

135 FERC ¶ 61,206  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Rockies Express Pipeline LLC

Docket No. RP11-2056-000

ORDER ACCEPTING TARIFF RECORD

(Issued May 31, 2011)

1. On April 29, 2011, Rockies Express Pipeline LLC (REX) filed proposed revised tariff language to establish the circumstances in which it may seek a discount-type adjustment to recourse rates based upon negotiated rate agreements.<sup>1</sup> The proposed tariff record is accepted, effective June 1, 2011.

**Details of the Filing**

2. REX proposes to place this tariff language into its tariff. This language states:

33.6 Treatment of Discounts

(A) A discount-type adjustment to recourse rates for negotiated rate agreements shall only be allowed to the extent that Transporter can meet the standards required of an affiliate discount-type adjustment including requiring that Transporter shall have the burden of proving that any discount granted is required to meet competition. Transporter shall be required to demonstrate that any discount-type adjustment for negotiated rate agreements does not have an adverse impact on recourse rate shippers.

(1) Demonstrating that, in the absence of Transporter's entering into such negotiated rate agreement providing for such discount, Transporter would not have been able to contract for such capacity at any higher rate, and that recourse rates would otherwise be as high or higher than recourse rates which result after applying the discount adjustment; or

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<sup>1</sup> Rockies Express Pipeline LLC's FERC NGA Gas Tariff, Tariffs, NEGOTIATED RATES, Section 33 - Negotiated Rates, 1.0.0 A.

(2) Making another comparable showing that the negotiated rate discount contributes more fixed costs to the system than could have been achieved without the discount.

3. REX claims that, except for minor, non-substantive changes to conform to its own tariff conventions, the proposed tariff provision is the same as the provisions accepted by the Commission in *Columbia Gulf*<sup>2</sup> and *WIC*.<sup>3</sup> REX claims that the proposed language requires REX to demonstrate that any discount-type adjustment “does not have an adverse impact on recourse rate shippers,” and provides the specific factors that REX must show to demonstrate that no such adverse impact will occur. REX asserts that its proposal is fully consistent with the Commission’s policy requiring that a pipeline “protect recourse rate-paying shippers against inappropriate cost-shifting.”<sup>4</sup> REX further contends that this filing is unrelated to the fuel lost and unaccounted for (FL&U) proceeding in Docket No. RP11-1844-000, *et al.*<sup>5</sup>

### **Notice and Comments**

4. Public notice of REX’s filing was issued on May 11, 2011. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations, 18 C.F.R. § 154.210 (2011). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2011), all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted.

5. Ultra Resources, Inc. (Ultra) protests REX’s filing. Ultra claims that in REX’s Docket No. RP11-1844-000, the Commission correctly upheld its policy against shifting costs associated with a pipeline’s negotiated fuel rates to recourse rate shippers.<sup>6</sup> Ultra believes that in the instant proceeding REX may be attempting to lay the foundation for circumventing this policy and the March 30 Fuel Order. Ultra argues that the discount

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<sup>2</sup> REX Transmittal at p. 3 (citing *Columbia Gulf Transmission Co.*, 133 FERC ¶ 61,078 (2010) (*Columbia Gulf*)).

<sup>3</sup> REX Transmittal at p. 3 (citing *Wyoming Interstate Company, Ltd.*, 117 FERC ¶ 61,150 (2006) (*WIC*)).

<sup>4</sup> *Id.* P 14.

<sup>5</sup> On March 30, 2011, the Commission rejected REX’s proposal for a discount-type adjustment to REX’s recourse fuel rates based on negotiated fuel rate agreements. *Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248 (2011) (March 30 Fuel Order). Order on rehearing pending.

<sup>6</sup> Ultra Protest at p. 5 (citing March 30 Fuel Order, 134 FERC ¶ 61,248).

policy approved in *WIC* has not been applied so as to authorize recovery from recourse fuel rate shippers of the under-recoveries of fuel resulting from negotiated fuel rates with other shippers.

6. Ultra also argues that REX's proposed tariff language would not be applicable to fuel as section 33.8 of REX's GT&C continues to provide:

If Transporter negotiates surcharge or fuel retention percentage rate components at lower than the maximum rate level for those components as part of a Negotiated Rate Agreement, it will assume any risk of under-recovery of costs or Fuel retention from Negotiated Rate Shippers in order to ensure that its FL&U Recourse Rate Shippers are not adversely affected due to Negotiated Rate Agreements with individual Shippers.

Even if REX's proposed tariff language were to go into effect, Ultra claims REX could not use the tariff language to modify the tariff language in effect at the time the costs were incurred without violating the prohibition on retroactive rate making.

7. Finally, Ultra alleges that REX, in its request for rehearing of the March 30 Fuel Order, claims that the Anchor Shippers with cost-based FL&U rates are negotiated rate shippers. Ultra argues that the cost-based FL&U rates paid by Anchor Shippers and Standard Shippers who also pay negotiated reservation rates, are not somehow transformed into negotiated FL&U rates merely because they are included in a "negotiated rate agreement."

8. Ultra requests that the Commission should direct REX to revise the proposed tariff language to foreclose authorizing a recourse rate adjustment for any fuel-related discounts made by REX. Further, Ultra requests that the Commission should reiterate in this docket that Anchor Shippers and Standard Shippers who pay the full cost-based tariff (recourse) rates for FL&U are indeed FL&U recourse rate shippers notwithstanding the existence of negotiated reservation rates.

### **Discussion**

9. The Commission accepts REX's proposed tariff records because the proposed language is consistent with the tariff provisions that the Commission accepted in *WIC* and *Columbia Gulf*. Most recently, in *Tennessee*,<sup>7</sup> the Commission fully addressed its policies regarding discounted adjustments for negotiated rate transactions, and explained its reasons and caveats for accepting tariff language consistent with *WIC*, *Columbia Gulf* and the instant tariff language. Accordingly, given the disposition in *Tennessee*, the Commission will not here act on Ultra's objections to reject the instant tariff language for

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<sup>7</sup> *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208 (2011) (*Tennessee*).

like reasons. The Commission stresses, however, as stated in *Tennessee* and *Columbia Gulf*, the Commission's acceptance of the instant tariff language does not guarantee the pipeline the right to make a discount-type adjustment, but only establishes the burden of proof the pipeline must satisfy in order to obtain a discount-type adjustment consistent with the policy in *WIC* and *Columbia Gulf*.<sup>8</sup> Consistent with *Tennessee*, the Commission finds that the burden set forth in REX's proposed tariff language provides a balanced and reasonable framework for considering the issue of discount-type adjustments for negotiated rates in REX's future general Natural Gas Act section 4 rate cases. Accordingly, as the Commission also has explained elsewhere, it will address requests for discount-like adjustment involving negotiated rates as they arise in particular rate filings.<sup>9</sup>

10. Ultra's concerns regarding the effect of REX's proposal on discount-like adjustments involving negotiated fuel rates appear misplaced in the context of the subject filing. The proposed revision to section 33.6 does not reference or change REX's commitments or obligations under the currently effective sections 38.4F, 38.5B(3), and 33.8 related to negotiated fuel percentages. Further, the Commission's acceptance of this new language related to discount adjustments does not restrict the Commission from prohibiting any discount adjustments that violate Commission policy barring discounts for fuel costs or the cost-shifting of fuel costs unrecovered from shippers with negotiated rate fuel caps to recourse rate shippers without such caps. The Commission has held that pipelines should be at risk for discounts given between rate cases.<sup>10</sup> Consistent with that policy, REX's fuel tracker mechanism does not permit truing up underrecoveries resulting from negotiated fuel charges. In the March 30 Fuel Order, the Commission determined that REX's request for discount-type adjustment to its recourse fuel rates based upon negotiated rate agreements with fuel caps both violated Commission policy and was inconsistent with REX's tariff.<sup>11</sup> Nothing in the instant order is inconsistent with the determination of the March 30 Fuel Order.

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<sup>8</sup> *Tennessee*, 135 FERC ¶ 61,208 at P 208; *Columbia Gulf*, 133 FERC ¶ 61,078 at P 15.

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., *Williston Basin Interstate Pipeline Co.*, 67 FERC ¶ 61,137, at 61,377-61,282 (1994); *Panhandle Eastern Pipe Line Co.*, Opinion No. 395, 71 FERC ¶ 61,228, at 61,867 n.243 (1995).

<sup>11</sup> March 30 Fuel Order, 134 FERC ¶ 61,248 at P 11-13. Further mitigating Ultra's concerns, REX has not proposed to revise section 33.8 of its GT&C, which specifically provides that REX will assume "any" risk that a negotiated fuel rate will result in an under-recovery.

The Commission orders:

The tariff record set forth in footnote 1 is accepted to be effective June 1, 2011.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.