

134 FERC ¶ 61,005
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 6, 2011

In Reply Refer To:
Alliance Pipeline L.P.
Docket No. RP11-1601-000

Alliance Pipeline L.P.
600, 605-5 Avenue SW
Calgary, Alberta, T2P 3H5
Canada

Attention: Brian Troicuk, Manager, Regulatory Affairs

Reference: Negotiated Non-Renewal Charge Filing

Dear Mr. Troicuk:

1. On December 7, 2010, Alliance Pipeline L.P. (Alliance) filed tariff records¹ to revise its Rate Schedule FT-1 Negotiated Rate Transactions pursuant to its negotiated rate authority and section 39 of its General Terms and Conditions (GT&C) approved by the Commission.² The filing includes a surcharge to certain shippers, as discussed below. Alliance states that the revised tariff records are proposed to become effective on January 1, 2011, and requests that the Commission allow the tariff records to go into effect without suspension. Alliance also requests that the Commission waive the notice requirements of 18 C.F.R. § 154.207 (2010) for the rates to take effect. For the reasons discussed below, the Commission grants the waiver and accepts the revised tariff records to become effective January 1, 2011.

2. Alliance states that all of its Rate Schedule FT-1 shippers operate under negotiated rate agreements, all of which are 15-year contracts, terminating November 30, 2015. Alliance's tariff includes records that summarize the essential elements of each of Alliance's Rate Schedule FT-1 negotiated rate transactions. Alliance's negotiated rate agreements and section 39 of its GT&C provide that changes in Alliance's costs will be

¹ See Appendix.

² *Alliance Pipeline L.P.*, 92 FERC ¶ 61,249 (2000).

reflected in its negotiated rates from time to time.³ Alliance files proposed tariff records annually, as it has done for the past ten years, to reflect changes made to the rates charged under its negotiated rate agreements as a result of changes in Alliance's costs. The rates set forth in the proposed tariff records are the same as the rates currently in effect, but include a surcharge to shippers who have elected not to extend their contracts beyond the November 30, 2015 termination date.

3. Alliance states that the tariff records also include for the first time a Negotiated Non-Renewal Charge. The Negotiated Non-Renewal Charge results from a provision in Alliance's Rate Principles contained in the applicable negotiated transportation agreements. Alliance states that the level of the Negotiated Non-Renewal Charge was based on the current projection of the expected balance in a long-term Accounts Receivable as of November 30, 2015. Alliance also states that the Negotiated Non-Renewal Charge would be adjusted annually to reflect any revisions to the projected balance of the Accounts Receivable, similar to the reconciliation Alliance does of other costs. Alliance states that the negotiated rate contracts provide for the collection of an "exit fee" type charge from shippers that do not elect to extend their contracts beyond the existing November 30, 2015 termination date. The election date associated with this contractual extension right was December 1, 2010.

4. Public notice of Alliance's filing was issued on December 9, 2010. Interventions and protests were due December 20, 2010, as provided under section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ all timely motions to intervene and any motions to intervene out of time filed before the issuance date of this order are granted. On December 20, 2010, Constellation Energy Commodities Group, Inc. and Iberdrola Renewables, Inc. (Joint Shippers), who did not extend their contracts and to whom the surcharge would apply, filed a motion to intervene and request for clarification and, in the alternative, a protest. On December 23, 2010, Alliance filed an answer to the Joint Shippers' request for clarification and protest.⁶ On December 27, 2010, Joint Shippers filed an answer to the answer of Alliance. Rule 213(a) (2) of the Commission's regulations does not permit

³ *Alliance Pipeline L.P.*, 80 FERC ¶ 61,149 (1997) (*Alliance Order*), 84 FERC ¶ 61,239 (1998), *reh'g denied*, 85 FERC ¶ 61,631 (1998).

⁴ 18 C.F.R. § 154.210 (2010).

⁵ 18 C.F.R. § 385.214 (2010).

⁶ Rules 213(a)(3) and 213(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 213(a)(3), (d), permit all timely answers to requests for clarification.

such answers “unless otherwise ordered by the decisional authority,” and in this case we will accept both answers because they have provided information that assisted us in our decision-making process.

5. Joint Shippers seek clarification that Alliance has derived the Negotiated Non-Renewal Charge reflecting only the adjustment for depreciation which shippers agreed to in their negotiated rate contracts and as described by the Commission in the *Alliance Order*. Joint Shippers also request that the Commission require Alliance (1) to provide the “expected balance of a long-term Accounts Receivable” that was used to derive the \$1.4234 per Dth per month Negotiated Non-Renewal Charge and (2) to show the derivation of the proposed charge. If such clarification is not provided, the Joint Shippers protest Alliance’s filing.

6. Joint Shippers’ December 20, 2010 pleading does not dispute that shippers electing not to extend their negotiated rate contracts have agreed to pay additional charges. Joint Shippers nonetheless request clarification of the derivation of the actual amount of the charge. Joint Shippers also request assurance that the projected balance in the Accounts Receivable has been properly calculated to assure “that the amount being charged is the amount that Alliance is entitled to charge in accordance with its contracts.”

7. In its Answer, Alliance states that it held a number of shipper meetings from June 2010 to October 2010 to discuss the methodology for determining the level of the January 1, 2011 Negotiated Non-Renewal Charge. Alliance states that a forecast of the Accounts Receivable reflecting preliminary numbers was provided to the shippers on November 5, 2010 and November 30, 2010, respectively, in response to questions raised during two prior Shipper Task Force meetings held in October 2010. A final forecast of the November 30, 2010 Accounts Receivable was then prepared for the December 7, 2010 filing. Alliance also states in a footnote⁷ that no inquiries about the calculation of the Negotiated Non-Renewal Charge were received by Alliance from either of the Joint Shippers following the October shipper meetings or the December 7, 2010 tariff filing.

8. In the December 23, 2010 answer, Alliance submitted Exhibit 1, Alliance’s current governing Rate Principles that includes Table 1, the depreciation rates for years 1 through 25, that the calculation for depreciation on transmission plant uses for the purpose of deriving annual negotiated rates during the contract term. Alliance states that the Rate Principles are appended to each shipper’s negotiated rate contract (designated as Appendix B). Exhibit 2 to that answer is a table that depicts the derivation of the forecast Accounts Receivable and the derivation of the \$1.4234 per Dth amount which would be collected as the Negotiated Non-Renewal Charge beginning January 1, 2011. Alliance asserts that the Rate Principles it uses are consistent with those that the Commission directed it to use in the *Alliance Order*. Alliance states that the iterative process used for

⁷ December 23 Answer at 3.

the establishment of Alliance's negotiated rates in any given year,⁸ will also be utilized to ensure that the Negotiated Non-Renewal Charge assessed by Alliance in 2011 through 2015 tracks the most recent projection of the November 30, 2015 balance in the Accounts Receivable.

9. The Joint Shippers, in their answer, assert that they have not asked the Commission to review the reasonableness of costs underlying the negotiated non-renewal charge, but rather to have it made clear to them that the rate was derived "consistently with the terms of the written agreement," i.e., the governing contractual rate principles.⁹

10. It appears that Alliance's answer attempts to address the concerns raised by the Joint Shippers by providing additional clarification and support regarding the expected balance of the long-term Accounts Receivable, the derivation and the amount of the charge. However, consistent with the Commission's rulings in prior Alliance negotiated rate filings, and affirmed by the court in *Iberdrola Renewables v. FERC*, 597 F.3d 1299 (D.C. Cir. 2010) (*Iberdrola*), there is no Commission section 4 review of the calculations where, as here, the contract does not provide for such review. Joint Shippers' Answer attempts to distinguish *Iberdrola* by insisting that what they seek here is assurance that the costs are properly calculated per their contract, and that this is different from the Commission deciding the justness and reasonableness of the costs underlying the non-renewal surcharge. The Commission finds, however, that this is a distinction without a difference and declines to involve itself further insofar as the calculation of the surcharge may remain in dispute. As the court stated in *Iberdrola*, at 1305, the shipper "is not without a remedy [since it] can always obtain relief from the courts in a breach of contract action. Likewise [it] can always challenge a rate change it thinks unreasonable in a section 5 action."

11. Therefore, the Commission grants waiver of the notice requirements of 18 C.F.R. § 154.207, and accepts Alliance's revised tariff records effective January 1, 2011, as requested.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁸ *Alliance Pipeline L.P.*, 122 FERC ¶ 61,250, at P 11 (2008).

⁹ Joint Shippers' Answer at 2.

Appendix

Alliance Pipeline L.P.
Alliance L.P. Database
FERC NGA Gas Tariff

Tariff Records Accepted Effective January 1, 2011

Sheet No. 11, Essential Elements of Negotiated Rate Transactions 1/ 4/, 7.0.0

Sheet No. 12, , 2.0.0

Sheet No. 13, , 3.0.0

Sheet No. 14, , 2.0.0

Sheet No. 15, , 3.0.0

Sheet No. 50, Essential elements of Negotiated Rate Transactions, 2.0.0