

154 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

DBM Pipeline, LLC

Docket No. CP15-104-001

ORDER GRANTING CLARIFICATION

(Issued February 18, 2016)

1. On July 24, 2015, the then-Acting Director of the Commission's Division of Pipeline Certificates in the Office of Energy Projects (Acting Director) issued an order granting certificate authorizations to DBM Pipeline, LLC to permit it to own and operate its existing Ramsey Residue Line.¹ As pertinent here, the Acting Director also found section 21.2 of DBM Pipeline's proposed General Terms and Conditions (GT&C) governing Allocation of Capacity to be overly broad and potentially unduly discriminatory, and directed DBM Pipeline to clarify or, in the alternative, modify its tariff regarding its right to reserve capacity and hold an open season.

2. On August 24, 2015, DBM Pipeline filed a request for clarification or, in the alternative, rehearing, of that portion of the July 2015 Order addressing GT&C section 21.2 of its proposed tariff. In addition, on August 24, 2015, DBM Pipeline filed in Docket No. RP15-1204-000 its baseline FERC NGA Gas Tariff in compliance with the July 2015 Order. That filing, which was accepted by letter order issued September 16, 2015, addressed the concerns expressed in the July 2015 Order. As discussed below, the Commission grants DBM Pipeline's requested clarification.

I. Background

3. Section 21 of DBM Pipeline's GT&C sets forth the procedures for requesting, and qualifications for receipt of, transportation service under Rate Schedules FT and IT.

¹ *DBM Pipeline, LLC*, 152 FERC ¶ 62,056 (2015) (July 2015 Order). The July 2015 Order provides additional background regarding DBM Pipeline and its proposal.

GT&C section 21.2, Allocation of Capacity, as proposed in DBM Pipeline's application, provided:

Transporter may hold an open season any time there is a request for available firm capacity. Transporter shall set forth the terms of the open season, including criteria for evaluating bids, in the open season notice.

4. In the July 2015 Order, the Acting Director determined:

The proposed tariff language is overly broad and may be unduly discriminatory. If a shipper requests firm service at the maximum recourse rate and the capacity is available, pipelines must contract with those shippers. If a pipeline wishes to reserve capacity such that the capacity is not immediately available or only available for a limited term, such reservations must be provided for as part of the tariff. Pipelines also should provide details about bidding and awarding of requests for capacity. DBM Pipeline is directed to clarify the availability of capacity and, if it intends to reserve capacity, add additional information on the right to reserve capacity and open season to its tariff.²

5. In its compliance filing in Docket No. RP15-1204-000, DBM Pipeline added the following language to GT&C section 21.2: "Transporter shall not reserve capacity. Instead, all available capacity on Transporter's system shall be posted on Transporter's Website." By letter orders issued on September 16, 2015, and October 14, 2015, the Director of the Commission's Division of Pipeline Regulation in the Office of Energy Market Regulation accepted the revised tariff records, including the original tariff language permitting DBM Pipeline to hold an open season in addition to the additional language prohibiting reservation of capacity and requiring website posting of available capacity.

II. Procedural Matters

6. On September 1, 2015, ConocoPhillips Co. filed a motion to intervene. ConocoPhillips did not address the Rule 214 criteria for granting late intervention.³ When late intervention is sought after the issuance of a dispositive order, the prejudice to

² July 2015 Order, 152 FERC ¶ 62,056 at 64,159.

³ 18 C.F.R. 385.214(d) (2015).

other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention. ConocoPhillips has not met its burden of justifying late intervention and, therefore, its motion to intervene is denied.

III. Discussion

7. DBM Pipeline requests that the Commission clarify that the Acting Director did not intend in the July 2015 Order to preclude DBM Pipeline from holding an open season pursuant to GT&C section 21.2 if a request for firm service is received, but rather was concerned that the provision would permit DBM Pipeline to reserve capacity. Alternatively, DBM Pipeline requests rehearing of this aspect of the July 2015 Order if the Commission did, in fact, intend to preclude it from holding an open season. DBM Pipeline states that while conducting an open season is not mandatory, it is long-standing and well-settled Commission policy to permit pipelines the discretion to hold open seasons when they receive requests for firm service, which, states DBM Pipeline, the Commission has recognized ensures that capacity is awarded to shippers that value it most.⁴

8. The acceptance of DBM Pipeline's proposed actual tariff records as submitted, including the originally-proposed language in GT&C section 21.2 flagged in the July 2015 Order, was indicative that the Commission did not intend to preclude DBM Pipeline from holding an open season prior to awarding capacity available on its system. Rather, the directive in the July 2015 Order was intended, as described, to preclude any potentially unduly discriminatory reservation of capacity by the pipeline, by requiring that the procedures relevant to any reservations of capacity be clearly set forth in the company's tariff. The additional tariff language submitted by DBM Pipeline in its compliance filing adequately addressed our concerns regarding the potential for the pipeline to improperly reserve capacity. In light of the clarification herein, DBM Pipeline's alternative request for rehearing is moot.

⁴ DBM Pipeline Request for Clarification at 3-4, including n.3.

The Commission orders:

DBM Pipeline's request for clarification is granted as discussed in the body of this order. DBM Pipeline's alternative request for rehearing is dismissed as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.