

131 FERC ¶ 61,198
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 27, 2010

In Reply Refer To:
Transwestern Pipeline Company, LLC
Docket No. RP10-650-000

Transwestern Pipeline Company, LLC
711 Louisiana Street, Suite 900
Houston, TX 77002

Attention: Shelley A. Corman
Sr. Vice President

Reference: Order Conditionally Accepting Tariff Sheet and
Non-Conforming Operational Balancing Agreements

Ladies and Gentlemen:

1. On April 27, 2010, Transwestern Pipeline Company, LLC (Transwestern) filed four non-conforming Operational Balancing Agreements (OBA) dated from 2001-2002.¹ In addition, Transwestern submitted a revised tariff sheet proposed to be effective May 28, 2010, listing the four OBAs as non-conforming service agreements.² The tariff sheet and agreements are conditionally accepted effective May 28, 2010, subject to Transwestern refiling the agreements as discussed below.

¹ The four agreements are: (1) Mojave Pipeline Company OBA Agreement, dated December 1, 2001, Contract No. 27755; (2) Natural Gas Pipeline Company of America OBA Agreement, dated April 1, 2002, Contract No. 27854; (3) Natural Gas Pipeline Company of America OBA Agreement, dated April 1, 2002, Contract No. 27855; and (4) Questar Southern Trails Pipeline Company OBA Agreement, dated May 24, 2002, Contract No. 100043.

² Seventh Revised Tariff Sheet No. 15 to Transwestern's FERC Gas Tariff, Third Revised Volume No. 1.

2. Section 15.1 of the General Terms & Conditions (GT&C) provides in part that “[a]ll operators of gas transportation, processing, treating, production, or other facilities will either deliver gas into or receive gas from Transporter’s system” must execute the *pro forma* OBA in Transwestern’s Tariff. Section 15.1, however, allows Transwestern to execute an OBA in another mutually agreeable form with such entities. Section 15.5 of the GT&C further requires that Transwestern file with the Commission any mutually agreed-upon OBA that differs from the *pro forma* OBA.

3. Transwestern states during a review of its OBAs it could not determine that the four non-conforming OBAs included with this filing had been filed with the Commission pursuant to section 15.5 of the GT&C. Transwestern avers that all four agreements contain provisions that differ from those in the *pro forma* OBA and were mutually agreed upon to address the specific operational and related requirements applicable to the particular facilities of Transwestern and the interconnecting interstate pipeline at the applicable interconnect point(s). Specifically, Transwestern states that the provisions in each OBA address, among other things: (1) the resolution of operational imbalances using specific gas price indices which reflect pricing in the vicinity of the interconnect points; (2) imbalance tolerance levels and associated penalties; (3) imbalance resolution timing provisions; and (4) other miscellaneous provisions necessary to reflect the operational and related requirements of the affected interstate pipeline operator.

4. Transwestern states that it has provided redlined versions of three of the four non-conforming OBAs, but that due to the extensive nature of the supplemental provisions to the agreement with the Mojave Pipeline Company (Mojave) providing a redlined version would be impractical. Transwestern requests that the Commission accept the agreements, along with the proposed tariff sheet to become effective on May 28, 2010.

5. Public notice of the filing was issued on April 28, 2010. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations (18 C.F.R. § 154.210 (2009)). 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 the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

6. The Commission finds that the four non-conforming OBAs contain an impermissible material deviation from Transwestern’s *pro forma* OBA, in that the agreements do not contain an appropriate penalty provision.

7. Under section 4(c) of the Natural Gas Act, pipelines must file all contracts which in any manner affect or relate to the pipeline's rates and services. Section 154.1(b) of the Commission's regulations implements this provision and provides that pipelines must file all contracts related to their services.³ Section 154.1(d) provides that any contract that conforms to the form of service agreement provided in the pipeline's tariff need not be filed, but that any contract that deviates in any material aspect from the form of service agreement provided in the pipeline's tariff must be filed.⁴

8. The Commission has defined a material deviation as any provision of a service agreement which goes beyond the filling in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties. Once a service agreement has been found to deviate materially from the form of service agreement in the tariff, the Commission must then determine whether to approve the non-conforming agreement. The Commission bases this determination upon whether the material deviation presents a significant potential for undue discrimination among customers.

9. Transwestern's *pro forma* OBA states in relevant part, at section Six of Second Revised Sheet No. 229, in its FERC Gas Tariff, Third Revised Volume No. 1, that:

Company will be charged 30 cents per dekatherm (\$0.30/dth) for volumes outside the [10%] tolerance level, although Company will be granted an automatic waiver of such penalty for the first outside-tolerance month in any six-month period. In addition, if Company's deliveries or receipts are outside the tolerance level due to incorrect measurement data communicated to Company by Transporter, any such penalty will be waived. If any Operational Imbalance is due to an operational request of Transporter (which shall be confirmed in writing), or is otherwise caused by Transporter, no penalty shall be assessed. No imbalance penalty should be imposed when a prior period adjustment applied to the current period causes or increases a current month penalty.

³ 18 C.F.R. § 154.1(b) (2009).

⁴ 18 C.F.R. § 154.1(d) (2009).

10. The Commission finds that the absence of such a penalty provision may affect the substantive rights of other transporters and may present the potential for a significant risk of undue discrimination among customers. Waiver of penalty provisions, to which other parties to an OBA are subject, represents a valuable right to a shipper and is potentially unduly discriminatory. Therefore, the Commission will conditionally accept the tariff sheet and OBAs subject to a filing within 30 days of this order revised OBA agreements to include the penalty provision as it exists in the OBA Form of Service Agreement.

11. Furthermore, as it pertains to the Mojave agreement, section 154.201(a) of the Commission's regulations requires that "a marked version of the sheets or sections to be changed or superseded showing additions and deletions" be included with the filing of an executed service agreement. Transwestern has not complied with this filing requirement, nor has it demonstrated why it should be exempt from such a requirement. Therefore, the Commission directs Transwestern to file a redline version of the OBA executed with Mojave along with the compliance filing as directed above.

By direction of the Commission.

Kimberly D. Bose,
Secretary

cc: All Parties