

141 FERC ¶ 61,260  
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.

Alliance Pipeline L.P.

Docket No. RP13-355-000

ORDER ON TARIFF FILING

( Issued December 28, 2012)

1. On November 30, 2012, Alliance Pipeline L.P. (Alliance) filed revised tariff records<sup>1</sup> reflecting, among other things, an approximate four percent increase in the negotiated reservation charge, as compared to the respective rates currently in effect. Alliance seeks an effective date of January 1, 2013. In this order, the Commission accepts and suspends Alliance's revised tariff records, subject to the conditions discussed below, to be effective January 1, 2013. Furthermore, pursuant to section 5 of the Natural Gas Act (NGA), we direct Alliance to file revised reservation charge crediting provisions, or show cause why it should not be required to do so.

**I. Details of Filing**

2. Alliance states that it provides firm transportation service under Rate Schedule FT-1 for its existing shippers, all of which have agreed to pay negotiated rates. Alliance further states that these negotiated rate agreements provide that changes in Alliance's costs and billing determinants will be reflected in its negotiated rates from time to time. Alliance explains that the tariff sheets listed in the Appendix set forth the essential elements of Alliance's Rate Schedule FT-1 negotiated rate transactions, including the rates charged thereunder. Alliance asserts that it is filing the listed tariff sheets to reflect changes made to the rates charged under its negotiated rate agreements.

**II. Public Notice, Intervention, and Comments**

3. Public Notice of Alliance's filing was issued on December 3, 2012. Interventions and protests were due December 12, 2012. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), all timely filed motions to intervene and any unopposed motions to intervene out-

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<sup>1</sup> See Appendix.

of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Indicated Shippers filed a protest.<sup>2</sup>

### III. Discussion

#### A. Proposed Revisions to Alliance's Rates

4. On January 25, 2012, Alliance filed an application under section 7(c) of the NGA for a certificate of public convenience and necessity authorizing it to construct the Tioga Lateral Project. The Tioga Lateral is designed to connect natural gas production from the Bakken shale formation in Eastern Montana and Western North Dakota to Alliance's mainline. In a September 20, 2012 Commission Order (September Order),<sup>3</sup> the Commission issued a certificate of public convenience and necessity authorizing Alliance to construct and operate the Tioga Lateral and approved Alliance's request to charge incremental rates for the Tioga Lateral. Alliance has yet to place the Tioga Lateral into service or submit a tariff filing to include the incremental Tioga Lateral rates on its Statement of Rates in its tariff.

5. In the instant filing, Alliance's proposed rates reflect an increase of approximately four percent in the negotiated reservation charge, from \$17.1186/Dth/month to \$17.8752/Dth/month. The revised 2013 Negotiated Non-Renewal Charges applicable to shippers that did not previously elect to extend their contracts reflect a decrease of about eight percent, from the current year's \$1.4294/Dth/month to \$1.3153/Dth/month for 2013. Two shippers exercised their contractual extension right, and the Negotiated Non-Renewal Charges for those contracts remained the same.

6. Indicated Shippers argue that it appears that Alliance has included the costs from the Tioga Lateral in the mainline rates recoverable from its negotiated rate shippers. Indicated Shippers note that the inclusion of the Tioga Lateral costs appears to result in a half cent increase in the negotiated shippers' rates.

7. Indicated Shippers state that the Commission has yet to address whether it is appropriate for Alliance to assign to the mainline shippers paying negotiated rates the costs of incremental expansions in which the negotiated rate shippers may not participate. The Commission found that "concerns related to the treatment of any new service costs and revenues through the negotiated rate formula are premature. The appropriate forum

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<sup>2</sup> The Indicated Shippers are BP Canada Energy Marketing Corp. and ConocoPhillips Company.

<sup>3</sup> *Alliance Pipeline L.P.*, 140 FERC ¶ 61,212 (2012) (September Order).

to address any costs and revenues from the new services is Alliance's next regularly scheduled negotiated rate filing."<sup>4</sup>

8. Indicated Shippers state that the instant filing is the next regularly scheduled negotiated rate filing after the Commission authorized construction of the Tioga Lateral. Indicated Shippers argue that Alliance is not permitted to shift the costs of incremental expansions to mainline shippers paying negotiated rates. Further, Indicated Shippers state that by including the costs of the Tioga Lateral, Alliance is contradicting the Commission's finding in the September Order that the Tioga Lateral should be treated as an incremental project. Indicated Shippers submit that this issue should be set for technical conference.

### **Commission Determination**

9. For the reasons discussed below, Alliance's revised tariff sheets are accepted and suspended, subject to conditions.

10. The Commission is unable to identify, from the instant filing or Indicated Shippers' protest, whether or not any costs related to the Tioga Lateral have been included in the mainline rates recoverable from Alliance's negotiated rate shippers. Therefore, we direct Alliance to submit a compliance filing, within 30 days of this filing, identifying whether any costs associated with the Tioga Lateral have been included in the mainline rates recoverable from its negotiated rate shippers. To the extent costs associated with Tioga Lateral are included in the mainline rates recoverable from its negotiated rate shippers, we direct Alliance to submit revised tariff records removing any costs associated with the Tioga Lateral from the mainline rates recoverable from Alliance's negotiated rate shippers. As presaged in the September Order, the Commission here finds that the incremental Tioga Lateral costs should not be recovered from negotiated rate shippers taking only mainline service.

### **B. Reservation Charge Crediting Provisions**

11. Alliance's existing reservation charge crediting provisions are in set forth in section 7 of Rate Schedule FT-1, which state among other things:

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<sup>4</sup> *Alliance Pipeline L.P.*, 136 FERC ¶ 61,066, at P 38 (2011) (July 2011 Order). This order addresses a proposal by Alliance to initiate a Parking and Loan (PAL) service and an interruptible wheeling (IW) service at the Alliance Chicago Exchange Hub. In that proceeding, concerns were raised that Alliance could utilize its approved negotiated rate formula to attempt to recover the costs associated with the new services from its FT-1 shippers, including those that might not use the PAL or IW services.

Such Shipper's Monthly Bill for the subsequent Month, however, shall be reduced by a Reservation Charge Credit in an amount equal to the applicable Reservation Charge, divided by the number of Days in the Month, and multiplied by the difference between the volume scheduled pursuant to Section 12 of the GTC and made available by a Shipper, and the volume received by Transporter. Such Shipper shall be entitled to an additional Reservation Charge Credit in an amount equal to the applicable Reservation Charge, divided by the number of Days in the Month, and multiplied by the volume (based on the average heat content of such Shipper's Gas) difference between the Dths actually received from a Shipper, minus the Fuel Requirement, and the amount of Dths actually delivered to such Shipper. If, however, Transporter and Shipper mutually agree, Transporter may transport make-up Gas for Shipper within an agreed-upon period of time, in which event Transporter shall be relieved of its obligation to provide Reservation Charge Credits. Reservation Charge Credits shall only be available with respect to quantities scheduled as part of the Shipper's Contracted Capacity for receipt from Shipper's Primary Receipt Point and delivery to Shipper's Primary Delivery Point(s). The tendering of make-up Gas will in no way impact the availability of service under any Firm Transportation Agreement.<sup>5</sup>

12. Indicated Shippers contend that Alliance's currently effective reservation charge provision does not conform to Commission policy because it provides reservation credits only for *scheduled* quantities. Indicated Shippers state that in *non-force majeure* situations, where the curtailment occurred due to circumstances within the pipeline's control, the Commission requires pipelines to provide firm shippers a full reservation charge credit for the amount of primary firm service they nominated for scheduling which the pipeline failed to deliver. Indicated Shippers further contend that in *force majeure* situations, pipelines must provide partial reservation charge credits in order to share the risk of an event not in the pipeline's control.

13. Indicated Shippers contend that Alliance's tariff violates Commission policy by making available reservation charge credits only with respect to quantities the pipeline schedules as part of a shipper's contracted capacity for receipt from shipper's primary receipt point and delivery to shippers' primary delivery point. Indicated Shippers explain that Alliance's reservation charge crediting provision allows Alliance to provide

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<sup>5</sup> Alliance Pipeline L.P., FERC Gas Tariff, Rate Schedule FT-1 at § 7.

reservation charge credits for quantities Alliance has *scheduled*, rather than the amount a shipper *nominates*. Indicated Shippers argue that basing reservation charge credits on scheduled quantities violates Commission policy.<sup>6</sup> Indicated Shippers note that while the Commission has allowed pipelines to limit their obligation to provide reservation charge credits in situations where the failure to provide service is due to the conduct of upstream or downstream providers,<sup>7</sup> Alliance's pipeline does not fall within this narrow exception.

14. Indicated Shippers contend that consistent with prior orders, the Commission should require Alliance to either revise its reservation charge credit provisions to be consistent with Commission policy or to show cause that it should not be required to do so.<sup>8</sup>

### **Commission Determination**

15. Pursuant to section 5 of the Natural Gas Act, we direct Alliance to file revised reservation charge crediting provisions to be consistent with Commission policy (as discussed below), or show cause why it should not be required to do so.

16. The Commission has developed its reservation charge crediting policy in a series of individual adjudicatory proceedings.<sup>9</sup> That policy differentiates between the credits a pipeline is required to give firm shippers depending upon whether the outage is caused by

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<sup>6</sup> Indicated Shippers Protest at 6 (citing *Southern Natural Gas Co.*, 135 FERC ¶ 61,056, *order on reh'g*, 137 FERC ¶ 61,050, at P 18 (2011) (*Southern*) (clarifying that a pipeline must pay reservation charge credits when it fails to deliver 100 percent of the amount a firm shipper nominates, up to its maximum daily quantity or contractual entitlement, rather than the amount the pipeline ultimately schedules)).

<sup>7</sup> *Id.* at 7 (citing *Gas Transmission Northwest LLC*, 137 FERC ¶ 61,115 (2011), *order on reh'g*, 141 FERC ¶ 61,101, at P 40 (2012); *Paiute Pipeline Co.*, 139 FERC ¶ 61,089 (2012)).

<sup>8</sup> *Id.* at 5 (citing *Gas Transmission Northwest LLC*, 137 FERC ¶ 61,115).

<sup>9</sup> *See, e.g.*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, *North Baja Pipeline, LLC*, 111 FERC ¶ 61,101 (2005), *aff'd*, *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819 (D.C. Cir. 2007) (*North Baja*); *Southern Natural Gas Co.*, 135 FERC ¶ 61,056, *order on reh'g*, 137 FERC ¶ 61,050; *Northern Natural Gas Co.*, 135 FERC ¶ 61,250, *order on reh'g*, 137 FERC ¶ 61,202 (2011); *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257 (2011) (*Midwestern*).

a *force-majeure*<sup>10</sup> event or a non-*force majeure* event. With respect to non-*force majeure* outages, where the curtailment occurred due to circumstances within a pipeline's control, including planned or scheduled maintenance, the Commission requires the pipeline to provide firm shippers a full reservation charge credit for the amount of primary firm service they nominated for scheduling which the pipeline failed to deliver.<sup>11</sup>

Commission policy also requires that the pipeline provide partial reservation charge credits during periods when it cannot provide service because of a *force majeure* event in order to share the risk of an event not in the control of the pipeline. In that event, the Commission allows two different methods for the credit, either full reservation credits after a short grace period (i.e., ten days or less) (Safe Harbor Method) or partial crediting starting on the first day of a *force majeure* event (No Profit Method).<sup>12</sup> In *North Baja Pipeline, LLC v. FERC*,<sup>13</sup> the Court of Appeals for the District of Columbia Circuit affirmed Commission orders requiring a pipeline to modify its tariff to conform to these policies.

17. Alliance's tariff appears to be inconsistent with Commission policy with respect to the manner in which reservation charge credits are calculated. In non-*force majeure* situations, the Commission requires the pipeline to provide shippers a full reservation charge credit for the amount of primary firm service the shipper nominated, but that the pipeline was unable to schedule or deliver.<sup>14</sup> Similarly, partial credits in a *force majeure* situation are based on the primary firm service the shipper nominated but the pipeline failed to schedule or deliver because of the *force majeure* outage.

18. However, Alliance's reservation charge crediting provisions do not distinguish between non-*force majeure* and *force majeure* situations. Further, Alliance's tariff bases

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<sup>10</sup> *Force majeure* events are "unexpected and uncontrollable events." *Tenn. Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,088 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997).

<sup>11</sup> *See, e.g.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,086, *as clarified by, Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006).

<sup>12</sup> *Midwestern*, 137 FERC ¶ 61,257 at PP 19-20.

<sup>13</sup> *North Baja*, 483 F.3d 819.

<sup>14</sup> *Southern*, 137 FERC ¶ 61,050 at P 19. The Commission has permitted pipelines to use an appropriate historical average of usage as a substitute for use of actual scheduled amounts to determine the level of the shipper's reservation charge credits under circumstances where the pipeline has given advance notice of the unavailability of service, i.e., due to an outage or scheduled maintenance, prior to shippers' scheduling nominations. *Southern*, 135 FERC ¶ 61,056 at P 33.

reservation charge credits on the amount of gas *scheduled* by Alliance, rather than the amount of gas *nominated* by shippers. Thus, the language can be read as providing that Alliance will not provide reservation charge credits in situations where, for example, it does not schedule primary firm service because it is conducting routine maintenance or because a *force majeure* outage has occurred. Accordingly, section 7 of Rate Schedule FT-1 appears to be contrary to Commission policy requiring that credits be measured by the amount of gas *nominated* by the shipper which the pipeline did not schedule.<sup>15</sup> Therefore, we direct Alliance to file revised reservation charge crediting provisions to be consistent with Commission policy, or show cause why it should not be required to do so.

### C. Suspension

19. 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.<sup>16</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>17</sup> Such circumstances exist here, where Alliance is revising its negotiated rates pursuant to an existing tariff mechanism.

#### The Commission orders:

(A) Alliance's revised tariff records are accepted and suspended, subject to refund and conditions, as discussed above, effective January 1, 2013.

(B) Pursuant to section 5 of the Natural Gas Act, Alliance must, within 30 days of the date of this order, revise the reservation charge crediting provisions in its tariff to comply with Commission policy or show cause why it should not be required to do so, as discussed above.

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<sup>15</sup> *Id.*

<sup>16</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>17</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension).

(C) Alliance must make the filings required by this order within 30 days of the date this order issues.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## **Appendix**

Alliance Pipeline L.P.  
FERC NGA Gas Tariff  
Alliance L.P. Database

[Sheet No. 11, Essential Elements of Negotiated Rate Transactions 1/ 4/, 12.0.0](#)

[Sheet No. 12, , 5.0.0](#)

[Sheet No. 13, , 8.0.0](#)

[Sheet No. 14, , 5.0.0](#)

[Sheet No. 15, , 7.0.0](#)

[Sheet No. 50, Essential Elements of Negotiated Rate Transactions, 4.0.0](#)