

129 FERC ¶ 61,017
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Questar Pipeline Company

Docket No. RP09-1037-000

ORDER ACCEPTING SERVICE AGREEMENTS AND
TARIFF SHEET, SUBJECT TO CONDITIONS

(Issued October 8, 2009)

1. On September 8, 2009, Questar Pipeline Company (Questar) filed certain transportation service agreements (TSAs) containing potential material deviations from the form of service agreement found in its FERC Gas Tariff and a revised tariff sheet listing non-conforming TSAs. Questar requests that the Commission review the deviating provisions in the submitted TSAs. For the reasons discussed below, the Commission accepts subject to conditions, the non-conforming TSAs submitted by Questar and the revised tariff sheet¹ to be effective October 7, 2009, as requested.²

I. Details of Filing

2. Questar states that it has been conducting a comprehensive self-audit of its TSAs. Questar asserts that in its self-audit, it has identified a number of potential material and immaterial deviations.

3. Questar explains that it has submitted TSAs with three categories of deviations. Questar states that the first category of TSAs contains potential material deviations. Questar states that the first category relates to two provisions, one allowing the shipper to increase the capacity under the TSA and another permitting a shipper to terminate a

¹ Eight Revised Sheet No. 8 to Questar's FERC Gas Tariff, First Revised Volume No. 1.

² The filing requested an October 7, 2009, effective date for the filed tariff sheets, which provided the Commission less than the 30-day notice required by Commission regulations. 18 C.F.R. § 154.207 (2009). The Commission grants waiver of the 30-day notice requirement.

20-year TSA at any time on or after ten years of service under the TSA provided that the shipper provides 12-month's notice.

4. Questar states that the second category of TSAs involves pricing issues which Questar contends are not material deviations related to discounts and negotiated rates. Questar states that the most prevalent provision at issue in this second category is a clause that would grant the shipper a comparable discount if another similarly-situated shipper were to be granted a discount to or from a particular receipt or delivery point. Questar contends that such provisions (commonly known as a "favored nations" clause) are permitted by Commission policy and Questar's tariff.

5. Questar states that the third category of TSAs contain conditional provisions whose conditions include events that have already occurred and, thus, are not material. Questar states that the most of these provisions pertain to the construction of certain facilities as a precondition to service. Questar states that because the construction of these facilities has been completed and service has begun, these provisions do not need to be filed as non-conforming or as material deviations. In this category, Questar also submitted Contract No. 926, which is a TSA with Northwest Pipeline Corporation (Northwest). This contract includes a renewal term allowing the TSA to continue from year-to-year unless written notice is provided.

II. Notice and Intervention

6. Notice of Questar's filing was issued on September 10, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), 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 this proceeding or place additional burdens on existing parties. No protests or comments were filed.

III. Discussion

7. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.³ In *Columbia Gas Transmission Corporation*,⁴ the Commission clarified that a material deviation is any provision in a TSA that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (2) affects the substantive rights of

³ 18 C.F.R. §154.1(d) (2009).

⁴ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

the parties.⁵ However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination the Commission may permit the deviation.⁶ Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (2) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission determines the contract contains a material deviation that is permissible, the Commission's regulations require the pipeline to file tariff sheets that reference the materially deviating contract.⁷

8. Questar has listed contracts containing the right to increase interruptible capacity and requested the Commission to determine whether such a provision constituted a material deviation from its *pro forma* service agreement.⁸ The Commission finds that such a provision is a material deviation from the pro forma service agreement. However, the Commission also finds that these contracts are just and reasonable in that they do not present a substantial risk of undue discrimination.

9. Questar has also listed on its proposed tariff sheet referencing TSAs with material deviations a TSA containing the following provision:

A twenty-year term commencing on the first day of the first month after the facilities are placed in service. Shipper shall have the right to terminate this Agreement at any time on or after ten years with 12 months' prior notification.⁹

10. This provision is also a material deviation. However, the provision was included in the TSA in order to obtain capital for an expansion, and, in this context, such a term is just and reasonable, and permissible.

⁵ In *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 27 (2003), the Commission stated “[s]ince there would appear to be no reason for the parties to use language different from that in the form of service agreement other than to affect the substantive right of the parties, this effectively means that all language that is different from the form of service agreement should be filed with the Commission.” *Id.* P 32.

⁶ *Columbia*, 97 FERC ¶ 61,221 at 62,004.

⁷ 18 C.F.R. § 154.112(b) (2009).

⁸ Contract Nos. 2673 and 2674.

⁹ Contract No. 2409.

11. Although the wording and circumstances differ in each TSA, Questar has also filed several contracts with provisions providing that the shipper is entitled to receive any lower rate if such a rate is received by a similarly situated shipper.¹⁰ A similar provision allows a shipper to receive its own discounted rates at alternate points, and to match lower rates for points west of Fidler Compressor Station delivered to Kanda/Coleman under the same rate schedule.¹¹ The provisions granting shippers the opportunity to obtain lower priced rates based upon the rates available to other shippers are a material deviation from the form of service agreement, but they do not adversely affect service to others or pose a substantial risk of undue discrimination. The tariff sheet Questar filed to list contracts containing material deviations did not include all of the contracts containing the provisions described in this paragraph. Questar must file a new tariff sheet that includes the contracts containing these material deviations.

12. Questar has also filed several TSAs containing terms related to the construction of facilities and the entering of those facilities into service.¹² These provisions are no longer material because they have become moot. Thus, these provisions do not require that the contract be filed.

13. Finally, Questar has filed a contract¹³ providing a renewal term allowing the TSA to continue from year-to-year unless written notice is provided.¹⁴ The Commission finds that this provision is a material deviation from the form of service agreement. Questar's tariff permits rollover contracts, and, thus, this provision is on its face¹⁵ not unjust or unreasonable. The tariff sheet Questar filed to list contracts containing material deviations did not include the contract containing this provision. Questar must file a new tariff sheet that includes the contract containing this material deviation.

¹⁰ Contract Nos. 2361, 2419, 2673, and 2674.

¹¹ Contract No. 1858.

¹² Contract Nos. 1609, 1650, 1841, 1928, 1951, 2409, 2673, 2674, 4094, 3173, 3293, 3347, 3711, 3726, 3727, 3728, 3732, 3734, 3735, 3870, 4069, 4070, and 4071.

¹³ Contract No. 926.

¹⁴ Questar represents that the meaning of this contractual term has been the subject of a dispute between it and the shipper. This order does not seek to resolve the proper interpretation of the contractual term.

¹⁵As noted earlier, the Commission is not determining here whether Northwest's or Questar's interpretation of the agreement's provision on rollovers is correct.

14. The Commission accepts the proposed tariff sheet and the filed TSAs subject to modification as discussed in this order.¹⁶

The Commission orders:

(A) Questar's revised tariff sheet referenced in footnote 1 is accepted, effective October 7, 2009, subject to the conditions discussed herein.

(B) The non-conforming TSAs filed by Questar, are accepted, subject to the conditions discussed herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ It appears that contrary to the requirements of section 154.1(d) of the Commission's regulations, 18 C.F.R. § 154.1(d) (2009), Questar failed to file the non-conforming contracts in a timely manner. Questar is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.