

141 FERC ¶ 61,076
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. RP12-1131-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS SUBJECT TO
REFUND AND THE OUTCOME OF HEARING PROCEDURES

(Issued October 31, 2012)

1. On September 28, 2012, Rockies Express Pipeline LLC (REX) filed tariff records¹ to revise the Fuel, Loss and Unaccounted-for-Gas (FL&U) reimbursement percentages applicable to transportation service on REX's system. As discussed herein, the Commission accepts and suspends the proposed tariff records, to be effective November 1, 2012, subject to refund and the outcome of the ongoing hearing procedures in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000.

Background

2. Pursuant to section 38.3 of REX's General Terms and Conditions (GT&C), REX has the option to file a re-computation of its FL&U percentage factors at any time. In this filing, the FL&U reimbursement percentages were calculated based on the actual throughput, customer fuel and L&U retention, fuel usage and system losses/gains for the 12 months concluding July 31, 2012.

3. REX's filing in this proceeding follows filings to revise FL&U rates in Docket Nos. RP11-1844-000 (March 2011 filing) and RP12-390-000 (February 2012 filing). The Commission has accepted and suspended these FL&U filings subject to refund,² and, in March 2012, set both the March 2011 filing and the February 2012 filing FL&U rates for hearing.³ In addition to setting the calculation of the fuel rates for hearing, the

¹ Rockies Express Pipeline LLC, FERC NGA Gas Tariff, Third Revised Volume No. 1, Tariffs; CURRENTLY EFFECTIVE RATES, Currently Effective Rates - ITS/FTS FL&U, 4.0.0; Incremental Fac. Rates, Cheyenne Booster Facilities, 3.0.0.

² *Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248 (2011); *Rockies Express Pipeline LLC*, 138 FERC ¶ 61,241, at P 53 (2012) (Hearing Order).

³ Hearing Order, 138 FERC ¶ 61,241 at P 53.

Commission also set for hearing whether REX's fuel mechanism should be changed prospectively.⁴ This hearing proceeding is ongoing.

Protest and Comments

4. Public notice of the subject filing was issued on October 1, 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. On October 10, 2012, the Indicated Shippers⁵ filed a protest.

5. On October 23, 2012, Ultra filed a late protest. Consistent with section 154.210 of the Commission's regulations and the notice issued on October 1, 2012, protests in this proceeding were due on October 10, 2012. The Commission rejects as untimely Ultra's protest, which was filed 13 days late.

6. Indicated Shippers state that REX's September 28, 2012 filing raises issues that the Commission has already set for hearing in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000.⁶ Indicated Shippers state these issues include REX's proposed use of a five-year amortization for its calendar 2010 deferred account balance⁷ and REX's use of the monthly natural gas index price in its fuel tracker mechanism. Accordingly, the Indicated Shippers protest REX's September 28, 2012 filing and request the Commission to accept the proposed tariff records subject to refund and the outcome of the ongoing hearing proceeding in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000. Indicated Shippers state that such an approach will avoid the unnecessary cost of litigating the same issues and conserve the parties' and the Commission's resources. Indicated Shippers

⁴ *Id.* P 54.

⁵ BP Energy Company; ConocoPhillips Company; ExxonMobil Gas & Power Company, a division of ExxonMobil Corporation; Shell Energy North America (US), L.P.; SWEPI LP; and WPX Energy Marketing, LLC.

⁶ Indicated Shippers' Protest at 2-3.

⁷ At the end of each month in each zone, REX compares its FL&U collections and its FL&U expenditures. The difference is placed into the deferred account. In its March 2011 filing in Docket No. RP11-1844-000, REX proposed a five-year amortization of the calendar 2010 deferred account balance. The Commission granted, subject to further Commission review, a waiver of section 38.5(C) of the GT&C to permit a 5-year amortization of the deferred account balance, \$20.3 million through December 31, 2010. *Rockies Express Pipeline LLC*, 134 FERC ¶ 61,248 at P 21.

state it will also ensure that REX's FL&U rates in this proceeding are adjusted to reflect the Commission's findings in the earlier dockets and will afford REX's shippers refund protection.

Commission Determination

7. Based upon a review of the filing, the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. REX's proposed tariff records raise issues of material fact involving the application of REX's existing fuel mechanism similar to the issues that are currently being addressed at hearing in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000. As the same issues raised by the subject filing are being litigated in the ongoing hearing on the prior REX fuel filings, the rates here must ultimately be adjusted to reflect the outcome in the ongoing hearing.

8. Accordingly, the Commission will accept and suspend the subject tariff records and permit them to become effective November 1, 2012, subject to refund, and the outcome of the ongoing hearing on REX's fuel tracker mechanism and earlier FL&U filings.

9. The Commission's policy regarding rate suspensions is that rate 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 that it may be inconsistent with other statutory standards.⁸ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.⁹ Such circumstances exist here where REX's filing is made pursuant to an existing tariff mechanism. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on November 1, 2012, subject to the conditions set forth in the body of this order and in the ordering paragraph below.

⁸ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

⁹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

The Commission orders:

The tariff sheets listed in footnote one are accepted and suspended to be effective November 1, 2012, subject to refund and the outcome of the ongoing hearing proceeding in Docket Nos. RP11-1844-000, *et al.*, and RP12-399-000, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.