

**8 FERC ¶ 61,241**

**Black Warrior Pipeline, Inc. and Rayar Pipeline, Inc., Docket No. CP79-295**

**Order Authorizing Transportation of Gas by an Intrastate Pipeline, Approving Rates and Charges and Granting Petitions to Intervene**

**(Issued August 31, 1979)**

**Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr. and George R. Hall.**

On April 27, 1979, Black Warrior Pipeline, Inc., and Rayar Pipeline, Inc. (hereinafter collectively referred to as Black Warrior), who jointly own Black Warrior pipeline, an intrastate pipeline operating in the State of Mississippi, filed in Docket No. CP79-295 an application, as supplemented on June 8, 1979, August 8, August 14, and August 28, 1979, pursuant to Section 284.127 of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) for authorization to transport natural gas on behalf of Southern Natural Gas Company (Southern Natural), all as more fully set forth in the application. Black Warrior presently gathers and transports gas from the Corinne field in Monroe County, Mississippi, to Mississippi Valley Gas Company (MVG), a gas distribution company operating solely in the State of Mississippi.

On May 1, 1973, certain producers in the Corinne field entered a contract to sell gas to MVG. In order to transport the gas from the field to MVG, the producers entered into a contract with Black Warrior, a corporation owned by certain of the producers. On June 5, 1973, Black Warrior obtained authorization from the Public Service Commission of the State of Mississippi (Mississippi PSC) to transport the gas for MVG.

Recently, MVG renegotiated its contract with a producer operating in the Corinne field, Grace Petroleum Company, releasing a portion of the reserves to which it had contract rights. Southern Natural then acquired rights to certain reserves in the Corinne field.

On April 24, 1979, Southern Natural entered into a transportation agreement with Black Warrior under which Black Warrior will construct and operate an extension of its pipeline facilities in the Corinne field to Southern Natural's system and transport up to 25,000 Mcf of gas per day for Southern Natural.

Under the agreement, Black Warrior will recover the costs of the construction and operation of the proposed facilities from Southern Natural through a demand charge based on an estimated annual cost of service. The cost of service reflects a ten percent straight line depreciation rate based upon the life of the estimated reserves in the Corinne field. In order to provide for the possibility of production of gas beyond a ten-year period, the transportation agreement includes a primary term of fifteen years and an extension from year to year thereafter until cancelled by either party. According to a reserve study by Black Warrior on the field, however, less than one percent of the reserves may actually remain after a period of ten years of production.

To compensate for the use of existing facilities, Black Warrior will impose a commodity charge on Southern Natural, equal to the rate of 8 cents per Mcf applicable to the gathering and transporting of gas for MVG.

Black Warrior seeks prior Commission approval herein since the proposed

transportation arrangement with Southern Natural, performed under Section 311 of the NGPA,<sup>1</sup> is for a period of more than two years. *See*, 18 CFR 284.122(b). Its application is filed in accordance with Section 284.127(a) of the Regulations.

Section 31(a)(2)(B) of the NGPA sets out a two-pronged test for intrastate pipeline rates and charges proposed in connection with a Section 311(a)(2) service: (1) The rates shall be fair and equitable; and (2) The rates may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

In Section 284.123 of the Regulations, the Commission has promulgated regulations governing the rates and charges of intrastate pipelines acting under Section 311(a)(2) of the NGPA. The general rule is that such rates and charges shall be fair and equitable. *See*, 18 CFR 284.123(a). In Section 284.123(b) the Commission provides intrastate pipelines with the right to elect to base the rates and charges for Section 311(a)(2) service on certain currently effective allowances and rates set by the appropriate state regulatory agency. In the instant case, however, such an election is unavailable to Black Warrior because the Mississippi PSC does not regulate transportation rates and Black Warrior does not provide city gate service covered by Sections 284.123(b)(1)(i)(A) or (B).

Black Warrior, then, is required to seek specific Commission approval of the proposed rates and charges under Section 284.123(b)(2).<sup>2</sup>

Approval of the rates and charges rests upon a determination that they are fair and equitable and otherwise in accord with Section 311(a)(2)(B) of the NGPA. In considering the proposed rates in the instant transaction, we shall consider the two charges principally involved -- demand and commodity -- in turn.

Black Warrior proposed a monthly demand charge of \$2.14 per Mcf, based upon a daily contract demand of 25,000 Mcf, to be effective for the first three years of the service. In its August 14, 1979 supplement it indicated its willingness to accept a reduction in the monthly demand charge to \$2.08 per Mcf of daily contract demand. As stated above, Black Warrior proposes to recover, in its monthly demand charge, the total annual estimated cost of service for the pipeline extension, from Southern Natural. The demand charge is computed on an average annual cost of service basis using the first three years of operation.

Black Warrior proposes to use the pipeline extension, at least initially, solely for the purpose of transporting gas for Southern Natural under Section 311(a)(2) of the NGPA. Black Warrior will be required to reduce the demand charge to Southern Natural on a *pro rata* basis if any other transportation service is provided by use of the proposed facilities.

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<sup>1</sup> 15 U.S.C.A. Section 3371 (1979 Pocket Part).

<sup>2</sup> While specific Commission approval of the proposed rates and charges is required under Section 284.123(b)(2), this section of the Regulations permits an intrastate pipeline to proceed with a proposed transportation service, collecting rates subject to refund, providing that prior Commission approval for the proposed transportation service is not required under Section 284.122(b)(2). *See*, 284.123(b)(2). As stated above, Black Warrior is required to seek prior approval of the proposed service since it is for more than two years. *See*, Section 284.122(b)(1)(i) and (b)(2).

It is estimated by Southern Natural that if it constructed and operated facilities in lieu of having Black Warrior construct additional facilities it would be permitted to collect a monthly charge from a third party of \$1.95 per Mcf, based upon daily contract demand quantity and a reserve index of ten years.

The approach taken herein to determine whether Black Warrior's proposed demand charge is fair and equitable was to consider, first, the estimated cost of service associated with the pipeline extension. In seeking to arrive at a fair and equitable rate, the rate of return currently permitted Southern Natural<sup>3 3</sup> was applied to this cost of service calculation. A further consideration was the assumption made that the proposed pipeline extension will be constructed using entirely equity funds since Black Warrior has no outstanding debt and the cost of the facilities is not substantial. These various considerations, taken together, underlie the determination that the demand charge meets the fair and equitable test. It is noted that this is the first case in which the Commission has judged proposed rates under the fair and equitable standard, and that the course followed herein should not be considered as the exclusive method of determining whether rates and charges are in accordance with the fair and equitable test.

The requirement that the proposed demand charge not exceed an amount which is reasonably comparable to the amount which interstate pipelines would be permitted to charge for providing similar service is met here in the expert judgment of the Commission, and considering, as stated above, that Southern Natural provided an estimate of what it would be permitted to charge for providing similar service, and the proposed demand charge is reasonably comparable to such estimate. As which the above determination of the fair and equitable standard, it is noted that the course followed herein to determine whether the proposed demand charge meets the reasonably comparable test is not intended to be the exclusive method for arriving at such a determination.

The proposed commodity charge is intended to compensate Black Warrior for the use of existing facilities. The proposed charge of \$ .08 per Mcf is derived from the rate Black Warrior currently charges for transporting MVG gas. As stated above, MVG's releasing 50 percent of its contract rights with Grace Petroleum Company in the Corinne field permits Southern Natural to obtain reserves from the field, which Black Warrior herein proposes to transport. The facilities to be used were originally used solely to provide a transportation service for MVG.

It is noted that, as matter of comparison, if Southern Natural were to undertake construction of facilities in 1979 to be used in place of the existing Black Warrior facilities, it would be entitled to a rate of approximately \$ .093 per Mcf, higher than Black Warrior's proposed commodity charge. It is further noted that a transportation rate based upon recovering only the costs related to the existing investment and future operating and maintenance expenses over the remaining recoverable gas reserves yields a rate of approximately \$ .077 per Mcf, only slightly less than the proposed commodity charge. This cost study, coupled with the fact that Southern Natural will be receiving service from the existing facilities identical to MVG and paying the same rate as paid for MVG gas transportation, is sufficient to support the proposed commodity charge as fair and equitable

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<sup>3</sup> Set in Docket No. RP78-36, order issued February 23, 1979, 6 FERC ¶ 62,063.

and as not exceeding an amount which is reasonably comparable to pipeline rates, within the meaning of Section 311(a)(2)(B). As with the discussion above of the proposed demand charge, it is noted that the method followed herein to make the two legal determinations commanded by Section 311(a)(2)(B) of the NGPA with regard to the commodity charge is not intended to be the exclusive method to make such determinations.

In its August 14, 1979 supplement, Black Warrior indicated its willingness to accept an overrun charge of \$ .08 per Mcf for all gas delivered to Southern Natural in excess of the contract demand quantity, and such charge will be approved.

In its petition to intervene in this proceeding, MVG states that it does not oppose the proposal of Black Warrior provided it is declared that MVG, its intrastate gas supply and transportation activities, remain exempt from the provisions of the Natural Gas Act. In its August 8, 1979 supplement, Black Warrior supports MVG's declaratory request. It is clear that the commingling of MVG's gas with that Southern Natural in the Corinne field pipeline facilities of Black Warrior will not affect the exempt status of MVG.

After due notice by publication in the Federal Register on May 18, 1979 (44 F.R. 29138), petitions to intervene were filed by Southern Natural and BWP, Inc., and, as stated above, MVG. No notices of intervention, protests to the granting of the application, or other petitions to intervene were filed.

*The Commission finds:*

- (1) The transportation service proposed in Docket No. CP79-295 is in the public interest.
- (2) The rates and charges mentioned above in connection with the service in Docket No. CP79-295 are fair and equitable and are otherwise in accordance with Section 311(a)(2)(B) of the NGPA.
- (3) Participation by Southern Natural and BWP, Inc., and MVG in this proceeding may be in the public interest.
- (4) The exempt status of MVG under the Natural Gas Act will not be affected by the activities of Black Warrior proposed in Docket No. CP79-295.

*The Commission orders:*

(A) Pursuant to Section 284.127(b) of the Commission's Regulations, the proposed transportation service of Black Warrior in Docket No. CP79-295 is hereby authorized.

(B) The authorization contained in paragraph (B) is conditioned upon Black Warrior's charging the following rates as explained above:

- (1) A monthly demand charge of \$2.08 per Mcf.
- (2) A commodity charge of \$ .08 per Mcf.
- (3) An overrun charge of \$ .08 per Mcf.

(C) The authorization contained in paragraph (A) is further conditioned upon Black Warrior's filing a cost and revenue study at the end of the first three years of service and every third year thereafter to justify its demand charge or to reflect current costs connected with the proposed service. Any rate adjustment found appropriate shall be effective on the tri-annual date.

(D) The authorization contained in paragraph (A) is further conditioned upon Black Warrior's filing for a reduction in the demand charge approved herein in the event the

proposed facilities are to be used to transport gas for persons other than Southern Natural.

(E) The authorization contained in paragraph (A) is further conditioned upon Black Warrior's agreeing not to file for an adjustment in the demand charge other than as provided in paragraphs (C) and (D) above.

(F) The authorization contained in paragraph (A) is further conditioned upon Black Warrior's filing an annual report, beginning one year from the date of initial delivery, of the volumes transported during the year, on a monthly basis, and the total revenues resulting from such transportation.

(G) The authorization contained in paragraph (A) is further conditioned upon Black Warrior's operating the proposed compressor station so as to not increase noise levels at nearby schools or residences above an L[dn] of 55dBA.

(H) Southern Natural and BWP, Inc., and MVG are permitted to intervene in Docket No. CP79-295, subject to the rules and regulations of the Commission; *Provided, however*, that participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; and *Provided, further*, that the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.