and Bridger contend that Enserco's protest relates to its claim that it did not receive timely notice of the Bridger filing and that because it was denied access at the pipeline's inception that fact will disadvantage unaffiliated shippers with respect to the pipeline's prorationing policy. Belle Fourche and Bridger state that while Enserco may have shipped on other Bridger systems it has shown no interest in service on Belle Fourche and, despite its claims of being denied access to the new Bridger system; it has not even submitted a nomination for service under the new tariff. Belle Fourche and Bridger state that Enserco could have submitted a nomination for December even after the tariff cutoff date because there is space available on Bridger. They further state that Belle Fourche, the new Bridger system and the Little Missouri Line are all governed by separate tariffs and a shipper's status on one system with respect to prorationing does not affect its status on another system. Moreover, Belle Fourche and Bridger state they will use only nominations for January 2009 to determine a shipper's historical volumes for purposes of prorationing because that is the first full month of service. They add that Enserco has not even submitted a nomination for January 2009.

20. Belle Fourche and Bridger assert their tariff filings were coordinated so shippers could take advantage of the new transportation route as soon as possible. They further assert that the tariff was filed on short notice because of certain technical requirements of the pipeline construction. Bridger states it had to have a tariff on file in order for shippers to provide crude oil to fill the line for purposes of testing the integrity of the pipeline in the presence of the construction crew. Bridger states it was more economical to test the system prior to the holidays rather than remobilize a construction crew for testing after the New Year.

Enserco's Answer to Belle Fourche and Bridger

21. Enserco filed an answer asserts the pipelines misstate the law with respect to Enserco's call for a cost of service justification. Enserco submits the Commission's regulations require such justification upon protest. Enserco argues that a cost justification is particularly important with respect to the rate for the new Heart River Line. Enserco states that Bridger proposes to charge $0.93/bbl for transportation over this short 15-mile segment of pipeline, but notes the transportation rate over the Little Missouri Line, an approximately 93-mile segment of pipeline, is only $0.8424/bbl. Enserco asserts that the map attached to its protest demonstrates the new Heart River Line and the Little Missouri Line are contiguous legs of one transportation route from Skunk Hill Junction, North Dakota to Baker Station, Montana. Accordingly, Enserco contends the Commission should make Bridger provide cost justification for the new rate.

22. Enserco further asserts that the establishment of the new services and tariffs is plainly a calculated scheme to provide a lock on the transportation to Baker Station to the benefit of the pipelines' marketing affiliate. Enserco argues that this is especially true

given that Enserco is constrained from utilizing the new Heart River Line service because of the lack of adequate takeaway capacity at Heart River's new destination at Fryburg Station into the Little Missouri Line. Enserco states that as a "new shipper" on the Little Missouri Line, under Bridger's prorationing policy, Enserco's allocation of capacity is limited -- along with four other shippers -- to its share of 10% of the available capacity of the line. Enserco states the remaining shipper, the Eighty-Eight, the affiliate of both pipelines here, has the remaining 90% of that capacity. Enserco contends that Bridger and Belle Fourche have interpreted and implemented their prorationing policies to the sole benefit of their marketing affiliate, and to the detriment of five new shippers. Enserco submits that a shipper's use of both services depends upon a fair and equitable application of the policies and an understanding of how they work with respect to contiguous segments of pipeline. Enserco concludes it is therefore entirely relevant and appropriate and in accordance with the Commission's statutory duties under the ICA for the Commission to investigate these two pipeline tariff filings made by affiliated entities owned by the same family both individually and in conjunction with the other.[4]

Discussion

23. In these related filings, Belle Fourche and Bridger have filed initial rates to establish new service due to the construction of the new Bridger pipeline between the Belle Fourche pipeline system at Skunk Hill Junction and the Bridger Little Missouri Line at Fryburg Station. Pursuant to section 342.2(b) of the Commission's regulations both Belle Fourche and Bridger filed affidavits stating that the initial rates have been agreed to at least one non-affiliated shipper who intends to use the services. Under section 342.2 of the Commission's regulations, a pipeline must justify an initial rate with cost, revenue and throughout data unless the initial rate was agreed to by at least one non-affiliated shipper.[5] However, if a protest is filed to an initial rate, the pipeline must provide the cost, revenue and throughput data. While both Enserco and Nexen have filed protests to the Belle Fourche and Bridger filings, the only rate challenge was filed by Enserco, and only to the initial rate proposed by Bridger in FERC No. 15. Enserco requested cost justification because the rate for the new 15-mile segment is approximately 9 cents per barrel higher than transportation on the existing 93-mile segment of the Little Missouri Line. Accordingly, the Commission will accept and suspend Bridger's tariff to be effective December 22, 2008, subject to refund and subject

[4] Nexen also filed an answer to Belle Fourche and Bridger further reiterating its belief that Belle Fourche and Bridger have manipulated their tariffs to prevent Nexen from shipping on their pipelines in order to reduce the competition that their marketing affiliate, Eighty-Eight, encounters.

[5] Contrary to Enserco's assertions, the pipeline is not required to provide the identity of the non-affiliated shipper.

to its providing cost, revenue, and throughput data pursuant to Part 346 of the Commission's regulation as required in section 342.2 of the Commission's regulations. We also direct Bridger to file its cost justification and other data within 30 days of the date this order issues.

24. Given that neither Nexen nor Enserco have challenged the initial rate in Belle Fourche's tariff, the Commission accepts Belle Fourche's Supplement No. 14 to FERC No. 108 to be effective December 22, 2008. However, the protests of Nexen and Enserco raise a number of other issues concerning the coordination of the activities and prorationing policies of these commonly-owned pipelines for the benefit of their marketing affiliate. These alleged practices merit further review. Accordingly, pursuant to sections 15(1) and 15(7) of the ICA, the Commission will establish an investigation into the practices of Belle Fourche, Bridger, and their affiliated entities to determine if their practices are just and reasonable. Within 30 days of the date of this order, we direct Enserco and Nexen to submit pleadings further supporting the allegations made in their protests. We further direct Belle Fourche and Bridger to file an answer 20 days thereafter. Since there are common issues raised by both filings, the parties may submit one pleading for both dockets.

25. The Commission will determine what further action, including whether consolidation is appropriate, based on its review of Bridger's cost justification data, and the pleadings submitted to determine whether Belle Fourche's and Bridger's practices are unjust and unreasonable, unduly preferential, or unduly discriminatory.

26. The Commission will grant special permission pursuant to section 341.14 of the Commission's regulations and allow the tariffs to go into effect December 22, 2008, on four days' notice. Belle Fourche and Bridger have adequately explained that the tariffs were coordinated to allow shippers to take advantage of the new transportation route and that the short notice was required because of certain technical requirements of the pipeline construction.

<u>The Commission orders</u>:

(A) Belle Fourche's Supplement No. 14 to FERC No. 108 is accepted to be effective December 22, 2008.

(B) Bridger's FERC No. 15 is accepted and suspended to be effective December 22, 2008, subject to refund and subject to Bridger submitting a cost justification pursuant to Part 346 of the Commission's regulations within 30 days of the date of this order. Enserco and Nexen may file answers to Bridger's cost justification within 20 days thereafter.

(C) Pursuant to section 15(1) of the ICA the Commission is initiating an investigation into the practices of Belle Fourche, Bridger, and their affiliated entities.

Within 30 days of the date of this order, Enserco and Nexen are directed to submit pleadings further developing the allegations contained in their protests. Belle Fourche and Bridger are directed to file answers 20 days thereafter.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.