

141 FERC ¶ 61,006
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.

Rockies Express Pipeline LLC

Docket No. RP11-2096-002

ORDER ON REHEARING

(Issued October 1, 2012)

1. On June 17, 2011, the Commission approved Rockies Express Pipeline, LLC's (REX) proposal for a new backhaul service pursuant to Rate Schedule BHS subject to conditions.¹ On July 15, 2011, REX filed a request for rehearing and clarification, and on July 18, 2011, Ultra Resources, Inc. (Ultra) also sought rehearing. As discussed herein, the Commission grants rehearing in part and denies rehearing in part.

I. Background

2. In a May 6, 2011 Filing, REX proposed a new backhaul service under Rate Schedule BHS. REX proposed to prohibit BHS shippers from using BHS service to nominate forward haul transactions, including forward haul transactions using secondary points. BHS has a lower scheduling priority than nominations to primary points under existing Rate Schedule FTS, but a higher scheduling priority than secondary BHS and FTS nominations.² According to REX, the BHS zone-based reservation rates were derived based upon 66 percent of its FTS reservation rates to reflect the limited character of the service.

3. Ultra filed comments objecting that BHS shippers could compete with and degrade FTS shippers' rights to secondary points, capacity release, and segmentation.

¹ *Rockies Express Pipeline LLC*, 135 FERC ¶ 61,253 (2011) (June 2011 Order).

² Under REX's proposal, firm segment capacity is scheduled in the following order of declining priority: FTS primary in-path; BHS primary in-path; and FTS and BHS secondary out-of-path. Similarly, firm point capacity is scheduled in the following order of declining priority: FTS primary points; BHS primary points; FTS and BHS within-path secondary points; and FTS and BHS outside-the-path secondary points.

4. In the June 2011 Order, the Commission accepted the proposed tariff records, subject to conditions. Specifically, the June 2011 Order held that the prohibition in the BHS Rate Schedule against using secondary points to obtain forward-haul service violated the Commission's policy of flexible receipt and delivery points. Thus, the June 2011 Order required REX to modify its proposal so that a BHS customer may use secondary points in a manner that allows for forward-haul movement.³

II. Rehearing Requests and Commission Responses

A. REX'S Rehearing Request and Commission Response

5. On rehearing, REX contends that the June 2011 Order imposed an unjust and unreasonable condition by requiring REX to remove the prohibition on BHS customers using secondary points for forward-haul transportation. REX argues that in a 1998 Tennessee Order, the Commission approved a like prohibition for stand-alone firm backhaul services offered at a reduced rate, because the lower rate reflected more limited transportation rights.⁴ REX therefore maintains that its proposed restriction on BHS secondary forward haul transportation is consistent with Commission policy.⁵

6. REX also asserts that the June 2011 Order improperly relied on a 2002 Tennessee Order to support removal of the proposed restriction on BHS shippers nominating secondary points for forward haul transportation.⁶ REX contends that the 2002 Tennessee Order merely noted that, as a general matter, shippers can reverse flow on a secondary basis and that these reversals would be considered out-of-path for scheduling purposes. REX asserts that the 2002 Tennessee Order did not address the prohibition on shippers nominating secondary forward haul transportation in Tennessee's lower cost backhaul-only Rate Schedule FT-BH that was discussed in the 1998 Tennessee Order, and which is still a feature of Tennessee's FT-BH service. REX argues that although some pipelines allow shippers to reverse backhaul service movements to forward-hauls,⁷ REX states that it is not appropriate to impose such a requirement on Rate Schedule BHS because service under the rate schedule is less expensive than REX's standard forward haul service under Rate Schedule FTS. REX also asserts that if Rate Schedule BHS shippers are allowed to use secondary points for forward-haul transportation, the

³ *Northern Border*, 97 FERC at 61,722; *Tennessee Gas Pipeline Co.*, 99 FERC ¶ 61,017, at P 91 (2002) (2002 Tennessee Order).

⁴ REX Rehearing Request at 5-6 (citing 1998 Tennessee Order, 84 FERC ¶ 61,083, at 61,404).

⁵ *Id.* at 6.

⁶ *Id.* (citing 2002 Tennessee Order, 99 FERC ¶ 61,017 at P 91).

⁷ *Id.* at 7 (citing *Northern Border Pipeline Co.*, 97 FERC ¶ 61,162 (2001)).

Commission must permit it to charge the maximum FTS rate for BHS service, and an applicable FL&U charge.

B. Ultra's Rehearing Request and Commission Response

7. Ultra incorporates by reference REX's arguments on rehearing regarding the prohibition on BHS shippers nominating capacity for forward-haul transportation.⁸ Ultra asserts that the June 2011 Order did not support its finding that the new BHS service does not degrade "in any significant way" FTS shippers' capacity rights, capacity release, segmentation, and flexible point rights. Ultra asserts that the Commission misconstrues the difference between contract rights and the regulatory rights to which all firm shippers are entitled under Order Nos. 636 and 637. Ultra asserts that Order Nos. 636 and 637 conferred on firm shippers valuable regulatory rights, including the ability to release their capacity to third parties, to segment capacity for their own use or for capacity release, and to utilize alternative receipt and delivery points. Ultra states that the ability to use flexible receipt and delivery points and to segment capacity "enhances the value of firm capacity."⁹ Ultra states that changes in market conditions can affect the market value of shippers' capacity. Ultra states that firm shippers are entitled to utilize capacity release, segmentation, and flexible point rights conferred by Order Nos. 636 and 637 to manage the risk associated with the fixed costs born by firm shippers under SFV rate design.

III. Discussion

8. The Commission grants rehearing in part and denies rehearing in part. The Commission grants rehearing and will not require REX to modify Rate Schedule BHS to allow BHS customers to use secondary points to make forward-haul movements.¹⁰ For backhaul services offered at less than the standard firm transportation rate, the Commission has approved limits regarding the use of secondary points to make forward-haul movements.¹¹ REX's proposed Rate Schedule BHS is a limited service with rates that are only 66 percent of its FTS rates. Thus, the restrictions proposed by REX

⁸ Ultra Rehearing Request at 3.

⁹ *Id.* at 6 (quoting *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,301 (2000)).

¹⁰ June 2011 Order, 135 FERC ¶ 61,253 at P 15.

¹¹ *Tennessee*, 84 FERC at 61,404 (conditionally accepting for a temporary period a BHS proposal that restricted the use of secondary points); *Tennessee*, 99 FERC ¶ 61,017 at P 95 (order lifting conditions on Tennessee's proposed backhaul service).

regarding secondary points are appropriate and the compliance filing directed by the June 2011 Order is no longer necessary.

9. The Commission rejects Ultra's argument on rehearing that the proposed Rate Schedule BHS undermines FTS shippers' capacity release, segmentation rights, and secondary point rights. Under REX's proposal, Ultra retains the ability to release its capacity consistent with Commission policies. Ultra and any replacement shipper also retains the right to use segmentation and make nominations to secondary points consistent with Commission policies. Ultra objects that BHS shippers using primary points will receive higher priority than FTS shippers using secondary points. This objection misconstrues the character of the secondary point rights conferred by Commission policy. By definition, secondary point nominations receive lower priority than primary point rights,¹² and, thus shippers have never been guaranteed access to secondary points. It is consistent with this policy that BHS shippers using primary point rights receive priority over FTS shippers using secondary points. REX's proposal does not degrade the existing regulatory rights of existing FTS customers.¹³

10. Ultra also objects that REX's proposal will create a competitive alternative to Ultra's released FTS capacity, particularly the use of secondary points to obtain backhaul service. As the June 2011 Order explained:

[T]he increased competition for released capacity is not a justification for rejecting the proposal given the additional flexibility that the proposed BHS will provide to all, and the attendant increased use of the REX infrastructure.¹⁴

Ultra cites no prior Commission decision rejecting a new service on the basis that the new service would compete with existing customers in the capacity release market. Moreover, Ultra has not identified any contractual or regulatory provision limiting REX's ability to modify its tariff and to offer additional services that may compete with existing

¹² *Tennessee Gas Pipeline Co., LLC*, 139 FERC ¶ 61,050, at P 14 (2012); *Ozark Gas Transmission, LLC*, 125 FERC ¶ 61,113, at P 26 (2008).

¹³ The June 2011 Order stated that "REX's proposal does not degrade [existing FTS customers'] service in any significant way." June 2011 Order, 135 FERC ¶ 61,253 at P 13. Contrary to Ultra's assertions, this statement was not meant to imply that REX's proposal degrades, in any respect, the existing regulatory rights of existing customers. REX's proposal does not change the Commission's regulatory requirements relating to segmentation, secondary points, and capacity release. As such, the rights of REX's existing customers have not been altered.

¹⁴ June 2011 Order, 135 FERC ¶ 61,253 at P 13.

shippers in the capacity release market.¹⁵ The Commission therefore rejects Ultra's argument on rehearing that the proposed Rate Schedule BHS is inconsistent with the rights of REX's existing shippers.

The Commission orders:

The requests for rehearing of the Commission's June 17, 2011 Order are granted in part and denied in part, as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁵ Pipelines must include in their tariffs *pro forma* service agreements, which set forth the standard contract the pipelines will enter into with all shippers. These *pro forma* service agreements uniformly include clauses allowing the pipelines to change their rates, rate schedules, and terms of conditions of service by making unilateral filings with the Commission pursuant to NGA section 4. 18 CFR § 154.110. Ultra has not provided evidence that its agreement with REX is contrary to this requirement.