

137 FERC ¶ 61,155
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 22, 2011

In Reply Refer To:
Williston Basin Interstate Pipeline
Company
Docket No. RP12-71-000

Williston Basin Interstate Pipeline Company
PO Box 5601
Bismarck, ND 58506-5601

Attention: Keith A. Tiggelaar
Director of Regulatory Affairs

Reference: Letter Order on Discounted Rate Adjustment Provision

Dear Mr. Tiggelaar:

1. On October 28, 2011, Williston Basin Interstate Pipeline Company (Williston Basin) filed a tariff record¹ that sets forth the circumstances in which Williston may seek a discount-type adjustment for negotiated rate contracts in a future rate case under section 4 of the Natural Gas Act. As discussed below, the Commission accepts Williston Basin's revised tariff record, to be effective November 28, 2011, subject to one modification.

2. Williston Basin states that its proposed tariff language adopts the same standard and conditions for discount-type adjustments that the Commission has recently approved for other pipelines.² Specifically, Williston Basin states that in a future rate case, its proposal would require it to show that any discount-type adjustment would not have an adverse impact on its recourse rate shippers by demonstrating that (a) in the absence of Williston Basin entering into negotiated rate agreements providing for such discounts, Williston Basin would not have been able to contract for such capacity at any higher rate,

¹ Sheet No. 272A, , 0.0.0 to Third Revised Volume No. 1, FERC Gas Tariff.

² Williston Basin, October 28, 2011 Filing at 2 (referencing *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208 (2011) (*Tennessee Gas*)).

and that recourse rates would otherwise be as high or higher than recourse rates that result after applying the discount-type adjustment; or (b) the negotiated rate discount contributes more fixed costs to the system than could have been achieved without the discount.

3. Additionally, Williston Basin states that its proposed tariff language adopts the same standard and conditions that have been approved by the Commission for discount-type adjustments for negotiated rate agreements that are converted from pre-existing discounted Part 284 agreements to negotiated rate agreements.³ Williston Basin asserts that such adjustments would be based on the greater of the negotiated rate revenues received or the discounted recourse rate revenues that otherwise would have been received.

4. Public notice of the filing was issued on October 31, 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 interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Northern States Power Company (NSP) filed comments.

5. NSP expresses concern about Williston Basin's proposed tariff section 48.9, which reads as follows: "A discount-type adjustment to recourse rates for negotiated rate agreements shall 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."

6. NSP states that in *Tennessee Gas*, the pipeline initially proposed tariff language very similar to the above-quoted portion of Williston Basin's proposal. NSP explains that after a technical conference in that proceeding, the pipeline offered to modify its proposal to more closely track language previously approved by the Commission in *Columbia Gulf*. Specifically, the pipeline offered to insert the word "only" as follows: "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...." NSP argues that the effect of adding "only" is to emphasize that a discount adjustment for negotiated rates will be permitted only if the specified heavy burden is met, and not for any other reasons.

³ *Id.* at 3 (citing *Columbia Gulf Transmission Co.*, 133 FERC ¶ 61,078 (2010) (*Columbia Gulf*)).

7. NSP also argues that having properly highlighted the importance of “only” in *Tennessee*, Commission acceptance of a tariff provision that is less emphatic could be less demanding in terms of the showing that the pipeline must make to get the discount-type adjustment. NSP suggests that in controversial matters such as the propriety of discount adjustments for negotiated rate contracts, consistency in the relevant tariff language across pipelines serves to clarify Commission policy. Accordingly, NSP requests that if the Commission accepts Williston Basin’s proposed tariff provision, it do so subject to Williston Basin modifying its proposal to add the word “only” as indicated above.

8. The Commission finds that, subject to Williston Basin modifying its proposed tariff records to add the word “only” as discussed above, Williston Basin’s proposal is just and reasonable and consistent with Commission policy. Williston Basin’s transmittal letter states that its revised tariff language “adopts the same standard and conditions for discount-type adjustments which the Commission has recently approved for other pipelines.”⁴ However, as NSP points out, the tariff language accepted in the recent *Columbia Gulf* and *Tennessee Gas* cases indicates that a discount-type adjustment to recourse rates for negotiated rate agreements shall *only* be allowed when certain conditions are met. The Commission finds that the inclusion of the word “only” is important not only to maintain consistency among pipelines’ discount-type adjustment provisions, but also to emphasize that a discount adjustment for negotiated rates will be permitted only if the specified heavy burden is met. Accordingly, the Commission accepts Williston Basin’s proposed tariff records, to be effective November 28, 2011, as requested, subject to Williston Basin revising its proposed tariff provision as discussed above. Williston Basin is directed to file a revised tariff record reflecting this change within 15 days of the issuance of this order.

By direction of the Commission. Commissioner Spitzer is not participating.

Kimberly D. Bose,
Secretary.

⁴ *Id.* at 2.