

135 FERC ¶ 61,259  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 24, 2011

In Reply Refer To:  
TransCanada Keystone Pipeline, LP  
Docket No. OR11-7-000

TransCanada Keystone Pipeline, LP  
450-1st Street S.W. 6th Floor  
Calgary, Alberta T2P 5H1  
Canada

Attention: Kristine L. Delkus, Deputy General Counsel,  
Pipelines and Regulatory Affairs

Reference: Waiver of 18 C.F.R. § 342.4(c)

Ladies and Gentlemen:

1. On May 2, 2011, TransCanada Keystone Pipeline, LP (TransCanada) filed a request for waiver of the requirement in 18 C.F.R. § 342.4(c) (2011)<sup>1</sup> that it submit a verified statement in support of future changes to its committed rates. TransCanada submits that good cause exists to grant the waiver because its committed shippers have already agreed contractually to permit TransCanada to adjust its committed rates and the

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<sup>1</sup> Section 342.4(c) states:

A carrier may change a rate without regard to the ceiling level under § 342.3 if the proposed change has been agreed to, in writing, by each person who, on the day of the filing of the proposed rate change, is using the service covered by the rate. A filing pursuant to this section must contain a verified statement by the carrier that the proposed rate change has been agreed to by all current shippers.

Commission previously granted such a waiver under similar circumstances. For the reason discussed below, the Commission grants the waiver requested by TransCanada.

2. TransCanada owns an oil pipeline that provides transportation service from the international border with Canada near Haskett, Manitoba to delivery points at Wood River and Patoka, Illinois and Cushing, Oklahoma. TransCanada commenced operations to Wood River and Patoka in mid-2010 and to Cushing in February 2011. On October 8, 2008, the Commission issued its order on petition for declaratory order approving the proposed committed rate structure and the principles for calculating the uncommitted rates.<sup>2</sup> TransCanada will charge walk up or spot shippers the uncommitted rate. Shippers who entered into long-term transportation service and throughput agreements (TSA) to ship or pay for capacity on the pipeline will pay the committed rate.

3. The committed rate includes a fixed component and a variable component. The fixed component represents the committed shippers' long-term financial support for the capital costs of the pipeline project. TransCanada will adjust the fixed component to reflect the project's actual capital costs using the contractual capital variance capital cost adjustment mechanism. The fixed component would then remain fixed over the term of the TSAs. The variable component, which reflects the non-capital costs of the pipeline, changes each year and contains a true-up mechanism. The Commission permitted TransCanada to adjust its committed rates under the TSA's contractual terms and conditions applicable to the fixed and variable components.

4. In April 2010, TransCanada filed initial rates for deliveries to Wood River and Patoka, and in January 2011, TransCanada filed initial rates for deliveries to Cushing. In March 2011, TransCanada revised the fixed portion of its committed rates to Wood River and Patoka pursuant to the adjustment mechanism set forth in the TSAs. TransCanada states it supported its rate changes with a verified statement in accordance with 18 C.F.R. § 342.4(c).

5. TransCanada requests waiver of the requirement to submit a verified statement in accordance with 18 C.F.R. § 342.4(c) in support of future committed rate changes. TransCanada asserts good cause exists to grant such a waiver because all of the shippers subject to committed rate changes have already agreed to such changes in writing by executing TSAs. TransCanada states there are only two types of changes to the committed rates that it is permitted to make as outlined briefly above. In fact, TransCanada has already adjusted the Wood River and Patoka rates and anticipates adjusting the Cushing rates. TransCanada will change the variable portion of its committed rates on an annual basis to reflect changes in non-capital costs. TransCanada

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<sup>2</sup> *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 18-22 (2008) (Declaratory Order).

states the TSAs require it to provide shippers with advance notice of these changes to the committed rates, and shippers have contractual auditing rights pertaining to these changes.

6. TransCanada contends that since the changes to the committed rates have been agreed to in writing by the shippers at the time they executed TSAs, there is no purpose served by requiring the pipeline to submit a verified statement in accordance with 18 C.F.R. § 342.4(c) at the time such changes are filed with the Commission. TransCanada states that the Commission has granted a waiver in similar circumstances where the pipeline proposed to change its committed rates according to contractual principles.<sup>3</sup> TransCanada states that, consistent with the waiver granted in *Express*, it will provide an explanation of any changes to the committed rates at the time it submits such changes and include a reference to the order granting the waiver request. TransCanada states that the waiver would only apply the committed rates during the term of the TSAs (either 10 or 20 years). TransCanada states that if the Commission determines that granting a waiver for this time period is inappropriate, it requests that the Commission grant a temporary waiver of 18 C.F.R. § 342.4(c), which would remain in effect, subject to revocation should circumstances change.

7. Public notice of the TransCanada's filing issued on May 6, 2011, providing for comments on or before May 24, 2011. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), all timely-filed motions to intervene and any unopposed 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 motions to intervene or comments were filed.

8. An oil pipeline may change its rates pursuant to a cost-of service filing, indexing, a market-based rate application, or a settlement. An oil pipeline seeking to change its rates pursuant to the section 342.4(c) settlement rate methodology must file a verified statement that the rates are agreed to in writing by all current shippers. Here, TransCanada seeks a waiver of that requirement. For good cause shown the Commission will grant TransCanada's requested waiver with respect to future changes to TransCanada's committed rates. Since the Commission already approved the committed rate methodology in its Declaratory Order, and the committed shippers have agreed to the rates in their 10 or 20 year term TSAs, we will not require TransCanada to file the verified statement required by section 342.4(c) each time it adjusts the Keystone Pipeline's committed shipper rates. The requirement for the verified statement makes sense when all current shippers have agreed to specific rates but there is no long-term

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<sup>3</sup> Citing, *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at 62,258 (1996) (*Express*).

contractual agreement, such as the TSAs, that bind shippers to future rate changes. The Commission finds the requested waiver is consistent with the waiver granted in *Express* and, as required in *Express*, we direct TransCanada to provide an explanation of any changes to the committed rates at the time it submits such changes and include a reference to the order granting the waiver request.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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