

140 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Regency Field Services, LLC vs. DCP Black Lake Pipe Holdings, LP Docket No. OR12-15-000

ORDER ON COMPLAINT ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued August 10, 2012)

1. This order addresses a complaint by Regency Field Services, LLC (Regency) against DCP Black Lake Pipe Holding, LP (Black Lake). This order establishes a hearing to determine whether Black Lake's penalty tariff provision for off-specification natural gas liquids (NGL) is just and reasonable, and whether Black Lake's enforcement of the penalty policy is just and reasonable. The hearing shall be held in abeyance pending the outcome of settlement judge procedures.

Background

2. Black Lake is a common carrier pipeline that transports natural gas liquids in interstate commerce. As relevant to the instant complaint, Black Lake's FERC Tariff No. 79.1.0 details its quality specifications of when and what type of NGLs it will accept into its system. The tariff provides that the methane/ethane ratio of the NGLs entering Black Lake's system cannot be greater than 1.5 percent and NGLs that fall outside this allowable methane/ethane ratio may be "treated" to correct the methane/ethane imbalance. The tariff also allows Black Lake to impose a penalty of 100 cents per barrel for "off-specification" NGLs that require treating. The tariff does not define the term "treating."

3. Black Lake notified all of its shippers in January of 2012 that it had begun charging the penalty allowed in Tariff No. 79.1.0 for all deliveries of NGLs that violated the methane/ethane ratio. Subsequently, Black Lake sent Regency a penalty notice on February 6, 2012, penalizing Regency \$161,838 for January 2012 deliveries that allegedly violated the methane/ethane ratio.

4. Regency declined to pay the penalty in a February 8, 2012 letter to Black Lake, which questioned the meaning of the word “treating” in Black Lake’s quality specification provision. Black Lake responded in a February 16, 2012 letter, which invoiced Regency for all the penalties it contends Regency incurred from July 2011 to December 2011.¹ Black Lake’s February 16, 2012 letter also explained that it had to treat Regency’s deliveries through blending in order for the fractionator to accept them.

5. Moreover, on April 10, 2012, after Regency refused to pay the penalties, Black Lake notified Regency that it would exercise the lien provision contained in its tariff. Thereafter, Black Lake placed a lien on 20,682.77 barrels of NGLs owned by Regency.

6. Against this backdrop, on May 14, 2012, Regency filed a complaint against Black Lake requesting the Commission to require Black Lake to cease and desist from its interpretation and application of its penalty tariff provisions in Tariff No. 79.1.0. Regency also requests that the Commission order damages and require Black Lake to revise its penalty tariff provisions. Specifically, the complaint arises from Black Lake’s application of its penalty tariff provision associated with off-specification NGLs received into its system. The complaint primarily focuses on the appropriate definition of “treating,” especially whether “treating” includes “blending” and how the penalty provision was applied to Regency. Regency states that Black Lake imposed a \$1.00 per barrel penalty totaling \$951,054 on Regency for alleged off-specification NGLs from July 2011 through January 2012.

7. Regency asserts that Black Lake’s penalty tariff provision is unjust and unreasonable because blending of off-specification NGLs does not constitute “treating” as that term is used in industry practice. Further, Regency questions Black Lake’s claim that all of Regency’s volumes were off-specification during the period July 2011-January 2012. Regency further alleges that Black Lake incurs no costs when blending Regency’s purported off-specification NGLs nor does blending off-specification NGLs damage the pipeline or other customers. Regency points out that Black Lake is a common-stream pipeline where all shippers’ volumes are intermixed during the ordinary course of Black Lake’s business and therefore it is unclear how Black Lake could identify or penalize Regency for off-specification NGLs.

8. Additionally, Regency argues that Black Lake’s penalties for tender of off-specification NGLs are unreasonable. In addition to being assessed on all barrels

¹ Black Lake states that Regency was not the only shipper that incurred charges under the Quality Violation Penalty. Black Lake states that Regency was one of multiple shippers charged the Quality Violation Penalty for the shipments made since the effective date of the penalty. *See*, Black Lake June 13, 2012 Answer at 49, fn 210 and Exh. CNM-1 at P 25.

transported, Regency states the penalties that Black Lake seeks amount to 70 percent of its transportation fees over the same period (July 2011 through January 2012).

9. On June 13, 2012, Black Lake filed an answer to Regency's complaint providing a history of its imposition of penalties on Regency and requesting that Regency's complaint be dismissed. In its answer, Black Lake states that the quality specifications in its tariff have never changed. Rather, it argues that its May 2011 tariff change simply added the option of using "treating" as a solution to a violation of Black Lake's quality specifications and added the 100 cents per Barrel penalty.² As noted above, Black Lake maintains that it notified all of its shippers in that it would begin charging the penalty for all deliveries of NGLs that violated Tariff No. 79.1.0's methane/ethane ratio, starting with deliveries in January 2012.

10. Black Lake also argues in its answer that both the inclusion of off-specification penalties in its tariff and the imposition of such penalties on Regency are appropriate because penalties are imposed to discourage shipper behaviors that impact pipeline operations and/or could harm the pipeline and its shippers. Moreover, Black Lake maintains that its off-specification penalties have been properly designed to deter such behavior. Black Lake argues that the injection of NGLs into its system that do not meet the quality specifications affect both the proper operation of the pipeline as well as harms "within-specification" shippers. Black Lake further asserts that the penalty amount of 100 cents per barrel is appropriate and widely used in the industry. Black Lake also argues that the term "treating" reasonably includes blending.

11. Finally, Black Lake asserts that Regency cannot use equitable defenses to avoid penalties incurred under a properly filed tariff as Regency has a duty to not deliver off-specification NGLs into Black Lake. Black Lake also contends that Regency was aware of this duty and that it nonetheless delivered off-specification product to Black Lake.

Discussion

12. Based upon a review of the filings made in this docket, the Commission finds that there are a number of material issues of fact in dispute concerning the justness and reasonableness of Black Lake's penalty provision, and the enforcement of that provision, that require a hearing.

13. The Commission has consistently encouraged parties to resolve disputes of this nature through settlement, and is of the view that formal settlement procedures may lead to a resolution of this case. Accordingly, the Commission will hold the hearing in

² The tariff change, which was not protested, went into effect by operation of law on June 15, 2011.

abeyance pending the outcome of formal settlement procedures in this matter. To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³ If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.⁴ Absent settlement, the presiding administrative law judge shall issue an initial decision including remedial measures, if appropriate.

The Commission orders:

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly sections 15(1) and 15(7) thereof, and the Commission's regulations, a hearing is established to determine whether Black Lake's penalty provision is just and reasonable, and whether Black Lake's enforcement of the penalty provision is just and reasonable.

(B) The hearing established in Ordering Paragraph (A) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(D) Within 60 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days

³ 18 C.F.R. § 385.603 (2012).

⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at www.ferc.gov/legal/oalj/bio/judges.htm.

thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.