UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Crossroads Pipeline Company — Docket Nos. RP00-333-002, RP00-333-003, RP01-51-002

ORDER ON COMPLIANCE AND
DENYING REQUEST FOR REHEARING

(Issued May 23, 2003)

1. On August 2, 2002, Crossroads Pipeline Company (Crossroads) filed revised tariff sheets in response to our order issued on July 3, 2002.[1] In the July 3 Order, we directed Crossroads to file actual tariff sheets to fully comply with Order No. 637.[2] In addition to its compliance filing, Crossroads concurrently filed a request for rehearing of our July 3 Order, arguing that the Commission acted in an arbitrary and capricious manner by failing to permit Crossroads to include an index price component to each of its penalties. This order finds that the Commission properly rejected Crossroads penalty proposal as being outside the scope of Order No. 637.

2. This order encourages competition, helps create competitive equality for capacity release and pipeline capacity, removes impediments to the sale and use of capacity, creates more flexibility for shippers and generally benefits customers by enhancing pipeline services.

Background

---

[1] Crossroads Pipeline Co., 100 FERC ¶ 61,025 (2002) (July 3 Order).

[2] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,091 (Feb. 9, 2000); order on rehearing, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000); order on rehearing, Order No. 637-B, 92 FERC ¶ 61,062 (July 26, 2000); aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. Apr. 5, 2002).

3. On June 15, 2000, as revised on August 9, 2001, Crossroads filed pro forma tariff sheets in compliance with Order No. 637. In the July 3 Order, the Commission found that Crossroads generally complied with the requirements of Order No. 637. However, the Commission directed Crossroads to revise its tariff to make certain compliance changes in the areas of scheduling equality, segmentation, discount portability, and shipper penalties.

4. With regard to Crossroads' proposal to add a variable penalty, based on a gas index price, to its current fixed penalty amount, the Commission rejected this proposal as beyond the scope of this Order No. 637 compliance proceeding. The Commission reiterated that Order No. 637 was not an opportunity for pipelines to file to increase their penalties or make their penalty provisions more stringent.[3] Accordingly, the July 3 Order directed Crossroads to remove this aspect of its proposal without prejudice to a future tariff filing pursuant to Section 4 of the Natural Gas Act.

Crossroads' Compliance Filing

5. In its compliance filing, Crossroads filed revised tariff sheets to comply with the July 3 Order.[4] These tariff sheets revise provisions pertaining to segmentation, discount portability, and shipper penalties.

Public Notice and Interventions

6. Public notice of Crossroads' compliance filing was issued on August 12, 2002. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations. None was filed.

Crossroads' Request for Rehearing

7. Under Section 19 of its tariff, Crossroads can assess penalties on its shippers for: 1) takes in excess of total firm entitlements; 2) failing to interrupt service; 3) failing to comply with an OFO; 4) monthly imbalances; and 5) park and loan violations. In its June 15, 2000 compliance filing, Crossroads proposed to retain these existing penalties, and with the exception of the park and loan penalty, would modify its other penalties by adding a variable penalty amount, based on a gas index price, to its current fixed penalty amount. Crossroads stated that the proposed index price component would prevent shippers from gaming its system, since gaming could potentially cause significant harm to system reliability.

---

[3] July 3 Order at P 53.

[4] See Appendix.

8. Crossroads also proposed to add a new Section 19.7, "Critical Day Requirement for Penalties." This provision authorizes Crossroads to only impose penalties on its shippers during "critical days" when circumstances have led to conditions which could severely deteriorate the integrity of the system, except for the failure to interrupt and OFO penalties. For penalties ascribed for conduct that occurs over a monthly as opposed to a daily period, Crossroads will only impose such penalties if it declares a critical day during that monthly period.

9. The July 3 Order rejected Crossroads' proposal to include an index price as a component of each of the above penalties as beyond the scope of the Order No. 637 compliance proceeding. The Commission therefore directed Crossroads to remove this aspect of its proposal, without prejudice to a future tariff filing to address its concerns about arbitrage.

10. On rehearing, Crossroads now argues that the Commission acted in a manner inconsistent with its existing precedent, by failing to permit Crossroads to include an index price component to each of its penalties. Crossroads states that it designed its proposal to add a variable component, based upon an index price, to its existing fixed penalties to prevent gaming by shippers. Crossroads states that the proposed penalty would discourage arbitrage behavior because it would always penalize the shipper by an amount that exceeds the gas price that the shipper could receive in other markets.

11. In support of its argument, Crossroads states that the Commission approved index price components in other pipelines' Order No. 637 filings, and cites to our recent decisions in East Tennessee Natural Gas Co.[5] and Gulf South Pipeline Co.[6] as examples of where pipelines have added an index price component to its penalty provisions. In East Tennessee, the Commission approved the addition of an index price component to its existing penalties, whereas in Gulf South, Crossroads argues that the Commission accepted an index price with a premium in place of a fixed penalty. In light of these cases, Crossroads believes that the Commission's refusal to allow it to include an index price component to each of its penalties is arbitrary and capricious.

Discussion

12. The revised tariff sheets filed by Crossroads on August 2, 2002, generally comply with the July 3 Order and are accepted effective the date that this order issues. Crossroads did not propose revisions to address the issue of scheduling equality, as directed by the July

---

[5] 98 FERC ¶ 61,060 (2002) (East Tennessee).

[6] 98 FERC ¶ 61,278 (2002) (Gulf South).

3 Order. However, we note that Crossroads filed tariff sheets in Docket No. RP02-461-000, to comply with Order No. 587-O, to adopt the capacity release timeline as contained in Version 1.5 of the North American Energy Standards Board's Standard 5.3.2. Since the Commission subsequently accepted Crossroads' proposal to adopt Version 1.5, Crossroads' compliance here, with regard to scheduling equality is rendered moot.[7]

13. With respect to Crossroads' request for rehearing, we find that although the Commission has permitted an index price component to be included in some pipelines' Order No. 637 proposals, we did not consider that those particular pipelines (e.g., Gulf South) were using their Order No. 637 filings as an opportunity to increase their penalties or make them more stringent.

14. We find that Crossroads' proposal and circumstances are not similar to that of Gulf South. In Gulf South, the pipeline proposed to replace all of its fixed penalties with variable penalties based upon the market price of natural gas at the Henry Hub on the date the shipper incurred the penalty. For example, Gulf South proposed to change its penalty for System Management Plan (SMP) violations from $10 per Dth for volumes exceeding a 10 percent variance to five times the Henry Hub Midpoint price. The Commission, however, found that unless Gulf South could demonstrate the need for a "five times" penalty, a more appropriate SMP penalty was two times the Henry Hub Midpoint price. As such, recognizing that the midpoint price of natural gas at Henry Hub typically ranges between $2 and $5 per Dth, the Commission found that a penalty of two times the Henry Hub Midpoint price would, in many cases, actually result in lower penalties when compared to Gulf South's then-existing fixed penalty of $10 per Dth.

15. In contrast to Gulf South, Crossroads did not propose to replace its fixed penalties with a variable penalty that has the potential to result in a lesser penalty than its current fixed penalties. Instead, Crossroads proposed to increase its penalties by adding a variable penalty amount, based on a gas index price, on top of its existing fixed penalty amount. Thus, Crossroads' proposed penalty would result in an increased penalty amount to its shippers, whereas the penalty mechanism that was accepted in Gulf South would likely result in reduced penalties to its shippers. Therefore, the Commission properly found that Crossroads' proposal would only result in increased penalties to its shippers. Again, we reiterate our policy of not allowing pipelines to use Order No. 637 as an opportunity to increase their penalties or make them more stringent.

16. With respect to our decision in East Tennessee, in a contemporaneous order, we reverse our decision in East Tennessee and direct the pipeline to remove the index price

[7] Crossroads Pipeline Co., 100 FERC ¶ 61,359 (2002).

component that was previously approved. Accordingly, our decision in East Tennessee will now conform to our July 3 Order and Crossroads' request to rehear this matter is denied.

The Commission orders:

(A) Crossroads' referenced tariff sheets are accepted to be effective the date that this order issues.

(B) Crossroads' request for rehearing of the July 3 Order is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Crossroads Pipeline Company
FERC Gas Tariff, First Revised Volume No. 1

Tariff Sheets Effective, The Date This Order Issues

First Revised Sheet No. 2
First Revised Sheet No. 9
Original Sheet No. 9A
First Revised Sheet No. 30
First Revised Sheet No. 106
First Revised Sheet No. 119
First Revised Sheet No. 120
Second Revised Sheet No. 122
Second Revised Sheet No. 123
First Revised Sheet No. 124
Original Sheet No. 125
Original Sheet No. 126
Second Revised Sheet No. 178
Second Revised Sheet No. 184
Second Revised Sheet No. 202
First Revised Sheet No. 203
First Revised Sheet No. 213
Original Sheet No. 213A
First Revised Sheet No. 214
Original Sheet No. 214A
First Revised Sheet No. 215
First Revised Sheet No. 216
First Revised Sheet No. 233
First Revised Sheet No. 234
Original Sheet No. 235
First Revised Sheet No. 240
Original Sheet No. 616
Original Sheet No. 618
Original Sheet No. 619