

129 FERC ¶ 61,272
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 28, 2009

In Reply Refer To:
T.W. Phillips Pipeline Corporation
Docket No. RP10-141-000

T.W. Phillips Pipeline Corporation
502 Keystone Drive
Warrendale, PA 15086

Attention: Robert M. Hovanec, Executive Vice President and CFO

Reference: Tariff Sheets to Comply with February 19, 2009 Order

Dear Mr. Hovanec:

1. On November 12, 2009, T.W. Phillips Pipeline Corporation (T.W. Phillips) filed its FERC Gas Tariff Original Volume No. 1¹ to comply with the Commission's February 19, 2009 Order Issuing Certificate² (Certificate Order). In addition, T.W. Phillips included in its filing the North American Energy Standards Board (NAESB) standards adopted by the Commission in compliance with Order No. 587-T issued on February 24, 2009.³ The referenced tariff sheets are accepted for filing, effective January 1, 2010, as proposed, subject to T.W. Phillips filing revised tariff sheet(s) within 20 days of the issuance of this order, as discussed below.

2. T.W. Phillips is a new corporation created for the sole purpose of constructing and operating a natural gas pipeline to transport gas to a single customer Bionol Clearfield,

¹ Original Sheet Nos. 1 through 122 to FERC Gas Tariff, Original Volume No. 1.

² *T.W. Phillips Pipeline Corporation*, 126 FERC ¶ 62,132 (2009).

³ *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-T, 74 FR 9162, (March 3, 2009), 126 FERC ¶ 61,129 (2009).

LLC (Bionol). On October 6, 2008, T.W. Phillips filed an application with the Commission under section 7(c) of the Natural Gas Act (NGA) for authority to construct, own, operate, and maintain a new 8-mile, 6-inch diameter pipeline to provide service from a new interconnect with Columbia Gas Transmission Company (Columbia) and a new ethanol production plant to be constructed by Bionol.

3. On February 19, 2009, the Commission issued its Certificate Order granting the requested authorization.⁴ In addition, the Certificate Order, among other things, directed T.W. Phillips to revise various sections of its General Terms & Conditions (GT&C). Specifically, the Certificate Order: 1) granted an extension of time to comply with certain NAESB Electronic Delivery Mechanism (EDM) requirements; 2) required compliance with other NAESB requirements; 3) denied requests for waiver of certain reporting requirements; 4) required adjustments to the proposed accounting treatment, rates and the *pro forma* tariff; and 5) required correction of miscellaneous typographical errors in the tariff.

4. In compliance with the Certificate Order, T.W. Phillips made the following changes to its tariff: (1) modified section 18 to include a true-up mechanism for over/under recovered fuel costs; (2) revised section 7 to require a security deposit for up to 3 months of service charges; (3) revised section 7.5.2 to give its customers 30 days notice prior to terminating a service agreement; (4) revised section 13.1 requiring T.W. Phillips to enter into an Operational Balancing Agreement at all points of interconnection between its system and that of another pipeline; (5) incorporated certain NAESB standards Version 1.8 by reference; (6) modified section 27 to clarify that routine repair and maintenance should not disrupt confirmed service and that pipelines provide full reservation charge credits for all schedule gas not delivered to shippers due to a non-force majeure event; (7) modified section 29.2 to give at least 30 days notice to a customer before terminating a service agreement and (8) corrected miscellaneous typographical errors. Finally, T.W. Phillips included in its filing NAESB Standards Version 1.8 in compliance with Order No. 587-T.

5. Public notice of T.W. Phillips' filing was issued on November 16, 2009, with comments due by November 24, 2009. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), all timely filed motions to intervene and any motion 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. No protests or comments were filed.

⁴ *T.W. Phillips Pipeline Corp.*, 126 FERC ¶ 62,132 (2009) (February 19, 2009 Order).

6. The Commission notes that T.W. Phillips incorporated NAESB Standard 1.3.2 (v) by reference. However, Order No. 587-S requires pipelines to include NAESB Standard 1.3.2 (v) verbatim in their tariffs.⁵ Therefore, T.W. Phillips must revise its tariff to comply with the Commission's directive in Order No. 587-S by including NAESB Standard 1.3.2 (v) verbatim and removing the provision incorporating it by reference.

7. Further, in review of the tariff sheets filed by T.W. Phillips, the Commission finds that T.W. Phillips included in Exhibit A to its Form of Service Agreement for Rate Schedules FT and IT a section titled "Other Conditions" in which T.W. Phillips may insert provisions pertaining to aspects of service that are either not included or vary from its GT&C.⁶ Consistent with the Commission's determination in *Northern Natural Gas Co.*⁷ where the pipeline proposed a blank section labeled "Other," the Commission finds that allowing a blank section labeled "Other Conditions" in the Form of Service Agreement is too broad and vague. The Commission requires pipelines to include *pro forma* service agreements in their tariffs in order to comply with the requirement of section 4 of the NGA that pipelines file all contracts which affect the pipeline's rates and services "in any manner." The filing of *pro forma* service agreements gives the Commission and other interested parties an opportunity to review those service agreements to ensure that their provisions are just and reasonable. Moreover, as the Commission determined in *Northern*,⁸ contract provisions must be fully transparent and implemented in a non-discriminatory manner. The proposed blank section entitled "Other Conditions" lacks the specificity required by the Commission.

8. The Commission has stated that lack of clarity could lead to the inclusion of impermissible terms and conditions of service in a particular shipper's service agreement. Allowing such an undefined blank in the *pro forma* service agreement would deprive the Commission of an adequate opportunity to review the type of provisions which the pipeline and a shipper might include in that blank to ensure that they were just and reasonable and not unduly discriminatory because T.W. Phillips would not have to file

⁵ See *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-S, FERC Stats. & Regs. P 31,179 (2005). A June 14, 2005 errata notice in Docket No. RM96-1-026, changed the title of the May 9, 2005 Final Rule was changed from Order No. 654 to Order No. 587-S.

⁶ See Original Sheet Nos. 106 and 111 to FERC Gas Tariff, Original Volume No. 1.

⁷ *Northern Natural Gas Co.*, 102 FERC ¶ 61,171, at P 18 (2003) (*Northern*).

⁸ See e.g., *Gulf South Pipeline Company, LP*, 127 FERC ¶ 61,314, at P 8 (2009) (*Gulf South*).

conforming agreements for Commission review. Further, other pipeline customers would not be able to review the provisions included in the blank, thereby posing a substantial risk of undue discrimination. Accordingly, the Commission directs T.W. Phillips to revise its Form of Service Agreement to clearly indicate that only provisions which its tariff permits the pipeline to negotiate with shippers under the applicable rate schedule may be included in any such “Other Conditions.”

9. Finally, in *Northern*,⁹ the Commission also required the pipeline to list in a section of its GT&C the provisions which could be included in its proposed broadly defined “blank” together with references to the specific tariff provisions authorizing it to negotiate those provisions.¹⁰ Accordingly, the Commission will accept T.W. Phillips’ proposal conditioned upon T.W. Phillips adding in its GT&C a similar list outlining the content which may be included in this section. The list should reference the specific section of its tariff (or other authority) authorizing each particular provision of the “Other Conditions” and specifying the rate schedules to which each provision applies.

10. Therefore, T.W. Phillips is directed to file revised tariff sheets within 20 days of this order, to modify its tariff pursuant to the discussion above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁹ See also, e.g., *Gulf South* at P 5-7.

¹⁰ *Northern Natural*, 102 FERC ¶ 61,171 at P 19.