

136 FERC ¶ 61,007  
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.

Trailblazer Pipeline Company LLC

Docket No. RP11-2168-000

ORDER ACCEPTING AND SUSPENDING CERTAIN TARIFF RECORDS AND  
ESTABLISHING HEARING, AND REJECTING OTHER TARIFF RECORDS

(Issued July 1, 2011)

1. On June 3, 2011,<sup>1</sup> Trailblazer Pipeline Company LLC (Trailblazer) filed revised tariff records to update its Expansion Fuel Adjustment Percentage (EFAP). Trailblazer has proposed three alternative revised tariff records: (a) an Option A Primary Case, which establishes an EFAP of 8.69 percent and which Trailblazer states is calculated strictly conforming with section 41 of its GT&C;<sup>2</sup> (b) an Option B Alternate Case I, which Trailblazer states is its preferred option and which requests waiver of various provisions of Trailblazer's tariff to establish a rate of 3.2 percent; and (c) an Option C Alternate Case II, which also requests waiver of Trailblazer's tariff to delay collection of the deferred account and to establish an EFAP of 4.78 percent.<sup>3</sup> Trailblazer also requests waiver of the 30-day notice requirement in section 4(d) of the Natural Gas Act (NGA) and the Commission's regulations<sup>4</sup> to make the tariff records effective July 1, 2011. As discussed below, the Commission rejects the Option B and C tariff records comprising Alternate Case I and Alternate Case II and denies the associated waivers that would be needed to implement them. The Commission grants waiver of the 30-day notice

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<sup>1</sup> On June 6, 2011, Trailblazer filed a supplement that provided work papers in the required native file format.

<sup>2</sup> Section 41 of its General Terms and Conditions (GT&C) of its FERC Gas Tariff, Fifth Revised Volume No.1.

<sup>3</sup> See Appendix.

<sup>4</sup> 18 C.F.R. § 154.207 (2011).

requirement and accepts and suspends the Option A Primary Case tariff record, to be effective July 1, 2011, subject to refund and conditions, and the outcome of hearing procedures established in this order.

## **I. Background**

2. Trailblazer states under section 41.3 of its GT&C, the EFAP is to be adjusted on the anniversary of the initial effective date of its 2002 Expansion, which occurred in May of 2002. On March 31, 2011, in Docket No. RP11-1939-000, Trailblazer filed new tariff records to update its EFAP rate to 3.2 percent to be effective on May 1, 2011. Trailblazer requested waiver of its tariff to defer collection of its deferred account for the third straight year and requested waiver of its tariff to calculate the EFAP based upon the most recent four year average historical data, rather than base period data as defined by the tariff. On April 28, 2011, the Commission denied the requested waivers and rejected Trailblazer's filing.<sup>5</sup> On May 2, 2011, Trailblazer filed a tariff record setting the EFAP at 8.14 percent purportedly in compliance with an April 28 Order.<sup>6</sup> However, in an order issued May 18, 2011, the Commission explained that the April 28 Order did not intend such a compliance filing, but a new filing at Trailblazer's volition, and therefore rejected Trailblazer's May 2, 2011 filing.<sup>7</sup> Trailblazer has separately sought rehearing of both the April 28 Order and the May 18 Order,<sup>8</sup> and has also made the subject filing in response to the May 18 Order.

## **II. Description of Trailblazer's Filing**

3. Trailblazer states that the subject filing proposes three options for a revised EFAP level under section 41. Trailblazer states that the collection period shall commence July 1, 2011, and continue for 10 months through April 30, 2012. Trailblazer states that the shortened collection period of 10 rather than 12 months arises from the May 18 Order's rejection of Trailblazer's May 2, 2011 filing.

4. The subject filing presents three alternative tariff proposals: Primary Case, Alternate Case I, and Alternate Case II. Trailblazer urges adoption of Alternate Case I.

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<sup>5</sup> *Trailblazer Pipeline Company LLC*, 135 FERC ¶ 61,091 (2011) (April 28 Order).

<sup>6</sup> *Id.*

<sup>7</sup> *Trailblazer Pipeline Company LLC*, 135 FERC ¶ 61,161 (2011) (May 18 Order).

<sup>8</sup> The Commission will address these pending rehearing requests in subsequent orders.

**A. Primary Case**

5. Trailblazer states that the Primary Case results in a revised EFAP of 8.69 percent calculated in strict compliance with section 41 of its GT&C consistent with the April 28 Order. Trailblazer states that the EFAP of 8.69 percent consists of two components, a current rate of 4.78 percent and a deferred rate of 3.91 percent. Trailblazer states that these numbers are developed from the base period, defined by section 41.2(f) of Trailblazer's GT&C as the 12 months ended March 31, 2011, three months prior to the new effective date.

6. Trailblazer states that the current rate includes the actual fuel gas consumption at Station 601 during the base period. Trailblazer explains that the second component consists of the portion of electric costs at Station 602 that are attributable to Expansion 2002 and total electric costs at Station 603. To obtain natural gas equivalents, the electric power costs are divided by Average Monthly Index Price (AMIP) as defined by section 41.2(a) of Trailblazer's GT&C. Trailblazer explains that station 602 costs have been allocated between Expansion 2002 Shippers and Existing System Shippers by deducting \$1,646,698 which is the amount assigned to Existing System Shippers and assigning the remaining costs to be recovered through the fuel tracker. Trailblazer states that the sum of these costs is divided by the Receipt Quantities, defined by section 41.2(h) of the GT&C to be the actual volumes received by Trailblazer, net of fuel, during the base period.

7. Trailblazer also explains that the related deferred account reconciles actual fuel collections with actual costs on a monthly basis, and Trailblazer states that the deferred rate is calculated to recover the balance in the deferred account over the recovery period. Trailblazer asserts that the deferred account is currently a positive \$12,227,892, reflecting under-recoveries by Trailblazer.

8. Trailblazer explains that the EFAP of 8.69 percent, a large increase over the EFAP of 3.18 during the prior period results from the operation of the deferred account, significant declines in Expansion 2002 transportation volumes, increases in electric power costs, and reduced AMIP.

9. Trailblazer argues that the primary case is neither in its interest nor the interest of its shippers. Trailblazer states that if fuel costs are established at 8.69 percent, then FTS Expansion 2002 Shippers are unlikely to nominate their full maximum daily quantity because the fuel costs alone of \$0.35<sup>9</sup> exceed the gross spread on Trailblazer's system of

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<sup>9</sup> Trailblazer calculates fuel costs based upon the proposed EFAP of 8.69 percent multiplied by a cost of gas of \$4.09.

\$0.13.<sup>10</sup> Trailblazer further states that between May 4 and May 18, 2011, it sought to implement an EFAP of 8.14 percent,<sup>11</sup> and that expansion volumes dropped sharply during this period. Trailblazer states that adoption of the Primary Case, by causing shippers not to nominate volumes due to the high EFAP, will preclude Trailblazer from recovering any of its costs under the tracker mechanism. Trailblazer states that this is contrary to the Commission's obligation under the NGA to provide a regulated entity with a reasonable opportunity to collect its reasonably incurred fuel costs.

**B. Alternate Case I**

10. For Alternate Case I, Trailblazer proposes the same EFAP of 3.2 percent, which is the same EFAP that Trailblazer proposed in the March 31, 2011 filing rejected by the Commission.

11. As in the March 31, 2011 filing, Trailblazer seeks waiver of sections 41.5 in order to postpone recovery of the Deferred Rate until a future filing and, in this filing, proposes to set the Deferred Rate at 0.00 percent. As in the March 31, 2011 filing, Trailblazer requests waiver of sections 41.4(b), (c) and (e) to calculate the EFAP based upon the four year average historical data from February 1, 2007 through January 31, 2011, rather than base period data as defined by the tariff. Trailblazer states that this waiver is consistent with Commission policy that permits a pipeline to deviate from its tariff-prescribed base period in order to mitigate the rate impact of reduced throughput on its system. Trailblazer also seeks waiver of section 4.2(f) to use a base period that ends more than three months prior to the recovery period.

12. Trailblazer states this fuel rate will shield shift shippers from significant rate shifts from year to year and ensure that Trailblazer's transportation remains competitive and based on current transportation spreads, maintaining flows on the system. Trailblazer states that this proposal is consistent with previous waivers granted by the Commission in other proceedings permitting a pipeline to provide a timely benefit and allow the pipeline

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<sup>10</sup> Trailblazer calculates the basis differential based upon the difference between cash prices on ICE for Cheyenne and NGPL Amarillo for May 27, 2011.

<sup>11</sup> This EFAP of 8.14 percent that Trailblazer strove to implement for this period in May was never accepted by the Commission, and was inconsistent with Trailblazer's effective EFAP tariff during that period, which was 3.18 percent.

to recover or smooth out the effects of an unexpected fuel increase.<sup>12</sup> Trailblazer states that its proposal is consistent with the underlying concept of the fuel tracker and that it will allow Trailblazer to recover all of its actual fuel costs at a future point in time. Trailblazer states that adoption of Alternate Case I would moot Trailblazer's rehearing request of the April 28 Order.

### **C. Alternate Case II**

13. For Alternate Case II, Trailblazer proposes an EFAP of 4.78 percent, which is the current rate component calculated in accordance with its tariff and set forth in the Primary Case. Trailblazer seeks waiver of section 41.5 of its GT&C in order to defer recovery of the Deferred Rate until a future filing. Trailblazer states that the Alternate Case II provides Trailblazer the opportunity to recover, at a minimum, its current fuel costs, consistent with the Commission's ratemaking principles and ensures that a mechanism is in place that will minimize the future growth of Trailblazer's deferred account. Trailblazer states that it allows Trailblazer the ability in a future proceeding to recover its prudently incurred costs. Trailblazer states that deferring recovery of the balance in the deferred account is consistent with similar requests that were granted by the Commission in prior Trailblazer fuel tracker proceedings.<sup>13</sup>

14. Through the tariff filing's metadata, Trailblazer provided, pursuant to section 154.7(a)(9),<sup>14</sup> an unconditional motion to move its tariff records into effect in the event of a minimal suspension.

### **III. Notice and Interventions**

15. Public notice of the filing was issued on June 6, 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. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. J.M. Huber Corporation (J.M. Huber) filed a protest and Devon Energy Production

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<sup>12</sup> Trailblazer Filing at 9 (citing *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,304 (2008); *Panhandle Eastern Pipeline Co.*, 26 FERC ¶ 63,058 at 65,257, *aff'd*, 27 FERC ¶ 61,345, *reh'g denied*, 28 FERC ¶ 61,115 (1984)).

<sup>13</sup> Trailblazer Filing at 10 (citing *Trailblazer Pipeline Company LLC*, 131 FERC ¶ 61,084 (2010); *Trailblazer Pipeline Company LLC*, 127 FERC ¶ 61,098 (2009)).

<sup>14</sup> 18 C.F.R. § 154.7(a)(9) (2011).

Company, L.P., (Devon) filed comments. On June 16, 2011, Indicated Shippers<sup>15</sup> submitted a late protest. The Commission accepts Indicated Shippers' late protest given Indicated Shippers' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. On June 20, 2011, Trailblazer filed an answer. The Commission accepts the answer filed by Trailblazer because it has provided information that assisted our decision-making process.

#### **IV. Discussion**

##### **A. Whether to Adopt Primary Case, Alternative Case I or Alternative Case II**

16. Indicated Shippers assert that if the Commission does not summarily reject the entire filing, the Commission should reject Trailblazer's Alternative Case I and Alternative Case II as well as the Deferred Component of Trailblazer's Primary Case and that the Primary Case's Current Component be suspended for five months and then made subject to refund pending determination of the just and reasonable rate. Indicated Shippers state that Trailblazer's filing is not based on the procedures set forth in sections 41.4 and 41.5 of its tariff. Indicated Shippers request that the Commission deny Trailblazer's requested waivers of sections 41.3, 41.4 and 41.5 of Trailblazer's GT&C.

17. J.M. Huber asserts that Trailblazer should set the EFAP according to its tariff. J.M. Huber states that it does not concede 8.69 percent is the correct level and reserves their rights to challenge it in any hearing process.

18. J.M. Huber also alleges that Trailblazer's Alternative Case I and Alternative Case II are inconsistent with Trailblazer's tariff and prior Commission orders. J.M. Huber states that both Alternatives I and II request deferrals for future recovery of amounts in excess of the 3.2 percent fuel rate cap for negotiated rates, which is precisely what the Commission rejected in the April 28 Order. J.M. Huber alleges that allowing such deferred recovery will inflate the deferred account balance beyond the current \$12 million, which will dramatically increase fuel costs in future years after the negotiated fuel rates when the capped rates expire. J.M. Huber contends that in its March 2011 filing, Trailblazer recognized that it could not collect a fuel rate above 3.2 percent from negotiated rate shippers and sought to defer collection until after the current term of the contracts ended in 2012 and 2013. Devon also urges the Commission to consider Trailblazer's failure to comply with the terms of its tariff.

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<sup>15</sup> Williams Gas Marketing, Inc. and Marathon Oil Company.

19. In its Answer, Trailblazer states that it is premature for protestors to oppose its waivers on the basis that Trailblazer is not yet attempting to recover from shippers deferred amounts that it cannot currently collect from negotiated rate shippers under the fuel cap provisions. Trailblazer urges that recovery of the deferred account should be the subject of a future proceeding in which Trailblazer would have only an opportunity, not a guarantee, to recover its prudently incurred fuel costs. Trailblazer insists that the purpose of the deferred account is to smooth under and over-recoveries, and that Trailblazer would postpone collection of the deferred account so there is no need to inquire into the make-up of the deferred account now. Trailblazer further insists that no shippers are harmed by delaying collection of the deferred account and that such a delay is an attempt to avoid the detrimental impact to the market that would occur if Trailblazer sought to collect those costs over a single year. Trailblazer stresses that when it sought to implement an EFAP of 8.14 percent [apparently from all shippers, even those with fuel rates capped at 3.2 percent] following its May 2, 2011 filing and before the Commission's May 18, 2011 Order rejecting that filing, volumes transported under firm contracts sharply decreased by over 50 percent.

20. In its answer, Trailblazer also argues that if the Commission does not approve Alternate Case I, Trailblazer requests that the Commission accept either the Primary Case or the Alternative Case II subject to hearing where such material issues of fact can be properly addressed consistent with Commission policy. Trailblazer also urges the approval of the EFAP without the maximum suspension.

### Commission Decision

21. The Primary Case establishes a fuel rate pursuant to section 41 of Trailblazer's tariff, whereas Alternative Case I and Alternative Case II do not. Consistent with the existing tariff and its prior orders, the Commission therefore denies the tariff waivers needed to implement Alternative Case I or II, and accepts and suspends the Primary Case tariff record subject to refund and conditions, and the outcome of a hearing.

22. In support of Alternative Cases I, Trailblazer proposes to use a four-year average to determine the current component of the EFAP rate, in the hope that the market trends will change or turnaround. As the April 28 Order explained, Trailblazer has not demonstrated that the assumptions underlying its proposal to use a four-year average to determine the current component of the EFAP rate are likely to reflect its actual recovery needs or volumes.<sup>16</sup> In this filing, Trailblazer acknowledges that its fuel rate calculations under the tariff and its fuel recoveries have been affected by significant declines in transportation volumes, increased electric costs, and reduced AMIPs as compared to

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<sup>16</sup> April 28 Order, 135 FERC ¶ 61,091 at P 10.

previous years.<sup>17</sup> It is uncertain whether these market trends are secular or merely temporary. Trailblazer has identified the same factors to justify waiver the past two years of its tariff's fuel tracker mechanism.<sup>18</sup> There is a real possibility such changes are not temporary but are likely to persist for some time given the development of new sources of domestic natural gas; postponing the related increase in the EFAP may only cause further increases in the deferred account that Trailblazer may seek to pass on to future shippers or even to existing shippers.<sup>19</sup>

23. Furthermore, Alternative Case I and Alternative Case II do not include recovery of the deferred account in the EFAP rate, the third consecutive year in which Trailblazer has requested such a waiver. In each of the prior waiver requests, Trailblazer represented that the deferred account would not grow assuming the underlying assumptions supporting the current component of its EFAP rate were correct.<sup>20</sup> These predictions have not and may never come to fruition. As the April 28 Order explained, "the sum in Trailblazer's deferred account has continued to increase from just over \$3 million to nearly \$11 million, and the Commission is concerned that further deviation from Trailblazer's tariff will result in continued accumulation in the deferred account to be paid by future customers."<sup>21</sup> Rather than distributing the recovery of temporary price changes over time and avoiding sudden price changes, as Trailblazer suggests, the effect has been the opposite. The postponed collection of the deferred account has resulted in significant accumulations of under-recoveries in the deferred account that Trailblazer intends to assess on future and perhaps even current shippers. Given these circumstances, an examination of the composition and intended disbursement or collection of Trailblazer's deferred account should not be postponed for another day, but is ripe for inquiry now. Accordingly, the intended methodology for dealing with the deferred account and whether the deferred account has been properly kept pursuant to Trailblazer's tariff should be examined at the hearing directed by this order.

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<sup>17</sup> Trailblazer June 3, 2011 Filing at 4-5.

<sup>18</sup> *Trailblazer Pipeline Company LLC*, 131 FERC ¶ 61,084, at P 3 (2010); *Trailblazer Pipeline Company LLC*, 127 FERC ¶ 61,098, at P 4 (2009)

<sup>19</sup> The Commission notes that five of the seven firm expansion shippers' contracts listed at Trailblazer Pipeline Company LLC, Fifth Revised Volume No. 1, FERC NGA Gas Tariff, Sheet No. 8, Statement of Negotiated Rate Transactions, 2.0.0, (Sheet No. 8, 2.0.0) will terminate only seven days after the start of the next EFAP period.

<sup>20</sup> *Trailblazer Pipeline Company LLC*, 131 FERC ¶ 61,084, at P 4 (2010); *Trailblazer Pipeline Company LLC*, 127 FERC ¶ 61,098, at P 5 (2009).

<sup>21</sup> April 28 Order, 135 FERC ¶ 61,091 at P 10.

24. The Commission is requiring that this inquiry not be postponed because of a concern that Trailblazer may be seeking to circumvent its negotiated fuel rate agreements and its tariff. Trailblazer has certain negotiated rate contracts specifying that its fuel rates may not exceed a fuel rate cap of 3.2 percent. However, during the first weeks of May 2011, Trailblazer apparently refused to accept gas for transport, even from shippers with 3.2 percent fuel caps, unless these shippers tendered 8.14 percent for fuel.<sup>22</sup> Also, as explained below, Trailblazer's tariff requires it to credit its deferred account for the difference between these negotiated rates and the maximum EFAP contained within its tariff so that Trailblazer may not shift these costs to other shippers. By keeping its EFAP rate at or closer to 3.2 percent, Trailblazer avoids crediting its deferred account and may try to pass any resultant negotiated rate under-recoveries to other shippers.

25. Granting waiver of a pipeline's existing tariff is within the discretion of the Commission and is not automatic<sup>23</sup> and good cause must be shown to support a request for a waiver. Merely because the Commission has permitted a pipeline to waive certain provisions in its tariff's fuel tracker mechanism in the past does not require the Commission to grant waiver in succeeding years. Unlike Trailblazer's waiver requests in 2009 and 2010, several of Trailblazer's customers have expressed strong opposition to this waiver, and the Commission has also noted the market trends leading to increases to the deferred account are not likely to change. In sum, Trailblazer must follow the terms of its existing tariff, and live with the consequences of its contracts as reflected in that tariff.

### **B. The 3.2 Percent Cap**

26. J.M. Huber points out that Trailblazer's currently effective tariff is clear that fuel rates for certain negotiated rate shippers (including J.M. Huber) cannot exceed 3.2 percent.<sup>24</sup> J.M. Huber requests that the Commission order Trailblazer to honor its negotiated rate contracts and charge these shippers a fuel rate of no more than the 3.2 percent cap. J.M. Huber states that the Commission's prior orders require Trailblazer to

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<sup>22</sup> See Indicated Shippers, May 4, 2011 Motion, Docket No. RP11-1939-001 (citing Trailblazer's Critical Notice, posted May 2, 2011). See also Indicated Shippers, May 16, 2011 Protest at 7.

<sup>23</sup> E.g., *Columbia Gulf Transmission Co.*, 130 FERC ¶ 61,135, at P 16 (2010); *Colorado Interstate Gas Co.*, 124 FERC ¶ 61,192, at P 9 (2008); *Wyoming Interstate Co., Ltd.*, 122 FERC ¶ 61,299, at P 17 (2008).

<sup>24</sup> J.M. Huber Protest at 5 (citing Trailblazer Pipeline Company LLC, Fifth Revised Volume No. 1, FERC NGA Gas Tariff, Sheet No. 8, 2.0.0 and Sheet No. 9, Statement of Negotiated Rate Transactions (Footnotes), 2.0.0 (Sheet No. 9, 2.0.0)).

abide by its negotiated rate contracts and collect no more than 3.2 percent from these shippers.

27. Indicated Shippers request that the Commission order Trailblazer to comply with the 3.2 percent cap to the EFAP rates in the negotiated rate contracts with certain shippers and advise Trailblazer that further attempts to interfere with contractual provisions and tariff requirements may subject Trailblazer to damage awards. Indicated Shippers state that this cap serves as a substitute for the EFAP contained within sections 38.5 and 41 of the GT&C of Trailblazer's Tariff. Indicated Shippers add that in *Rockies Express*<sup>25</sup> the Commission applied a similar tariff provision to require the pipeline to assume responsibility for fuel costs it could not charge to shippers with a negotiated fuel rate. Indicated Shippers argue that Trailblazer's attempt to ignore the 3.2 percent fuel cap interferes with the parties' contract and is an illegal pressure tactic that disrupts gas markets.

28. Indicated Shippers allege that Trailblazer has only imposed the EFAP on its Negotiated Rate Expansion Shippers with capped fuel rates and has not charged other shippers for the EFAP. Regarding Trailblazer's allegation that denying its request for waiver will cause a drop in load, Indicated Shippers allege application of the 3.2 percent fuel cap will encourage these negotiated rate fuel shippers to continue to use their expansion capacity. In contrast, Indicated Shippers allege that short term firm and interruptible shippers using the expansion capacity have been misclassified by Trailblazer as existing shippers. Trailblazer states that these shippers are charged no more than the maximum recourse rate and fuel, further contending that Trailblazer largely grants other shippers on the expansion facilities a \$0.00 fuel rate.<sup>26</sup>

29. Additionally, Indicated Shippers state that Commission policy and section 38.5 of Trailblazer's GT&C prohibit it from shifting under-recovery resulting from negotiated rate fuel agreements to others. Indicated Shippers contend that section 38.5 requires Trailblazer to absorb the under-recovery of fuel costs due to the pipeline's agreement to fuel discounts or caps or its decision to offer no-fuel charge services. Indicated Shippers

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<sup>25</sup> Indicated Shippers Protest at 2 (citing *Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248 (2011)).

<sup>26</sup> Indicated Shippers state that these other shippers pay a maximum recourse rate of 6.5 cents/Dth. In comparison, Indicated Shippers assert that Trailblazer's negotiated rate shippers, in addition to paying an average fuel rate of 19.0 cents/Dth between February 2010 and March 2010, these negotiated rate shippers also pay transportation rates of 41.59 cents/Dth on a 100 percent load factor basis or 83.18 cents/Dth on a 50 percent load factor basis.

similarly argue that Commission policy requires Trailblazer to assume the risk for fuel under-recoveries resulting from negotiated rates and prohibits the pipeline from shifting costs to other shippers.<sup>27</sup> Indicated Shippers state that the Commission's April 28 Order, which rejected Trailblazer's original filing, invoked these policies.<sup>28</sup>

30. Devon also states that Trailblazer must honor the 3.2 percent cap in the negotiated rate agreements and bear the risk of under-recovery.

31. In its answer, Trailblazer asserts that the interpretation of the fuel cap is a contractual issue that is not before the Commission. Trailblazer states that there is no record in this proceeding for the Commission to use to resolve this disagreement. Trailblazer emphasizes that there is a group of Expansion 2002 Shippers that pay recourse rates and are subject to Trailblazer's maximum EFAP rate. Trailblazer also seeks to distinguish the Commission's decision in *Rockies Express*, stating that the Rockies provision involved different shippers, contracts, and tariff provisions and, thus, according to Trailblazer, any determinations made there cannot be applied in this proceeding. Trailblazer emphasizes that its EFAP recourse rates have never been different from the EFAP applicable to negotiated rate shippers and that it would be premature to address the workings of the deferred account in this proceeding.

#### Commission Decision

32. The Commission finds that the proper treatment of the 3.2 percent negotiated rate fuel cap is indeed before the Commission. Trailblazer argues that the application of the negotiated contract EFAP cap should not be considered as it is purely a contract issue, implicitly suggesting that the Commission either should disclaim or has no jurisdiction over it. However, the issues related to the 3.2 percent fuel rate cap involve Trailblazer's fuel rates and are reflected in its tariff. These rates thus are subject to the Commission's jurisdiction, as they are the negotiated rates established in Trailblazer's tariff.<sup>29</sup> These rates and related contracts impact the calculation of Trailblazer's deferred account used to

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<sup>27</sup> Indicated Shippers' Protest at 11-12 (citing *Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248 (2011); *Saltville Gas and Storage Co.*, 123 FERC ¶ 61,107 (2008); *Algonquin Gas Transmission, LLC*, 124 FERC ¶ 61,195 (2008)).

<sup>28</sup> Indicated Shippers' Protest at 11 (citing April 28 Order, 135 FERC ¶ 61,091 at P 10).

<sup>29</sup> See Sheet No. 8, 2.0.0, which lists the contracts that have negotiated rate provisions and the negotiated rates, and Sheet No. 9, which contains the footnote providing for the EFAP applicable to each footnoted negotiated rate contract.

calculate its EFAP rates and accounting practices used to recognize negotiated rate revenues, and affect all parties on the Trailblazer system whose just and reasonable operation is the Commission's responsibility under the Natural Gas Act.

33. Trailblazer's tariff bars it from charging negotiated fuel rate shippers<sup>30</sup> with the capped fuel rates of 3.2 percent specified by their negotiated rate agreements more than that rate. The negotiated rate contracts for affected 2002 Expansion Shippers provide:

In addition to the Negotiated Monthly/Daily Base Reservation Rates and the Negotiated Base Commodity Rates set forth above, Shipper shall be charged for or provide in kind Fuel Gas ("Fuel") in accordance with the applicable provisions of Trailblazer's FERC Gas Tariff, as may be revised from time to time; provided that during the Negotiated Rate Term, Fuel shall not exceed 3.2% of quantities tendered for transportation under the Transportation Agreement.<sup>31</sup>

Furthermore, footnote 3 to the list of negotiated rates on Sheet No. 9, 2.0.0, of Trailblazer's tariff states:

Fuel Gas and Gas Lost and Unaccounted For. In addition to the Negotiated Rates, Shipper shall be charged for or provide in kind Fuel Gas and Gas Lost and Unaccounted For in accordance with the applicable provisions of Trailblazer's FERC Gas Tariff, as may be revised from time to time; provided that during the Negotiated Rate Term, Fuel Gas shall not exceed 3.2% of quantities tendered for transportation under the FTS Agreement for all expansion Shippers listed above, except for Tenaska Marketing Ventures.<sup>32</sup>

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<sup>30</sup> As discussed in this order, the negotiated fuel rate shippers are those expansion shippers with a negotiated rate agreement with Trailblazer that specifies the fuel rate may not exceed 3.2 percent. *See* Sheet No. 8, 2.0.0 and Sheet No. 9, 2.0.0.

<sup>31</sup> *E.g.* Marathon Oil Company, Contract No. 927144, Exhibit C (Negotiated Rate Agreement-FTS), Article 2, Section 2.5. All of the negotiated fuel rate contracts containing the 3.2 percent cap are located in Trailblazer Pipeline Company LLC, Fifth Revised Volume No. 1, FERC NGA Gas Tariff, under the tariff record "Part 4.0, Negotiated Rate Agreements and Non-Conforming Agreements, 0.0.0."

<sup>32</sup> Sheet No. 9, 2.0.0.

Thus, while these negotiated rate agreements remain effective, Trailblazer may not charge more than 3.2 percent for fuel on any shipment tendered by the negotiated fuel rate shippers, and payment of that capped rate fulfills these shippers' entire obligation for fuel whatever higher EFAP rate may be charged to others. Given the tariff's incorporation of this contractual limit, there is no basis for Trailblazer to collect fuel rates from these negotiated fuel rate shippers that exceed their 3.2 percent cap during the period in which the capped fuel rates remain applicable.

34. Section 38.5 of Trailblazer's GT&C provides further that recourse rate shippers may not subsidize shippers paying negotiated fuel rates. Section 38.5 specifies the steps that Trailblazer must follow when there is negotiated fuel rate less than the maximum rate:

The separate accounting under Section 38.3 hereof will include separate accounting for fuel retainage and surcharge amounts collected and a comparison with the amounts which would have been collected at the maximum rate levels for fuel retainage and surcharges stated in Trailblazer's Tariff. In the event that Trailblazer agrees as part of a Negotiated Rate or Negotiated Rate Formula to assess fuel retainage or surcharge amounts which are less than the amounts which would be collected at the maximum rate level for such components stated in Trailblazer's Tariff, Trailblazer will credit the maximum Recourse Rate surcharge amounts to its surcharge accounts and will credit the maximum Recourse Rate fuel retainage levels to its fuel retainage accounts....

Trailblazer's tariff requires it to adjust its deferred account so that when it charges negotiated rates, "it must credit the maximum Recourse Rate fuel retainage levels." This requirement is consistent with the Commission's determination that the pipeline may not recoup under-recoveries that result from negotiated rate fuel contracts that do not recover the maximum fuel rate.<sup>33</sup>

35. Moreover, as a matter of accounting, it is not clear from the work papers that Trailblazer has in fact maintained separate sub-accounts for negotiated rate revenue as required by section 38.3, and, if Trailblazer has properly maintained these sub-accounts, how the sub-accounts are reflected in the EFAP calculations. This issue should be examined in the hearing established below.

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<sup>33</sup> *Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248, at P 13 (2011).

### **C. Effective Period**

36. Indicated Shippers claim that if the Commission does not reject Trailblazer's entire filing, the Commission should require the EFAP approved in this proceeding to remain in effect through July 1, 2012. Indicated Shippers oppose Trailblazer's request for a 10-month effective period July 1, 2011, through May 1, 2012. Indicated Shippers also state that 4 of the 5 negotiated rate expansion shipper contracts expire May 7, 2012 and it would be wasteful to be engage in additional proceedings on the same issues next year. Indicated Shippers state that section 41.2(g) of Trailblazer's GT&C requires a recovery period of 12 months, and emphasize that Trailblazer's decision not to follow its tariff has caused the delayed implementation of Trailblazer's EFAP.

#### Commission Decision

37. Section 41.3 of Trailblazer's GT&C specifies that the EFAP "shall be redetermined effective on each annual anniversary of the Initial Effective Date...." The anniversary of the Initial Effective Date is in May of each year.<sup>34</sup> Indicated Shippers correctly note that section 41.2(g) refers to a recovery period of twelve months. However, in the instant proceeding Trailblazer has made an out-of-cycle filing. Given the circumstances here, it is impossible to strictly apply both the requirement in section 41.3 for a redetermination of the rate in May and the specification of a 12-month recovery period in section 41.2(g) without impacting all future filings and changing the plain intent of section 41.3. In this context, the Commission determines that there is not adequate justification to depart from the effective date provision in section 41.3, and to treat this differently from any other interim or out-of-cycle filing.

### **D. Issues Set for Hearing**

38. Indicated Shippers argue that Trailblazer failed to include all throughput using expansion capacity to calculate its fuel rates. Indicated Shippers contend that Trailblazer should be directed to revise the usage billing determinant of its EFAP calculation to include all throughput using expansion capacity. In a related argument, Indicated Shippers also ask that the Commission order Trailblazer to cease its use of expansion capacity to provide transportation services without charging for EFAP.

39. The Indicated Shippers allege that Trailblazer failed to include in the receipt quantities used to design the proposed EFAP rates all the actual throughput utilizing "capacity resulting from" the 2002 Expansion during the base period. Indicated Shippers state that between 2003 and 2010, Trailblazer's total expansion throughput averaged

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<sup>34</sup> Trailblazer Filing at 3.

124.6 Bcf annually. Indicated Shippers elaborate that during the same 2003 to 2010 period, certain Negotiated Rate Expansion Shippers collectively have reserved an annual capacity of 118.20 Bcf, but Trailblazer has sold all available Expansion capacity to other shippers, including unutilized capacity. Thus, Indicated Shippers state that even as the throughput from the Negotiated Rate Expansion Shippers dropped to 79 Bcf, use of the Expansion capacity still exceeded 117 Bcf. Given this background, Indicated Shippers object that the volumes used to calculate the EFAP are projected at 73.5 Bcf. Indicated Shippers allege that to derive the 73.5 Bcf, Trailblazer either included only throughput associated with the five Negotiated Rate Expansion Shippers, or, if any other volumes were included, they were relatively insignificant.

40. Indicated Shippers elaborate that Trailblazer's "Existing System" and "Expansion System" capacities were established by settlement in Docket No. RP03-162. Indicated Shippers express suspicion that much of this capacity was offered under short term FTS where Trailblazer did not charge the shipper the Expansion fuel rate, and that Trailblazer has included the fuel costs associated with these short term FTS movements to pass them along to Negotiated Rate Expansion shippers, or, via continual waiver, to future shippers. Indicated Shippers aver that failing to charge these shippers for fuel is essentially a discount for fuel. Indicated Shippers claim that it is this discount which has caused Trailblazer's under-recovery. Indicated Shippers state that under section 38.5 of Trailblazer's tariff and Commission policy, the burden of these under-recovered fuel costs is on Trailblazer.

41. Indicated Shippers argue that that including all expansion system throughput (all capacity on Trailblazer's system over 190 Bcf)<sup>35</sup> in Trailblazer's receipt quantities to design its EFAP would reduce the current component of the EFAP to at least 3.0 percent.

42. Alternatively, Indicated Shippers state that reducing the EFAP to prudently incurred fuel costs related to movements for the negotiated rate expansion shippers would reduce the current component of the EFAP to at least 2.87 percent. Indicated Shippers state that Trailblazer includes in the calculations of its EFAP fuel rate costs that are unrelated to those associated with negotiated fuel rate expansion shippers charged by Trailblazer. Indicated Shippers explain that costs used in the fuel tracker are allocated according to a September 22, 2003 settlement in Docket No. RP03-162. Under the settlement, Indicated Shippers state that \$1,646,698 of fuel costs are allocated to existing system firm shippers, and Indicated shippers explain that under the settlement all other fuel reimbursement costs incurred by Trailblazer for firm transportation shall be collected from the 2002 Expansion shippers pursuant to Section 41 of Trailblazer's GT&C. To the

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<sup>35</sup> According to Indicated Shippers, this is the throughput level used for the rate design of existing shippers established by settlement in Docket No. RP03-162.

extent that only negotiated fuel rate shippers are charged for the EFAP and that the EFAP only includes volumes associated with movements involving the negotiated fuel rate shippers, Indicated Shippers state that the costs used to calculate the EFAP should also be restricted to those involving negotiated rate shippers.

43. In its answer, Trailblazer states that it followed its tariff when it only used throughput associated with its Expansion 2002 Shippers in its EFAP calculations of receipt quantities.<sup>36</sup> Trailblazer states that Expansion 2002 Agreements subject to the EFAP are defined by its tariff as firm agreements entered into between Trailblazer and a Shipper for capacity resulting from the Expansion 2002. Trailblazer states that the Expansion 2002 Agreements comprise capacity of 324,000 Dth/day held by negotiated rate expansion shippers and 37,000 Dth/day of winter only capacity held by recourse rate expansion shippers. Trailblazer claims that short-term FTS agreements referenced by Indicated Shippers are not Expansion 2002 Agreements. Trailblazer also argues that interruptible volumes that flow as a result of expansion shippers not utilizing capacity are not included in the volumes to calculate the EFAP because they are not “firm” Expansion 2002 Agreements. Trailblazer states that its tariff precludes it from assessing its EFAP to any transactions other than Expansion 2002 Agreements, including other firm and interruptible transportation transactions. However, Trailblazer states that it supports a prospective modification to its EFAP to apply these additional transactions that potentially use Expansion System capacity and intends to make a filing to that effect in the near future.

44. Trailblazer also claims that Indicated Shippers’ protest includes some factual inaccuracies. For example, Trailblazer alleges that Indicated Shippers have alleged expansion system throughput that exceeds expansion system capacity.<sup>37</sup> Referencing attachment 2 of the Indicated Shippers Protest, Trailblazer also states that Indicated Shippers fail to recognize that the majority of electric power costs are demand based, not usage based. Trailblazer adds that these calculations do not account for the increase in electric power costs in recent years. Rather, Trailblazer alleges that Indicated Shippers incorrectly attribute any increased power costs solely to other firm and interruptible transactions, not to the expansion system capacity.

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<sup>36</sup> Trailblazer cites sections 1.11, 1.12, 41.2(d), and 41.3(a) of its GT&C as well as footnote one of sheet 7.

<sup>37</sup> Trailblazer June 20, 2011 Answer (citing Indicated Shippers Protest, Attachment Nos. 1 and 2).

### Commission Decision

45. All issues regarding the proposed EFAP raised by this filing, other than those specifically decided by this order with regard to the operation of the negotiated rate fuel cap and the 10 month length of this out-of-cycle EFAP, including but not limited to the appropriate throughput, revenue and cost data to use for determining the EFAP, and the composition, accounting for, and intended proposed recovery methodology for amounts in the deferred account, raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed at hearing.

#### **E. Suspension**

46. Based upon review of the filing, the Commission finds that the Primary Case (Option A) proposed rates have not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept and suspend the effectiveness of the relevant tariff record in the Appendix of this order for the period set forth below, subject to the conditions set forth in this order.

47. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.<sup>38</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>39</sup> Such circumstances exist here where the filing is pursuant to an existing tariff provision. Therefore, the Commission will exercise its discretion to suspend Trailblazer's proposed tariff record for its Primary Case as set forth in the Appendix A, to be effective July 1, 2011, subject to refund and the outcome of the hearing procedures ordered herein.

#### The Commission orders:

(A) The Option A tariff record as listed in the Appendix of this order, and comprising Trailblazer's Primary Case is accepted and suspended, to be effective July 1, 2011, subject to refund and conditions, and the outcome of hearing procedures.

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<sup>38</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>39</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(B) The Option B and C tariff records as listed in the Appendix of this order, and comprising Trailblazer's Alternate Case I and Alternate Case II are rejected as discussed herein.

(C) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held in Docket No. RP11-2168-000 concerning the lawfulness of Trailblazer's proposed rates.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, must convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

Appendix

Trailblazer Pipeline Company LLC  
Fifth Revised Volume No. 1  
FERC NGA Gas Tariff

Tariff Record Accepted and Suspended, Effective July 1, 2011

Sheet No. 7, Expansion Fuel Reimbursement Percentage, 2.0.0 A

Rejected Tariff Records

Sheet No. 7, Expansion Fuel Reimbursement Percentage, 2.1.0 B

Sheet No. 7, Expansion Fuel Reimbursement Percentage, 2.2.0 C