

141 FERC ¶ 61,079
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 31, 2012

In Reply Refer To:
Crossroads Pipeline Company
Docket No. RP12-818-000

Crossroads Pipeline Company
Attention: James R. Downs
5151 San Felipe, Suite 2500
Houston, TX 77056

Ladies and Gentlemen:

1. On June 22, 2012, Crossroads Pipeline Company (Crossroads) filed a non-conforming agreement with Northern Indiana Public Service Company (NIPSCO) and corresponding tariff records.¹ The agreement contains a provision that gives NIPSCO a Right of First Refusal (ROFR) option which is not available to other similarly situated shippers. Crossroads requests that the tariff records be made effective November 1, 2012. The Commission will accept the contract and the associated tariff records subject to the conditions discussed below.
2. Crossroads describes its agreement with NIPSCO as a single-year seasonal agreement. The agreement is to be in effect from November 1, 2012 through March 31, 2013. Consistent with section 284.221(d)(2)(ii) of the Commission's regulations,² section 4(c)(1)(a) of Crossroads' General Terms and Conditions of Service (GT&C) provides a regulatory ROFR only to shippers with contracts for twelve consecutive months or more or with multi-year seasonal agreements at the maximum recourse rate. Section 4(c)(1)(b) of Crossroads GT&C provides that Crossroads may agree, on a not unduly discriminatory basis, to include a contractual ROFR in a discounted or negotiated rate firm service agreement which has a term of twelve consecutive months or more or is a multi-year seasonal service agreement.

¹ See Appendix.

² 18 C.F.R. § 284.221(d)(2)(ii) (2012).

3. Because NIPSCO's contract is a single-year seasonal contract with a term of only five months, it is not eligible for either the regulatory or contractual ROFR provided for by Crossroads' GT&C. However, Crossroads states that it has agreed to include a contractual ROFR in NIPSCO's service agreement as a non-conforming provision. Under that provision, if NIPSCO exercises its ROFR, it would be required to take the capacity subject to the ROFR for a full-year term, rather than the seasonal term.

4. In requesting the Commission to approve this non-conforming provision, Crossroads states that it has experienced a significant amount of turned back capacity and in 2013 it faces the expiration of up to 81 percent of its currently contracted capacity. Additionally, Crossroads states that in 2010 deliveries were down 25 percent from 2009; and in 2011 deliveries were down 43 percent from 2009. Crossroads states that, because of this, it must make its services more attractive to accommodate more shippers. Crossroads believes that providing a contractual ROFR for single-year seasonal service does just that.

5. Furthermore, Crossroads states that even though this agreement deviates from the *pro forma* service agreement, it does not adversely affect other shippers' rights. Notably, Crossroads asserts that the service provided under the agreement is at the recourse rate and, in order to exercise its contractual ROFR, NIPSCO must enter into a new contract for a full-year term, rather than a seasonal term. Therefore, Crossroads argues that the non-conforming provision does not undercut the value of services held by current customers. Moreover, Crossroads states that it is willing to negotiate similar ROFR provisions for similarly-situated shippers who are interested in similar services which will allow other shippers to have access to a similar provision and there is no risk of undue discrimination that would necessitate the renegotiation of the agreement.

6. Public notice of the filing was issued on June 25, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), 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 protests or adverse comments were filed.

7. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.³ In *Columbia Gas Transmission Corp.*, the Commission clarified

³ See 18 C.F.R. §154.1(d) and 18 C.F.R. §154.112(b).

that a material deviation is any provision in a service agreement that: (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (b) affects the substantive rights of the parties.⁴ However, not all material deviations are impermissible. If the Commission finds that a deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.⁵ Therefore, there are two general categories of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (b) provisions the Commission can permit without a substantial risk of undue discrimination.

8. The Commission permits pipelines to negotiate a contractual ROFR with shippers who would not otherwise qualify for the regulatory ROFR required to be given to long-term, maximum rate shippers by section 284.221(d) of the Commission's regulations and the pipeline's tariff.⁶ However, in order to ensure that such contractual ROFRs are offered on a not unduly discriminatory basis, the Commission only allows pipelines to negotiate contractual ROFRs, if its tariff contains a provision offering to negotiate such contractual ROFRs on a not unduly discriminatory basis.⁷ While Crossroads' tariff includes a provision offering to negotiate contractual ROFRs, that provision does not apply to single-year seasonal service agreements such as NIPSCO's service agreement.

9. The Commission finds that the ability to negotiate a ROFR provision in a single-year seasonal transportation contract is a valuable right that may not be offered absent a tariff provision offering to negotiate such provisions on a not unduly discriminatory basis. Therefore, the Commission finds that to permit such a service for NIPSCO could constitute a substantial risk of undue discrimination. Accordingly, the Commission will accept the NIPSCO contract subject to the condition that Crossroads either eliminates the provision granting the ROFR rights on NIPSCO's seasonal service contract or revise its tariff to offer the right to access ROFR rights on single season transportation agreements to all shippers pursuant to not unduly discriminatory conditions.

⁴ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001).

⁵ *Id.*

⁶ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,091, at 31,341 (2000).

⁷ *Texas Eastern Transmission, LP*, 109 FERC ¶ 61,145, at P 6 (2004).

10. Crossroads has stated that it would offer such a provision to other similarly situated shippers who are interested. Accordingly, the Commission accepts the proposed contract as submitted and the proposed tariff record subject to the conditions set forth above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

Appendix

Crossroads Pipeline Company
Crossroads Tariffs, FERC NGA Gas Tariff
Effective November 1, 2012 Subject to Conditions

[Service Agreements Forms, Non-Conforming Service Agreements, 0.0.0](#)

[Tariff, Original Volume No. 1.1, 0.0.0](#)

[Table of Contents, , 0.0.0](#)

[Non-Conforming Svc Agmts, , 0.0.0](#)

[Non-Conforming Srvc Agmts, Section 2.1 NIPSCO - Contract No. 130139, 0.0.0](#)

[Negotiated Rate Svc Agmts, , 0.0.0](#)

[Non Conf Neg Rate Svc Agm, , 0.0.0](#)