UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Trailblazer Pipeline Company | Docket Nos. RP03-162-004
RP03-162-005

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued July 13, 2004)

1. On May 23, 2003, the Commission issued an order in this proceeding [1] accepting tariff sheets submitted by Trailblazer Pipeline Company (Trailblazer), subject to further modification, directing Trailblazer to file revised tariff sheets, and denying a request for rehearing filed by Indicated Shippers.[2] On June 20, 2003, Trailblazer filed tariff sheets[3] in compliance with the May 23 Order in this proceeding, requesting effective dates of May 23, 2003, and August 15, 2003. Trailblazer and Indicated Shippers also filed requests for rehearing and/or reconsideration of the May 23 Order on June 20, and June 23, 2003, respectively.

2. As discussed below, the Commission denies rehearing, finds that Trailblazer has generally complied with the provisions of the May 23 Order, and conditionally accepts the tariff sheets listed in the appendix, effective May 23, 2003, and August 15, 2003, as proposed. This order benefits the public because it permits Trailblazer to implement reasonable tariff provisions and balances the need to assure shippers reasonable opportunity to obtain pipeline services with Trailblazer's need to ensure the shipper's creditworthiness.

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[1] 103 FERC ¶ 61,225 (2003) (May 23 Order).

[2] The Indicated Shippers are BP Energy Company, BP America Production Company, ConocoPhillips Company, and Chevron Texaco Natural Gas, a division of Chevron U.S.A. Inc.

[3] See Appendix.

Background

3. On November 29, 2002, Trailblazer filed revised tariff sheets pursuant to section 4 of the Natural Gas Act (NGA), and part 154 of the Commission's regulations. Trailblazer filed to comply with Article III of the Amended Stipulation and Agreement (Settlement Agreement) filed in Docket No. RP 97-408 on November 20, 1998. Article III of the Settlement Agreement required Trailblazer to file a major rate proposal to become effective no later than January 1, 2003. A number of parties protested Trailblazer's filing.

4. In an order issued December 31, 2002, [4] the Commission accepted revised tariff provisions involving creditworthiness, imbalance charges, the right of first refusal (ROFR) term matching cap, and capacity award procedures, subject to refund, conditions, and a technical conference. The order accepted the tariff sheets effective the earlier of June 1, 2003, or a date specified in an order issued after a technical conference.[5] The Commission determined that a number of issues required further consideration and directed staff to convene a technical conference. Indicated Shippers requested rehearing of the December 31 Order. The technical conference was held on February 6, 2003. Thereafter, parties submitted initial and reply comments.

5. On May 23, 2003, the Commission denied Indicated Shippers' rehearing request and accepted Trailblazer's proposed tariff sheets, effective on the date of that order, subject to further modification. The Commission directed Trailblazer to file revised tariff sheets within 30 days of the date of the order. Trailblazer filed revised tariff sheets on June 20, 2003.

Discussion

A. Rehearing Requests Related to Creditworthiness

1. 30-Day Notice of Termination of Service

6. The May 23 Order approved Trailblazer's proposals to reduce the notice period before it can suspend service to a non-creditworthy shipper, but reaffirmed the requirement that Trailblazer provide at least 30-days notice prior to terminating service. The Commission explained that its regulations require a 30-day notice prior to termination of service.

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[4] 101 FERC ¶ 61,405 (2002).

[5] The December 31 Order also accepted and suspended certain revised rate tariff sheets, effective January 1, 2003, subject to the outcome of a hearing.

7. In its request for rehearing, Trailblazer acknowledges that the Commission approved its proposal to provide for a reduced notice period before it can suspend service, but Trailblazer argues that the Commission erred in not likewise reducing the notice period before it can terminate service. Trailblazer avers that in the commercial world the primary concern when a shipper's credit deteriorates is bankruptcy. Mere suspension of service under a contract, it argues, preserves the contract and makes it subject to the bankruptcy process. Trailblazer asserts that it can protect itself from obligations that continue into bankruptcy only by terminating the contract prior to the filing of bankruptcy. Trailblazer cites its experience with Enron where Enron held capacity for 3 months while service was suspended. Although Trailblazer did not receive payment for the capacity during that period, Trailblazer could not release the capacity to other shippers. Shorter contract termination periods are generally accepted practices in the energy industry, avers Trailblazer. It is typical, it states, for a service provider to cancel a contract if the customer cannot provide adequate collateral within only a few days. The Commission, however, argues Trailblazer, ignored these considerations and the general industry practice, and failed to strike a balance among competing interests.

Commission Holding

8. The Commission denies rehearing. The Commission held in the May 23 Order that it was reasonable for Trailblazer to suspend service to a non-creditworthy shipper on 15 days written notice, but found that Commission regulations (section 154.602) require a 30-day notice prior to the termination of a tariff or service agreement. On rehearing, Trailblazer did not justify how a period of less than 30 days is a reasonable time period for a shipper to obtain collateral, and allow a Commission response to a shipper complaining of unfair treatment by the pipeline. We find here, in addition, that the shorter termination period proposed by Trailblazer is unnecessary to protect its financial interests. We found recently in the *Natural* proceeding[6] that prepayment of one month's service within a 5-day notice period, and the pre-payment of 3-months service provisions, which Trailblazer has also adopted in its compliance filing, fully satisfies pipeline concerns regarding bankrupt shippers. Trailblazer has not shown, moreover, that its experience with the Enron bankruptcy, if replicated in the future, would result in any different outcome under its proposed procedures and timelines. Trailblazer's compliance filing follows our suggestion for the appropriate notice periods, balancing the needs of the pipeline and shippers. Therefore, we accept the tariff revisions regarding this procedure, with the necessary modifications described below.

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[6] *See* Natural Gas Pipeline of America, 106 FERC ¶ 61,175 (2004) (*Natural*) at P 25.

2. Payment of Reservation Charges and Release of Capacity During Suspension

9. Although not specifically addressed in Trailblazer's tariff or the proposed changes to its tariff, an issue arose at the technical conference regarding whether reservation charges can continue when service has been suspended. Citing a series of recent decisions, the Commission held that when a pipeline suspends a shipper's service, the shipper must pay for service until the date service is suspended, but cannot be charged beyond that date.[7] The Commission stated that, if the pipeline is concerned that a non-creditworthy shipper may hold firm capacity off the market during a suspension period, the pipeline can terminate service after 30-days' notice.

10. Reciprocally, the Commission found that when its service is suspended a shipper may neither release nor recall capacity. The Commission explained that a shipper whose service has been suspended is not paying for, and therefore should not be allowed to use, its capacity. The Commission found that it would not be equitable to allow a shipper to release or recall capacity for which it has not paid.

11. Trailblazer argues in its rehearing request that the Commission's determination that a pipeline may not assess reservation charges during the suspension of service to a non-creditworthy shipper renders the suspension remedy essentially worthless. Because suspension of service does not terminate the contract, it avers, the contract can continue into a bankruptcy filing situation, during which time Trailblazer could not resell these capacity rights to another shipper on a long-term basis. If Trailblazer cannot assess charges during a suspension, it states, there is no rational incentive to utilize suspension as a tool.

12. On rehearing, Indicated Shippers assert that when service is suspended Trailblazer cannot remarket the capacity as firm capacity because the suspension ends when the shipper becomes creditworthy again. Thus, during the suspension the capacity is removed from both the primary and secondary markets. Indicated Shippers contend that shippers should still have the right to pay reservation charges during suspension, and in that case, should also have the right to release capacity. Indicated Shippers state that the Commission should allow suspended shippers paying reservation charges to release capacity because Trailblazer is fully subscribed and the only way shippers can acquire capacity is through capacity release. Moreover, they say, because a replacement shipper

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[7] *See* Tennessee Gas Pipeline Company, 102 FERC ¶ 61,075 (2003) (*Tennessee*); Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 (2003) (*Gulf South*); and PG&E Gas Transmission, Northwest Corp., 103 ¶ 61,137 (2003) (*PG&E*).

must satisfy Trailblazer's creditworthiness standards, capacity release in this situation benefits Trailblazer by replacing a non-creditworthy shipper with one that is creditworthy.

Commission Holding

13. In *Tennessee*, the Commission affirmed its determination that shippers should not be billed for demand charges after service is suspended, and the Commission applies that same reasoning here.[8] The shipper is not paying simply to reserve capacity; it is paying to reserve capacity and to have the pipeline transport gas using that capacity. The pipeline should not be entitled to repudiate its obligation under the contract to transport gas while still insisting that it benefit from the receipt of demand charges. In the case of a non-creditworthy shipper, the pipeline retains full control of the shipper's obligation to pay. Upon the shipper's failure to maintain creditworthiness, the pipeline can choose either to suspend service or to continue to provide service. If the pipeline elects to suspend service, it cannot bill for service that it does not offer to provide.[9] On the other hand, if the pipeline chooses not to suspend, it can continue to bill the shipper under the contract.

14. We disagree with Trailblazer's argument that, because a pipeline may not assess reservation charges during the suspension of service to a non-creditworthy shipper, the suspension remedy is essentially worthless. Rather, suspension enables the pipeline to protect itself from incurring losses from further performance under the contract while the shipper is in material breach of its contract. For instance, if the shipper fails to establish the required collateral and, the pipeline is concerned that the shipper will not be able to pay its future charges, the pipeline can limit its potential future losses by suspending the shipper's service.

15. Moreover, as Trailblazer recognizes, it is under no obligation to suspend service, and thus may continue to provide service, and continue to insist on the payment of reservation charges. Under its proposal here, however, Trailblazer would have the right to suspend service indefinitely while continuing to collect reservation charges for an indeterminate period. Trailblazer has failed to demonstrate the need for the extraordinary remedy of refusing to provide service to a shipper while at the same time billing the shipper as if it were providing the service.

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[8] Tennessee, 103 FERC ¶ 61,275 at P 86-88, *reh'g denied*, 105 FERC ¶ 61,120 at P 10-14.

[9] The pipeline could bring a court action against the shipper for the consequential, unmitigated damages caused by contractual breach.

16. Indicated Shippers' concerns on this matter are not persuasive. Suspension provides a means for a pipeline to protect itself in a situation where a shipper is delinquent or non-creditworthy. The Commission does not envision that suspension would last beyond 15 days for delinquencies or 25 days for creditworthiness concerns. As a result, firm capacity would be unavailable for only a very short time. In any event, once service is suspended, Trailblazer would have the obligation to make such capacity available on an interruptible basis (IT service) until the shipper regains its creditworthiness or the non-creditworthy shipper's contract is terminated.

3. <u>Collateral Requirements</u>

17. Trailblazer proposed to modify section 17 (Evaluation of Credit) of its GT&C to require non-creditworthy shippers to provide assurance of future performance obligations for longer than the current 3 months of service, up to one year.[10] In its post-technical conference comments, Trailblazer proposed to provide a sliding scale of prepayments from 4 months to 12 months based on contract length. Trailblazer contended that declining credit and liquidity throughout the industry warrant an increased level of prepayments. The Commission rejected Trailblazer's proposal, including its proposal for a sliding scale. The Commission noted that in *Northern Natural* it found that 3 months of payment "will accommodate the concerns of shippers while protecting Northern in the event that a firm shipper defaults on its obligations."[11] The Commission explained that it designed the 3-month payment standard to cover exposure during the period it requires to terminate a contract, and not to protect the pipeline against remarketing risk.

18. In its rehearing request, Trailblazer contends that changing industry conditions justify the reexamination of the Commission's prior reasoning. Trailblazer states that the fact that the Commission has accepted 3 months as the standard in the past during a period of stable credit and low credit risk does not address changing industry conditions or Trailblazer's reasons for increasing the level of security in what Trailblazer characterizes as a time of substantial and rapid deterioration of credit experienced by many shippers. Trailblazer contends that collateral based solely on 3 months of service charges is not reasonable in all circumstances, and avers that its proposed sliding scale of prepayment levels tailors the level of prepayment to the credit profile of the customer and the length of the contract term. The sliding scale approach, says Trailblazer, would allow it to apply an objective standard that would protect shippers against discrimination.

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[10] Assurance of future performance options include: (1) prepayments; (2) an irrevocable letter of credit; (3) a security interest in collateral; and (4) a guarantee by a person or another entity.

[11] Northern Natural Gas Company, 102 FERC ¶ 61,076 (2003).

Commission Holding

19. The Commission's general policy since Order Nos. 436 and 636 is that a pipeline can require a shipper to post collateral for no more than 3 months of service on existing facilities.[12] This standard for existing service balances the risks to the pipeline from potential contract default against the need under open access service to ensure that existing pipeline services are reasonably available to all shippers. The Commission adopted the 3-month collateral requirement because 3 months corresponds to the time it takes a pipeline to terminate a shipper in default and to position itself to remarket the capacity.[13] As the Commission explained in the May 23 Order, three months of collateral protects the pipeline against revenue loss while it completes the termination process and is in position to remarket the capacity. A pipeline reflects in its return on equity the business risk of remarketing capacity.[14] The rate of return component of the pipeline's base rates, in part, reflects normal financial risks associated with business operations, including contracting risks. To the extent Trailblazer believes that its allowed rate of return is too low, it can file a general rate case to support a higher rate of return.

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[12] *See* Florida Gas Transmission Co., 66 FERC ¶ 61,140 at 61,261 n.5&6, *order vacating prior order*, 66 FERC ¶ 61,376 at 62,257 (1994); Southern Trailblazer Gas Company, 62 FERC ¶ 61,136 at 61,954 (1993); Valero Interstate Transmission Company, 62 FERC ¶ 61,197 at 62,397 (1993); Texas Eastern Transmission Corporation, 41 FERC ¶ 61,373 at 62,017 (1987); Williams Trailblazer Gas Company, 43 FERC ¶ 61,227 at 61,596 (1988); Pacific Gas Transmission Company, 40 FERC ¶ 61,193 at 61,622 (1987); Tennessee Gas Pipeline Co. (*Tennessee*), 40 FERC ¶ 61,194 at 61,636 (1987); Trailblazer, 41 FERC ¶ 61,164 at 61,409, n.4 (1987); Northern Trailblazer Gas Co. (*Northern*), 37 FERC ¶ 61,272 at 61,822 (1986).

[13] The 3-months for termination are as follows. The first month's collateral reflects the practice of billing shippers after the close of the prior month. See 18 C.F.R. § 284.12(a)(1)(iii), Standard 3.3.14 (billing by the 9th business day after the end of the production month). The second month accounts for the time period given the shipper to pay, and an opportunity to cure a default. The third month reflects the requirement that the pipeline provide 30 days notice prior to termination. *See Northern*, 102 FERC ¶ 61,076 at P 49, n.10; 18 C.F.R. § 154.602.

[14] *See* Ozark Gas Transmission Company, 68 FERC ¶ 61,032, at 61,107-108 (1994) (business and financial risk determine where the pipeline should be placed within the zone of reasonableness); Williston Basin Interstate Pipeline Company, 67 FERC ¶ 61,137 at 61,360 (1994) ("Bad debts are a risk of doing business that is compensated through the pipeline's rate of return").

20. The Commission addressed this issue in the *Natural* proceeding. In *Natural*, we explained that the amount of collateral demanded of a shipper does not directly reduce the remarketing risk of the pipeline should the shipper default. Although with greater security in hand, Trailblazer would have a longer period to try to remarket the capacity, Trailblazer is still subject to the risk of remarketing the capacity. Further, requiring larger amounts of collateral, we pointed out, increases the current risk of default from a shipper that cannot provide such expensive collateral. The Commission determined in *Natural* that in balancing the interests of the pipeline and subsequent shippers on existing facilities, the potential benefit to the pipeline of longer collateral requirements for service on existing facilities is not sufficient to offset the harm to shippers and to the principle of open access service from having shippers required to provide larger collateral.

21. Trailblazer argues that the Commission's policy fails to allow Trailblazer to differentiate between differences in credit profiles of shippers when shippers first obtain capacity rights or when a shipper holding capacity becomes non-creditworthy. Trailblazer also states the Commission should permit a sliding scale of security requirements for different lengths of contracts.

22. The Commission already allows pipelines to allocate available capacity based on the highest valued bid for the capacity, without distinction as to customer class.[15] For example, in a situation when multiple shippers bid for available capacity, Trailblazer might appropriately consider the bid by a creditworthy shipper more valuable than an equal or greater bid by a non-creditworthy shipper. However, Trailblazer's tariff filing did not propose a method for evaluating bids by non-creditworthy shippers (or a method of establishing differences in credit standing of competing shippers), as compared to creditworthy shippers, or the length of contracts. Moreover, the Commission has requested comment on this issue in its creditworthiness rulemaking proceeding.[16]

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[15] *See Tennessee*, 76 FERC ¶ 61,101, at 61,518 (1996) (accepting net present value (NPV) formula for allocating capacity), *aff'd*, Process Gas Consumers Group v. FERC, 292 F.3d 831 (D.C. Cir. 2002) (affirming no length of contract cap for NPV bids); Texas Eastern Transmission Corporation, 79 FERC ¶ 61,258 (1997), *aff'd on rehearing*, 80 FERC ¶ 61,270 (1997) (use of net present value to allocate capacity), *aff'd*, Municipal Defense Group v. FERC, 170 F.3d 197 (D.C. Cir. 1999) (finding use of NPV allocation method not unduly discriminatory when applied to small customers seeking to expand service).

[16] Docket No. RM04-4-000, Notice of Proposed Rulemaking Concerning Creditworthiness Standards for Interstate Natural Gas Pipelines, 69 Fed. Reg. 8587 (February 25, 2004), FERC Stats. & Regs. ¶ 32,573 (Feb. 27, 2004).

Because Trailblazer has not submitted a detailed proposal and because the Commission will consider the matter in its rulemaking proceeding, we will deny Trailblazer's request here.

23. We also note that Trailblazer did not limit its proposal only to bidding situations where it allocates available capacity among various bidders. Here, Trailblazer proposes to require up to 12-months collateral in all situations, including for instance, when a shipper seeks to continue existing service as well as when a shipper bids for available capacity.[17] The statutory standards governing abandonment of service are stricter than those governing acquisition of capacity, and Trailblazer has not justified a change from the traditional 3-months collateral requirement for shippers seeking to retain service.[18]

4. Interest on Prepayments

24. The Commission's May 23 Order directs Trailblazer either to pay interest on any prepayment amounts it holds or to allow the shipper to place such amounts in an interest-bearing escrow account. In its rehearing request, Trailblazer states that requiring interest on prepayments will in fact undermine the basis for requiring assurance of future performance. It contends that interest payments and escrow accounts could suggest to a bankruptcy court that the amounts are intended to be security deposits held by Trailblazer, rather than a true prepayment by the shipper. Viewed thusly, asserts Trailblazer, these amounts could be recaptured by the bankruptcy estate, and not provide Trailblazer any protection, thus defeating the purpose of the prepayment requirement.

Commission Holding

25. The Commission addressed this same issue recently in *Tennessee* and in *Natural*, finding that payment of interest on collateral held by the pipeline, as a matter of policy, is appropriate.[19]

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[17] *See* section 16(b)(1) of the tariff language proposed by Trailblazer in its November 29, 2002 filing.

[18] *See* Process Gas Consumers Group v. FERC, 292 F.3d 831, 838 (D.C. Cir. 2002), *affirming*, *Tennessee*, 94 FERC ¶ 61,097 at 61,400 (2001) (different bidding standards apply to abandonment than to acquisition of capacity).

[19] *See* Tennessee Gas Pipeline Company, 105 FERC ¶ 61,120 at P 17-19 (2003), and Natural at P 28-31.

26. Under current rules, Trailblazer would hold the 3-month's collateral, while continuing to charge the shippers a monthly demand charge. This entitles the shipper to a return of the withheld payments if it satisfies Trailblazer's creditworthiness requirements. As we explained in *Tennessee* and *Natural*, the amounts provided Trailblazer by shippers are therefore designed to provide collateral or security against potential default, not prepayments of future demand charges. The pipeline must pay the shipper interest to cover the time value of the money it holds as security.[20] The Commission generally requires pipelines to pay interest on amounts held for shippers to ensure that the shippers are not unduly harmed by the pipelines' holding monies due, and that pipelines are not unduly enriched.[21] The Commission finds no basis for treating collateral put up by non-creditworthy shippers differently from other amounts held by the pipeline. Indeed, the pipeline may well hold such collateral for a long time (depending on the shipper's contract duration and whether it can satisfy the pipeline's creditworthiness requirements), and it would be inequitable for the pipeline to hold monies for such an indeterminate time without affording the shipper the opportunity to earn interest on the amounts held.[22]

27. Trailblazer's argument regarding the treatment of interest on prepayments by a bankruptcy court is not persuasive. Whether the funds are considered a deposit belonging to the shipper, or prepayment for services to be rendered by the pipeline by a bankruptcy court, the Commission has found that these "prepayments" for up to 3 months of service are not in fact prepayments, but constitute a security interest. The Commission's determination of how properly to treat collateral held by the pipeline cannot be governed by how a bankruptcy court may possibly treat the transaction, but on the Commission's determination of whether the pipeline's holding of such funds without the payment of interest is just and reasonable. Trailblazer must pay interest to ensure that the pipeline's

[20] *See* Commissioner of Internal Revenue v. Indianapolis Power & Light Co., 493 U.S. 203, 209 (1990) (amounts held by utility were not considered prepayments when the timing and method of refund are within the control of the customer).

[21] *See* Anadarko Petroleum Co. v. FERC, 196 F.3d 1264, 1267-68 (D.C. Cir. 1999) ("interest is merely a way of ensuring full compensation").

[22] *See, e.g.*, Trailblazer Pipeline Company, 103 FERC ¶ 61,074 at P 69 (2003) (requiring pipeline to pay interest on penalty revenues retained for only one year).

rates are just and reasonable and not unduly discriminatory.[23] The Commission, however, permits pipelines flexibility in structuring their collateral provisions, as long as the pipeline gives the shipper interest where the pipeline holds the collateral.[24]

28. The Commission imposes this interest requirement to mitigate the cost to the shipper of providing collateral when it lacks creditworthiness. This requirement also removes the profit incentive from this form of collateral (a prepayment) versus other forms, such as, irrevocable letters of credit. The actions of the Commission in providing just and reasonable creditworthiness provisions are independent of the hypothetical actions of a bankruptcy court. Further, Trailblazer is not prevented from pursuing any remedies it may have for contract breach in the event of non-payment. We find that prepayments to cure lack of creditworthiness are not Trailblazer's revenues, since Trailblazer has not yet provided service to the shipper related to the prepayments. [25]

B. Rehearing Requests Related to Other Tariff Issues

1. Five-Hour Open Season for Capacity Less Than One-Year

29. In its post-technical conference comments, Indicated Shippers argued that instead of the proposed 5 hours, Trailblazer should implement a 4-business-day advance notice of an open season for capacity available for less than one year. The longer time, it maintained, is necessary to allow a prospective shipper to do preparation work, such as financial and market analysis. The Commission disagreed with Indicated Shippers, explaining in the May 23 Order that the Commission has approved similar minimum posting and bidding periods in other tariffs. Specifically, it noted that in a Natural Gas Pipeline of America proceeding, the Commission approved a 5-hour open season identical to that proposed here applicable to firm capacity available for less than 5 months, explaining that the time period proposed reflects "the pace, intensity, and speed of today's transactional market" and that Indicated Shippers' request to extend the bid period "indicates an unrealistic view of Natural's competitive position and the needs of today's gas markets." [26]

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[23] *Natural* at P 30.

[24] *See Northern*, 102 FERC ¶ 61,076 at P 38-39 (2003) (shipper can deposit funds in an interest bearing escrow account where the principal is maintained by the pipeline and the interest is paid to the shipper).

[25] *Id.*, at P 31.

[26] Natural Gas Pipeline Company of America, 93 FERC ¶ 61,075, at 61,204 (2000).

30. In its rehearing request, Indicated Shippers contend that the Commission erred in approving Trailblazer's proposal to conduct no-notice 5-hour open seasons. They renew their contention that 5 hours is too short a period to permit shippers to make necessary business decisions regarding the acquisition of new capacity. Indicated Shippers states that more time is needed to coordinate the acquisition of the capacity with the purchase of gas supplies, to acquire any needed capacity on upstream or downstream pipelines, and to contract with customers to be served. The 5-hour period, they say, is also contrary to Commission-allowed time frames in other settings, such as the 30-day ROFR period or the 30 days for a replacement shipper to decide whether to retain capacity held by a releasing shipper determined to be non-creditworthy.

Commission Holding

31. Indicated Shippers has presented no new facts or arguments on rehearing. For the reasons already stated in the May 23 Order, we disagree with Indicated Shippers' that a no-notice 5-hour bid period for short-term capacity is too short in view of the steps that a shipper must take before bidding for capacity. Moreover, the industry standard in capacity release situations actually involves a shorter time frame than Trailblazer proposes here. Under the capacity release standards of the North American Energy Standards Board (NAESB),[27] releases of less than one year, subject to bid, are only posted once a day, at 12 P.M. CCT,[28] with the award of capacity communicated by 2:00 P.M., unless there is a match involved, in which case the award is posted by 3 P.M.[29] Many of the same business considerations are involved in bidding for short-term capacity and bidding for short-term released capacity, and the 5-hour bidding period here for short-term capacity is consistent with the 2-hour industry standard for capacity release.

32. The examples that the Indicated Shippers provided to support longer bidding periods are inapposite to the immediate allocation of short-term capacity involved here. The 30-day bidding period for ROFR relates to a situation where the capacity in question is under contract. The pipeline begins the ROFR bidding process 5 ½ months prior to when the capacity could become available. Because Trailblazer knows that capacity will not become available until a date in the future, Trailblazer does not need a short bidding period. Likewise, the 30-day period allowed for a replacement shipper to decide whether to retain capacity held by a non-creditworthy releasing shipper is not applicable to the

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[27] Standard 5.3.2

[28] CCT refers to central clock time (which takes daylight savings into account).

[29] 18 CFR § 284.12 (a) (1)(v), Capacity Release Related Standards 5.3.2 (Version 1.6).

situation involved here because Commission regulations require the pipeline to provide 30 days notice before terminating a shipper's contract. Thus, the capacity in that situation is not available to others for 30 days.

33. Moreover, we note that Trailblazer has complied with a directive in the May 23 Order requiring Trailblazer to file tariff language providing that it will award capacity at least two days before the capacity becomes available. This revision should mitigate Indicated Shippers' concerns about having sufficient time to make arrangements for using the capacity. The Commission finds that Trailblazer proposed short-term bidding period is appropriate.

2. **Period Before Commencement of Service**

34. In its initial comments, Trailblazer stated that it is not obligated to award bids for short-term firm capacity (capacity for less than one year) when the service is to commence more than 60 days in the future. Trailblazer stated that this provision simply allows it to refuse short-term requests for capacity commencing several months in the future, before the market is generally ready to bid on firm capacity for that time period. Awarding such capacity, it argued, could hamper the ability of other bidders seeking long-term, year round capacity to obtain the capacity they desire and need.

35. Indicated Shippers objected that this provision would violate the Commission's open access policy. The provision would allow Trailblazer improperly to impose a one-year minimum term requirement, they argued. Shippers may not need the capacity at the moment, but know that they will need the capacity at a future date, and should be allowed to bid on it for that date. Indicated Shippers contended that the pipeline will award the capacity based on the bid with the highest net present value. This is especially important on the Trailblazer system, they asserted, because of the limited availability of firm capacity.

36. The Commission found in the May 23, 2003 Order that Indicated Shippers had mischaracterized this provision. The new provision, explained the Commission, does not allow Trailblazer to impose a one-year minimum term requirement for capacity; rather, it merely provides that Trailblazer is not obligated to award short-term capacity that will commence more that 60 days in the future. The Commission found that this type of provision addresses the Commission's stated concerns about unreasonably tying up future capacity, while also providing sufficient time for the pipeline to process the request and the shipper to execute the contract.[30] The Commission stated that allowing shippers to acquire capacity for a future period, "would possibly tie up long term firm transportation

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[30] *Citing* Transwestern Pipeline Co., 95 FERC ¶ 61,165 (2001).

service at the expense of other shippers who may place a higher value on the capacity."[31] The Commission did, however, require Trailblazer to file tariff sheets replacing the 60-day period with the Commission's standard 90-day period from the date transportation service is requested for commencement of service. [32]

37. In its rehearing request here, Indicated Shippers aver that there is little chance that awards of capacity for the future will unreasonably tie up present capacity. They say that a shipper cannot acquire future capacity if another shipper places a higher value on the capacity because the pipeline evaluates all bids on the basis of their net present value and applies a discount rate to any bid for future capacity. Moreover, because of the strong demand for capacity on Trailblazer's system, shippers will likely use all the available capacity, they argue. They also contend the Commission is overlooking the importance of allowing shippers to acquire future capacity where, for example, a shipper seeks to acquire capacity for a new plant or a new market. Finally, Indicated Shippers assert that the proposal violates the Commission's open access policies by allowing the pipeline to withhold capacity from the market. The Commission, they say, has repeatedly rejected proposals to impose a minimum duration on bids for capacity to prevent pipelines from leveraging a shipper into bidding for capacity for a longer period than the shipper wants.

Commission Holding

38. Indicated Shippers' arguments on rehearing regarding the reservation of future capacity are restatements of its earlier contentions. The Commission fully addressed and rejected Indicated Shippers' arguments in the May 23 Order, and we affirm those findings here. Contrary to Indicated Shippers' assertions, Trailblazer's proposal neither allows it to withhold capacity from the market nor imposes a minimum duration on bids for capacity. As required by the Commission's May 23 Order, Trailblazer proposes modified language providing that it is obligated to award capacity to a shipper if it receives a maximum rate bid.[33] In addition, Trailblazer includes language that firm capacity will be available without any term limit unless the firm capacity is committed at some future time under a then existing contract or that firm capacity is operationally available for a limited period of time.[34]

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[31] May 23 Order at P 78.

[32] *See* Northern Natural Gas Co., 52 ¶ 61,047 (1990).

[33] Section 6.1(c)(4), Sheet No. 110H.

[34] Section 6.1(b)(1)(vi), Sheet No. 110B.

39. The May 23 Order did direct Trailblazer to modify its tariff language to require that a shipper winning firm capacity of less than one year must commence service within 90 days from the end of the open season, rather than the 60 days proposed by Trailblazer. As we explained in the May 23 Order, the Commission's longstanding standard policy is that 90 days from the date a shipper requests transportation service is an appropriate time limit for commencement of service to allow shippers sufficient time to coordinate their various transactions.

3. First-In-Time Tiebreaker for Released Capacity

40. Trailblazer proposed to modify its tariff with a "first-in-time" tiebreaker allocation mechanism for when it receives multiple identical bids for released capacity, in place of the existing pro rata method. Indicated Shippers objected to the proposal on several grounds.[35] First, Indicated Shippers argued, because Trailblazer's tariff does not provide for advance notice of an upcoming open season for released capacity, affiliates or favored shippers with advance notice from Trailblazer would have an unfair advantage. Indicated Shippers asserted that the first-in-time method is anti-competitive with respect to the Trailblazer system because it could give a few shippers excessive control over limited take-away capacity in the Rocky Mountain region, and give them unfair leverage in negotiating with producers. Indicated Shippers also contended that the first-in-time tiebreaker creates logistical problems. The Commission's reliance on precedent in approving the provision in the December 31, 2002 Order, it argued, is misplaced because its finding appears based on the erroneous assumption that a bidder can always increase its bid for capacity. Indicated Shippers acknowledged that "gaming" by means of sham affiliate bids under the current pro rata method is a problem, but contended that the first-in-time method has larger flaws. As a means of resolving the gaming issue, Indicated Shippers recommended an "aggregate affiliate bid" approach, under which all affiliated companies would be considered as a single bidding entity.

41. In the May 23, 2003 Order, the Commission approved the proposed first-in-time tiebreaker modification. The Commission stated that each tiebreaker method has advantages and disadvantages. It found that Trailblazer may choose any reasonable method as a means of breaking ties in bids for capacity, and that Indicated Shippers had not identified a significant problem with Trailblazer's first-in-time proposal. The Commission reaffirmed findings that it has made in other proceedings involving a variety of circumstances that the first-in-time method is reasonable, fair, and

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[35] Because the tiebreaker was addressed in the December 31, 2002 Order, Indicated Shippers' arguments on this issue were treated as a request for rehearing.

nondiscriminatory.[36] The Commission specifically found in the May 23 Order that the first-in-time method is appropriate even in the context of a constrained pipeline. The Commission explained that its precedent approving first-in-time tiebreakers was not based on an assumption that a bidder can always increase its bid for the capacity. Because released capacity is subject to the maximum rate, the Commission said, it was not persuaded that a shipper that is first in time will have an unfair leverage with producers. Finally, the Commission noted that Trailblazer's proposal is in accord with the NAESB standard prescribing a first-come, first-served, tiebreaker.

42. In their request for reconsideration, Indicated Shippers renew their previous arguments against the first-in-time tiebreaker method for awarding capacity. They again argue that this method could result in abuses, such as, for example, a select group of shippers, or an unsuccessful party in a negotiation of a prearranged release, having advance notice of the released capacity. The pro rata tiebreaker, on the other hand, it argues, is superior to the first-in-time method because it enhances competition for gas supplies by allocating capacity to multiple shippers. They also renew their suggestion to improve the pro rata method by treating all affiliates as a single entity.

Commission Holding

43. We have already addressed and rejected the same arguments Indicated Shippers' makes here in the May 23 Order, and they have not shown any reason why we should not affirm our finding that first-in-time is an appropriate tiebreaking mechanism. As we stated in the May 23 Order, the Commission has found in a variety of circumstances that the first-in-time method is reasonable, fair and nondiscriminatory. The May 23 Order also noted that first-in-time is merely the default method for breaking ties, and that Trailblazer's tariff provides that a releasing shipper may choose a different tiebreaker mechanism for evaluating bids for a particular release. We also explained that Trailblazer's tiebreaker method for awarding released capacity conforms to the NAESB standard.[37]

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[36] *Citing* United Gas Pipe Line Co., 65 FERC ¶ 61,006 at 61,070 (1993) (holding the first-in-time method as reasonable, while rejecting a protest arguing for the pro rata method); Arkla Energy Resources, a division of Arkla, Inc., 62 FERC ¶ 61,076 at 61,465 (1993); and Panhandle Eastern Pipe Line Co., 61 FERC ¶ 61,357 at 62,417 (1992).

[37] NAESB Standard 5.3.3 provides, "When the capacity release service provider makes awards of capacity for which there have been multiple bids meeting minimum conditions, the capacity release facilitator should award the bids, best bid first, until all offered capacity is awarded."

44. We are not persuaded by Indicated Shippers' argument that first-in-time could give a few shippers excessive control over capacity. Indicated Shippers contend that a pro rata method is advantageous because it would increase the number of parties that can serve a market and thus improve the competitive structure of the natural gas industry. Using the pro-rata method as a tiebreaker on a pipeline such as Trailblazer, however, where capacity is scarce, could have serious disadvantages. Trailblazer cited examples in its initial filing in which so many shippers bid equally on the same released capacity that the pro rata allocations resulted in amounts of capacity too small to be of any real use to a shipper.[38]

45. We do not believe it likely, moreover, that releasing shippers would abuse the first-in-time method by giving advance notice of an open season to a select group of shippers. The NGA and Commission regulations require that pipelines act without undue discrimination or preference.[39] Pipelines are prohibited from providing advance information to only some prospective shippers.[40] In any event, as Indicated Shippers state in their rehearing request, capacity on Trailblazer is highly sought after and, when released, is normally released at the maximum rate. We also believe that abuses of the first-in-time method arising from a shipper in an unsuccessful prearranged lease situation having advance notice of a capacity release are unlikely. If a releasing shipper and a prospective shipper reach agreement, there exists no reason to post the capacity as a biddable release. On the other hand, if the parties do not reach agreement for a release, there is no reason to believe that the shipper would remain interested in the capacity.

46. Trailblazer proposed first-in-time tiebreaking methodology because of problems with the pro-rata method in allocating capacity between bids by single entity shippers and affiliated shippers. Indicated Shippers acknowledge difficulties associated with the pro-rata method, but propose a modification that they believe would remove any problem. First-in-time already has the distinct advantage of eliminating arguments and challenges arising from allocating capacity between single entity shippers and multiple affiliated shippers. Under first-in-time there is simply no advantage in having multiple affiliated corporate entities submitting bids for the same capacity. Although we believe that Indicated Shippers proposed alternative pro rata tiebreaking methodology could have

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[38] One such example involved a capacity release of 25,000 Dth a day for 10 months. Sixty-eight winning bidders each received contracts for approximately 367 Dth a day.

[39] 15 U.S.C. § 717(c); 18 C.F.R. §§ 284.7(b), 284.9(b).

[40] *See* Transwestern Pipeline Company, 100 FERC ¶ 61,058 (200) at P 19 (2002).

merit in some situations, it is not the tariff method that Trailblazer has proposed, and that we have found reasonable here. Trailblazer can choose either a pro-rata or first-in-time methodology as its tiebreaker, and it has chosen first-in-time.

C. <u>Compliance Filing</u>

47. In its compliance filing, Trailblazer states that it has made revisions in its original tariff proposals to comply with directives in the May 23 Order. Notice of Trailblazer's compliance filing was published in the *Federal Register*, 68 Fed. Reg. 38,707 on June 30, 2003. There were no requests for intervention or protests.

48. Trailblazer's compliance proposes the following creditworthiness provisions to: (1) limit security for non-creditworthy shippers to 3 months of service charges, except where Trailblazer constructs new facilities or a replacement shipper accepts permanent assignment of expansion capacity;[41] (2) require that Trailblazer give delinquent and non-creditworthy shippers 30 day's prior notice before terminating service;[42] (3) clarify that any deficiency resulting from a good faith billing dispute will not result in suspension or termination of service;[43] (4) establish timelines for collateral applicable to a shipper's deterioration of credit, of 5 days notice for the first month's prepayment and a 30-day notice for 3 months of service prepayment;[44] (5) prohibit Trailblazer from collecting reservation charges during a period of suspension and non-creditworthy shippers from recalling or releasing capacity;[45] (6) address a shipper's right to request credit evaluation at any time, and the return of any prepayment if a reevaluation shows the shipper to be creditworthy;[46] (7) implement a revised credit rating analysis procedure;[47] (8) permit shippers the option to deposit prepayments in an interest bearing escrow account;[48] and (9) permit shippers to provide a letter of credit as security for new facilities, stipulate that Trailblazer can recover the cost only once, reduce the level of security as Trailblazer

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[41] Section 6.10(a)(1), Sheet No. 119; section 17(b), Sheet No. 141.

[42] Section 6.9(b) Sheet No. 118; section 6.10(d), Sheet No. 119A.

[43] Section 6.9(d), Sheet No. 119.

[44] Section 6.10(a)(1), Sheet No 119.

[45] Section 6.9(c), Sheet No. 119; section 6.10(e), Sheet No. 119A.

[46] Section 6.10(c), Sheet No. 119A.

[47] Section 17.1(a), Sheet Nos. 140, 140A, 140B and 140C.

[48] Section 17.1(c), Sheet No. 141.

recovers the cost, and limit an individual shipper's security obligation to no more than its proportionate share of the cost of the facilities.[49] Except as discussed below, we find the proposals in Trailblazer's compliance filing acceptable.

1. Deterioration of Credit and Collateral Timelines

May 23 Order

49. The Commission rejected the portion of proposed section 6.10(b) of the GT&C, which would have required a shipper to provide security within 10 days after Trailblazer's notification to the shipper of its determination that the shipper is no longer creditworthy. Following precedent established in recent proceedings, the May 23 Order allowed Trailblazer to refile to require one month of advance payment within 5 business days, with the full security (3 months) provided within 30 days. If the shipper fails to meet these deadlines, the May 23 Order allowed Trailblazer to suspend service, but required 30 days' prior notice to the shipper and to the Commission for termination of service.

Compliance Filing

50. Trailblazer proposed section 6.10(a)(1), providing that at any time Trailblazer reasonably determines, based on adequate information, that a shipper is not creditworthy under section 17.1(a), or if shipper fails to maintain assurance of future performance under section 17.1(b), Trailblazer may notify such shipper in writing that it has 5 business days to provide Trailblazer with security consistent with section 17.1(b), adequate to offset any outstanding billings (excluding any amounts as to which there is a good faith dispute), all charges for the current month's service, and all charges for one month's advance service. In addition, Trailblazer proposes that within 30 days after such notification, the shipper must fully comply with the means for adequate assurance of future performance, covering 3 full months of advance service from the end of such 30-day notice period, as provided under section 17.1(b). If the shipper fails to satisfy the requirements of the prior two sentences by the end of the specified prior notice period, Trailblazer may immediately suspend service to the shipper. A shipper providing security under section 17.1(b) shall, in addition, continue to pay for the current month's service by one business day prior to the date nominations are due for that month's service, adjusted for reconciliation of prior billings to actuals.

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[49] Section 17.1(e), Sheet No. 141A.

51. The Commission finds that Trailblazer's section 6.10(a)(1) is generally consistent with our policy that the pipeline can require a shipper that becomes non-creditworthy to pay one month's advance payment within a 5-day notice period, and prepayment of 3 months of service within 30 days of that date. In addition to the above requirements, however, Trailblazer is proposing that shippers must also pay for the current month's service by one business day prior to the date nominations are due for that month's service. This essentially requires an advance payment, within 5 days, of two months of demand charges. The May 23 Order required Trailblazer to justify that any proposal that differs from the Commission's policy provides shippers with a reasonable opportunity to provide the required collateral.[50] Trailblazer has failed to show that this provision is reasonable. The Commission rejected a similar proposal in *Natural* and required the pipeline to modify its tariff language.[51] We likewise direct Trailblazer to revise its tariff language to remove the provisions requiring payment, or other security, within 5 days of anything greater than one month's service charges.[52]

2. Timelines Applicable to Additional Information for Credit Determination

Compliance Filing

52. Trailblazer proposes language in section 6.10(a)(2) that states; "If Trailblazer does not have sufficient information to determine whether Shipper is creditworthy, it may request additional information in writing from the Shipper consistent with section 17.1(a) of these GT&C, and Shipper must provide such information within 3 business days."[53] If a shipper fails to provide the requested information or if Trailblazer determines that the shipper is not creditworthy based on such information, Trailblazer may suspend or terminate service.

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[50] May 23 Order, at P 42.

[51] *Natural*, 106 FERC ¶ 61,175 at P 49 (2003).

[52] In the creditworthiness rulemaking proceeding, the Commission is requesting comment on whether, as a variant to our traditional policy of requiring no more than 3 months' worth of reservation charges, pipelines should be permitted to require a non-creditworthy shipper to provide an advance payment for one month of service.

[53] Substitute First Revised Sheet No. 119.

Commission Holding

53. The Commission finds that requiring shippers only 3 business days to provide additional information to aid in their credit determination is an unreasonably short period of time. In analogous situations, the Commission has provided that 5 days is an appropriate period for actions by the pipeline or its customers.[54] Additionally, the Commission addressed this same tariff language in *Natural*, and required Natural to allow a response time of 5 business days.[55] We direct Trailblazer to revise its tariff accordingly.

3. Criteria for Determining Creditworthiness

May 23 Order

54. The Commission found that Trailblazer's proposed credit criteria language was unjust and unreasonable in that it allowed Trailblazer too much discretion in determining when a shipper becomes non-creditworthy and allowed for possible undue discrimination.[56] The Commission instructed Trailblazer to set forth in its tariff objective financial analysis and the criteria that it will employ in evaluating the creditworthiness of a shipper to ensure that Trailblazer treats all shippers in a non-discriminatory manner.

Compliance Filing

55. Trailblazer revised its credit evaluation criteria in section 17.1(a) of its tariff. We have concerns with two of the proposed provisions. In section 17.1(a)(4), Trailblazer proposes that, to be considered creditworthy, a shipper cannot currently be operating under the bankruptcy laws or have pending a petition of involuntary bankruptcy, unless the shipper is a debtor in possession operating under Chapter XI of the Federal Bankruptcy Act and Trailblazer can be assured of prompt payment of bills as a cost of administration under the federal court's jurisdiction, and the shipper continues to make its payments.[57] Sections 17.1(a)(9)(i) through (xvi) list 16 types of information which Trailblazer may request a shipper provide in connection with a shipper's credit

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[54] *See, e.g.*, Koch Gateway Pipeline Co., 75 FERC ¶ 61,313 (1996) (posting); Southern California Edison Co., 67 FERC ¶ 61,034 (1994) (refunds); Transoak, Inc., 52 FERC ¶ 61,083 (1990) (workpapers).

[55] Natural, 106 FERC ¶ 61,175 at P 59 (2003).

[56] May 23 Order at P 58.

[57] Original Sheet No. 140A.

evaluation. As pertinent, pursuant to section 17.1(a)(9)(xv), Trailblazer may request "any information reasonably required so that Trailblazer can make any determination under this section 17.1(a)."[58]

Commission Holding

56. Section 17.1(a)(4) provides essentially that Trailblazer may refuse service to a shipper in a bankruptcy proceeding, except under Chapter XI where Trailblazer can be assured that it will have service billings paid promptly. In the *Natural* proceeding, the Commission addressed a tariff provision identical to that proposed by Trailblazer in section 17.1(a)(4).[59] There, the Commission explained that once a shipper has filed for bankruptcy, the U.S. Bankruptcy Court has jurisdiction, and noted that Natural's tariff did not contain any language addressing the interaction of its creditworthiness provisions and the Federal Bankruptcy Act. The Commission required Natural to include language in its tariff clarifying that Natural's creditworthiness provisions cannot conflict with the U.S. Bankruptcy Court. Consistent with our ruling in *Natural*, we will require Trailblazer to include language in its tariff clarifying that its creditworthiness provisions cannot conflict with the U.S. Bankruptcy Court.

57. Trailblazer's section 17.1(a)(9)(xv) proposal, allowing Trailblazer to request any information that it believes reasonable to make a credit determination was likewise addressed and rejected by the Commission in *Natural*. The Commission found that the proposal was vague and ambiguous, and did not meet the requirement that credit criteria be objective.[60] It found acceptable, however, the immediately following section, section 17.1(a)(9)(xvi), providing for the submission of, "[S]uch other information as may be mutually agreed by the parties." The Commission stated that this provision will allow Natural the opportunity to obtain additional information that is not listed in its tariff, if a shipper agrees to provide it. Consistent with our holding in *Natural*, we find that Trailblazer must delete section 17.1(a)(9)(xv) from its proposed tariff language.

4. Communication of Credit Analysis

58. As part of its tariff revision, Trailblazer removed certain section 17.1(a)(1) language filed November 29, 2002, that required Trailblazer to identify or to provide to a shipper any information used by Trailblazer in a determination that the shipper is non-creditworthy.

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[58] Original Sheet Nos. 140B and 140C.

[59] *Natural*, 106 FERC ¶ 61,175 at P 79 (2003).

[60] *Id*. at P 85.

Commission Holding

59. Our May 23 Order did not require that Trailblazer remove the language proposed in its November 29, 2002 filing that it would provide its analysis and identify or provide to the shipper any information used in its analysis prior to taking action on such information. In *Natural*, *Tennessee* and *PG&E*, the Commission found that all shippers are entitled to a written explanation when they are found to fail the pipeline's creditworthiness screen.[61] Therefore, we direct Trailblazer to revise its tariff to include language requiring that Trailblazer will inform the shipper in writing why the pipeline deems the shipper non-creditworthy. Consistent with our orders in *Natural* and *Tennessee*, we require that the revision provide that Trailblazer will provide the written notification within 10 days of its deeming a shipper non-creditworthy. The revision must also provide recourse for a shipper to challenge such a determination.[62] However, as in *Natural* and *Tennessee*, we will permit Trailblazer to include language that it will provide such a written explanation only when a shipper requests such written notification.[63] A shipper's interests remain protected if it is given the choice whether to receive such written notification.

5. Trailblazer's Approval of Escrow Accounts

May 23 Order

60. The Commission found that Trailblazer must provide a shipper with an opportunity to earn interest on prepayments. Trailblazer was required to revise its tariff to either pay the interest itself or give a shipper the option of depositing prepayment funds into an interest-bearing escrow account (established by the shipper) to which Trailblazer may gain access, if necessary.

Compliance Filing

61. Trailblazer added section 17.1(c) which requires that prepayment amounts will be deposited in an interest-bearing escrow account, if such an account has been established by a shipper, and "Trailblazer reasonably determines that such account is satisfactory."

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[61] *Natural*, 106 FERC ¶ 61,175 at P 89 (2003); *Tennessee*, 103 FERC ¶ 61,075 at P 46 (2003); *PG&E*, 105 FERC ¶ 61,382 at P 81 (2003).

[62] *Natural*, 106 FERC ¶ 61,175 at P 89 (2003); *Tennessee*, 103 FERC ¶ 61,275 at P 45 (2003).

[63] *Natural*, 106 FERC ¶ 61,175 at P 89 (2003); *Tennessee*, 105 FERC ¶ 61,120 at P 28 (2003).

Section 17.1(c) provides that the shipper will bear the costs of establishing and maintaining the escrow account. In addition, Trailblazer has added language in section 17.1(c) specifying criteria that an escrow bank must meet. The escrow bank must be rated at least AA or better and shall not be affiliated with the shipper. The escrow arrangement must provide that prepayment amounts will apply against the shipper's obligation under its service agreement or agreements with Trailblazer and must grant Trailblazer a security interest in such amounts as an assurance of future performance. The escrow agreement must also specify the permitted investments of escrowed funds so as to protect principal, and must include only such investment options as corporations typically use for short-term deposit of their funds.

Commission Holding

62. Trailblazer's section 17.1(c) states that the shipper may choose to place its prepayment in an escrow account, if Trailblazer reasonably determines that such account is satisfactory, and specifies the method of operation of the account, the credit rating of the escrow bank, and other provisions designed to protect the principal and its payment to Trailblazer in the event of default. The Commission finds that as long as a shipper meets the tariff's criteria in proposed section 17.1(c) of the GT&C, it will not allow Trailblazer to decide if an escrow account is satisfactory. The Commission addressed the same tariff provision in *Natural*, finding there was no need for an additional layer of approval by Natural to the execution of escrow accounts.[64] Accordingly, we will require Trailblazer to revise this provision to remove the approval feature from section 17.1(c).

The Commission orders:

(A) Trailblazer's tariff sheets listed in the Appendix are accepted, to become effective May 23, 2003, and August 15, 2003, subject to further modification, as more fully described in the body of this order.

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[64] *Natural*, 10 6 FERC ¶ 61,175 at P 93 (2003).

(B) Trailblazer is directed to file, within 30 days of the date of issuance of this order, revised actual tariff sheets consistent with the discussion of the body of this order.

(C) The requests for rehearing and reconsideration are denied.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix

TRAILBLAZER PIPELINE COMPANY
FERC Gas Tariff, Third Revised Volume No. 1

TARIFF SHEETS ACCEPTED EFFECTIVE MAY 23, 2003

Substitute Original Sheet No. 110A
Substitute Original Sheet No. 110B
Substitute Original Sheet No. 110C
Substitute Original Sheet No. 110H
Substitute Original Sheet No. 110I
Substitute Fourth Revised Sheet No. 132
Substitute Original Sheet No. 176A
Substitute Fourth Revised Sheet No. 177

TARIFF SHEETS ACCEPTED EFFECTIVE AUGUST 15, 2003

Substitute Second Revised Sheet No. 118
Substitute First Revised Sheet No. 119
Substitute Original Sheet No. 119A
Substitute First Revised Sheet No. 140
Original Sheet No. 1 40A
Original Sheet No. 140B
Original Sheet No. 140C
Third Revised Sheet No. 141
Substitute Original Sheet No. 141A