UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Continental Resources, Inc.

v. Docket No. OR05-11-000

Bridger Pipeline, LLC

ORDER ON COMPLAINT

(Issued November 18, 2005)

1. On September 19, 2005, Continental Resources, Inc. (Continental) filed a motion to intervene and protest the tariff supplements filed by Bridger Pipeline, LLC (Bridger) in Docket No. IS05-474-000, *et al.*, and a complaint concerning Bridger's rates for transportation of oil on certain segments of Bridger's pipeline system. The complaint was assigned Docket No. OR05-11-000.[1] For the reasons appearing below, Continental's complaint is denied.

Background

2. On June 30, 2005, Bridger submitted a tariff filing in Docket No. IS05-397-000 with a cost-of-service justification that proposed to increase certain rates for the transportation of crude oil on its pipeline system.[2] Nexen Marketing USA, Inc.

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[1] By order issued September 30, 2005, the Commission accepted the tariffs of Bridger as filed, finding that since Continental was not a current shipper under the tariff supplements filed by Bridger, it did not have standing to protest those filings, and stated that the Commission could address the issues raised by Continental in the complaint proceeding in Docket No. OR05-11-000. *Bridger Pipeline, LLC*, 112 FERC ¶ 61,349 (2005) (September 30 Order) at P21. Continental filed an application for rehearing of the Commission's September 30 Order, which we will address in a subsequent order.

[2] Bridger transports Canadian crude oil from the U.S./Canadian border near Raymond, Sheridan County, Montana (International Boundary) southward to Baker, Fallon County, Montana. Bridger also gathers crude from oil fields along its system.

(Nexen), protested the tariff filing. By order issued July 29, 2005, the Commission accepted and suspended the tariff supplements[3] to become effective July 15, 2005, subject to refund, and set the matter for hearing and settlement judge procedures.[4] On August 24, 2005, Continental filed a motion to intervene out of time and protest of Bridger's tariff filing in Docket No. IS05-397-000.

3. During the course of the settlement judge procedures, the parties reached agreement on the rates to be charged by Bridger for those movements. On September 6, 2005, Nexen withdrew its protest. On September 9, 2005, the Chief Administrative Law Judge issued an order terminating the proceedings, since the parties had reached a settlement in the case, and denied Continental's motion for leave to intervene out of time as moot.

4. On September 2, 2005, Bridger filed tariff supplements in Docket No. IS05-474-000, *et al.*, to implement the settlement reached with Nexen. It is this filing to which the complaint of Continental relates. On September 30, 2005, the Commission accepted the tariff supplements filed by Bridger.

Discussion

5. In its complaint, Continental challenges the justness and reasonableness of Bridger's rates, including the sulfur content provisions, contained in the tariff supplements filed by Bridger in Docket Nos. IS05-474-000, *et al.* Continental asserts that Bridger's rates lack cost justification and are unjust and unreasonable, and that Bridger's sulfur content restriction and mixed stream crude provisions contained in the tariffs are unduly discriminatory and preferential. Continental's complaint specifies individual items of Bridger's cost of service that it believes produce the unjust and unreasonable rates.

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[3] Supplement No. 5 to FERC Tariff No. 3, Supplement No. 5 to FERC Tariff No. 4, Supplement No. 4 to FERC Tariff No. 5, Supplement No. 4 to FERC Tariff No. 9 and Supplement No. 5 to FERC Tariff No. 10. The instant tariff supplements include Montana origin points at the International Boundary; Poplar Station in Roosevelt County, South Poplar Station in Richland County, Richey Station and Glendive Station in Dawson County; and Cabin Creek Station in Fallon County. The instant tariff supplements' Montana destination points include Poplar Station, Richey Station, and Baker Station, and also Alexander Station, McKenzie County, North Dakota (via a joint tariff with Belle Fourche Pipeline).

[4] *Bridger Pipeline, LLC*, 112 FERC ¶ 61,151 (2005) (July 29 Order).

6. Continental's complaint challenges only the following rates and tariffs of Bridger, including supplements thereto and reissues thereof: [5]

Supplement No. 5 to FERC No. 2
Supplement No. 6 to FERC No. 3
Supplement No. 5 to FERC No. 4
Supplement No. 5 to FERC No. 9
Supplement No. 6 to FERC No. 10

7. On October 13, 2005, Bridger answered Continental's complaint and moved to dismiss it.[6] Bridger contends that Continental's complaint in this docket is simply an attempt to circumvent the settlement reached with Nexen in Docket No. IS05-397-000. Bridger contends that Continental is not a current shipper on its system and that it should not be permitted to disrupt the reasonable and orderly administration of the Bridger pipeline system under its existing tariff, to which no current shipper has objected. In addition to challenging the sufficiency of Continental's complaint, Bridger responds to each of the contentions made by Continental respecting its cost of service.

8. The threshold question presented by Continental's complaint is whether Continental has complied with the Commissions procedural rules governing complaints, set forth at Rule 206 of the Commission's Rules of Practice and Procedure. [7] The rule provides that any complaint must set forth the business, commercial, economic, or other issues being complained of as such relate to or affect the complainant. Further, the complaint must make a good faith effort to quantify the financial impact or burden created for the complainant as a result of the action or inaction which is the subject of the complaint. In addition, the complaint must include all documents that support the facts of the complaint in possession of or attainable by the complainant. The complaint must state whether the complainant has utilized alternative dispute resolution or other informal dispute resolution mechanisms under the Commission's supervision, or whether the complainant believes that such informal dispute methods would be effective in resolving its issues. As discussed below, we find that Continental's complaint fails to meet the requirements of Rule

[5] *See* Continental Complaint, P55.

[6] In addition, Nexen Marketing USA, Inc. filed an answer to Continental's complaint and a motion to dismiss certain portions of the complaint.

[7] 18 C.F.R. § 385.206 (2005).

206.[8] In addition to the requirements of Rule 206, we have indicated that a complainant who is not a customer of a pipeline must demonstrate that it is adversely affected by the action it challenges.[9]

9. In attempting to demonstrate its interest in Bridger's rates, Continental contends that it is a substantial producer of crude oil in Richland County, Montana, and that it is a current, past, or future shipper on the Bridger pipeline system. Exhibit 9 to Continental's complaint is a Verification of Economic Interest of Continental Resources, Inc., verified by a Mr. Tom Fewox, a marketing representative of Continental. Mr. Fewox states that "Continental was a shipper on Bridger as late as August 2005 when volumes were nominated and delivered to Bridger in connection with an imbalance Continental had on its line fill obligation." (Exh. 9, P 1)

Commission finding: The fact that Continental delivered volumes to Bridger to satisfy a line fill obligation to Bridger does not make Continental a shipper on Bridger's pipeline system. In its response to Continental's motion to intervene and protest, filed September 26, 2005, Bridger pointed out that the last time Continental had shipped on its system was in February 2004, and Continental did not meet the line fill requirements of Bridger's tariff.[10] The delivery of crude oil to Bridger in February 2005 merely satisfied this prior obligation and as such does not constitute "shipping" on Bridger's system, nor does Continental acquire the status of "shipper" by so delivering these volumes. Continental does not say whether title to the oil transfers to Bridger upon delivery, and we assume that it would, since it couches its description of the transaction as having been done to satisfy an obligation, presumably to Bridger. Therefore, no current economic effect can be inferred from the fact of Continental fulfilling its obligations in this manner, especially since the transaction occurred long before the rates that are the subject of the complaint were even filed.

10. Mr. Fewox states that Continental has historically sold crude oil in the field to third parties under evergreen contracts, and that one of these parties (Nexen) as up to

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[8] *See Chevron Products Co. v. SFPP, L.P.*, 99 FERC ¶ 61,196 (2002) at P26 (complaint dismissed for complainant's failure to provide adequate support as required by Rule 206, specifically to include all documents that support the facts in the complaint, and to make a good faith effort to quantify the financial impact or burden arising from the respondent's actions).

[9] *See Southern Union Gas Co. v. Northern Natural Gas Co.*, 71 FERC ¶ 61,198, at p. 61,717 (1995).

[10] Response of Bridger Pipeline LLC to Motion to Intervene and Protest of Continental Resources, Inc., Docket No. IS05-474-000, *et* al., at 7.

at least February 2005 trucked a portion of this field production for shipment on Bridger's pipeline system at the existing receipt point at Bridger's Polar Station. (Exh. 9, P 2)

Commission finding: The transactions described by Continental occurred long before the tariffs and rates were filed. Continental does not indicate whether such transactions as it describes are continuing to take place. Moreover, Continental's delivery of crude to a third party which ships on Bridger, without more, is not enough to demonstrate how Continental is affected by Bridger's tariffs or rates.

11. Mr. Fewox states that Continental may become even more of a substantial shipper on Bridger in the future. He states that Continental, through an affiliate, is attempting to obtain a right of way and necessary permits for connection to a Bridger line to accommodate Continental's production in Richland County, Montana. He states that Continental estimates initial shipments of up to 10,000 gross barrels per day once the connection is complete. (Exh. 9, P 3)

Commission finding: As we found in our September 30 Order on Continental's similar claims in its protest, these events are too speculative in nature to clearly demonstrate how Continental is presently affected by Bridger's tariffs and rates that are the subject of the complaint.

12. Mr. Fewox further states that Continental's substantial economic interest in Bridger's rates results from its sales of crude oil production under a contract which is directly impacted by Bridger's tariff rates. He states that the sales arrangement has recently been in excess of 100,000 barrels per month. He avers that "the price that Continental receives under this … arrangement is based on a formula which includes an adjustment for the transportation charges in Bridger's Supplement No. 5 to FERC No. 9 (FERC Docket No. IS05-476) for transportation from the International Boundary to Poplar Station, Montana, including 10.00 cents per barrel trucking charge, which charges are the subject of Bridger's September 2 tariff filing." Mr. Fewox attaches, as Attachment B to his verified statement, a copy of a crude sales pricing calculation under that sales arrangement utilizing Bridger's Supplement No. 5 to FERC No. 9 to calculate the sales price paid to Continental. (Exh. 9, PP 4-5)

Commission finding: The information provided by Continental in support of its contentions does not satisfy Rule 206. For example, Continental supplied only a verified statement of one of its marketing representatives, and notably did not provide the contract under which the crude oil was sold. Thus, we are unable to verify the accuracy of the description of the agreement based only on the information submitted. Merely showing a calculation of a price for crude using Bridger's tariff rate does not indicate in and of itself whether this calculation is used by the parties to set the price under the contract, nor does a per barrel price indicate how or to what extent Continental may be adversely affected by Bridger's tariff.

13. Mr. Fewox further contends that "Continental will be adversely affected by Bridger's sulfur requirements. Bridger is proposing to require inputs at certain points such as South Poplar to meet the 0.20 percent sulfur requirement while allowing others to either have no limit or a 0.50 percent sulfur requirement." Since Continental's production generally contains less than 0.20 percent sulfur, its production is of a higher value than the higher sulfur crude with which it would be mixed, thereby devaluing Continental's Richland County production.
(Exh. 9, PP 8-9)

Commission finding: The Commission has already discussed these claims of Continental in our September 30 Order, concluding that, based on Bridger's assurance that there would be no commingling of different sulfur grades of crude, Bridger's proposed tariff changes were not discriminatory or preferential. That order is the subject of a rehearing request filed by Continental on October 5, 2005. Accordingly, we will further address the sulfur requirements in Bridger's tariff in our order on rehearing, to the extent any further discussion is required in light of Continental's request for rehearing.

14. We find that Continental has neither satisfied our requirements for complaints as specified in Rule 206, nor demonstrated that it is adversely affected by Bridger's tariffs. We therefore will deny Continental's complaint.

<u>The Commission orders</u>:

Continental's complaint is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.