

135 FERC ¶ 61,253
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 17, 2011

In Reply Refer To:
Rockies Express Pipeline LLC
Docket Nos. RP11-2096-000
RP11-2096-001

Rockies Express Pipeline LLC
370 Van Gordon Street
Lakewood, CO 80228

Attention: Robert W. Harrington
Vice President, Regulatory Affairs

Reference: Proposed Rate Schedule BHS

Dear Mr. Harrington:

1. On May 6, 2011, Rockies Express Pipeline LLC (REX) filed proposed tariff records¹ to implement a displacement-only backhaul service under a new Rate Schedule BHS. On May 18, REX filed to amend a proposed tariff record,² and requested waiver of the 30-day notice requirement in section 154.207 of the Commission's regulations to make the proposed records, as amended, effective June 6, 2011. For the reasons discussed below, the Commission grants waiver of the 30-day notice period and accepts the proposed tariff records as amended, to be effective June 6, 2011, subject to the conditions discussed herein.

¹ See the Appendix.

² REX explains that the May 6, 2011 version of proposed tariff record "Service Agreement - BHS Section" was inadvertently filed in a red-lined format. The Commission rejects this version as moot following the May 18, 2011 amended filing. The version of this tariff record filed on May 18, 2011 was unmarked.

2. REX states that its proposal has been developed based upon similar forms of separate backhaul transportation service previously accepted by the Commission.³ REX states that its forward haul services enable it to provide backhaul transportation by displacement. REX states that the proposed BHS backhaul service, when nominated on a primary point basis, will have a lower scheduling priority than forward haul nominations on a primary point basis under existing Rate Schedule FTS, but a higher scheduling priority than secondary BHS and FTS nominations. REX explains that it will determine on a daily basis the extent to which it can provide BHS backhaul service using scheduled forward haul volumes. According to REX, BHS shippers will be able to nominate both primary and secondary backhaul points. A BHS backhaul shipper's use of secondary receipt points must be downstream of all primary or secondary delivery points, and a shipper's use of secondary delivery points must be upstream of all primary or secondary receipt points.

3. Under section 2.8 of Rate Schedule BHS, shippers can segment or release capacity, subject to such activity not creating forward haul transportation relative to the designated flow direction of the pipeline.

4. REX has three rate zones, each with separate maximum recourse rates.⁴ REX states that the proposed BHS reservation rates are derived from the current FTS maximum recourse reservation rate for each corresponding zone using a multiplication factor of 66 percent. According to Appendix A of the May 6, 2011 REX filing, this factor corresponds to a weighted average percentage of total system mileage that would be available for BHS service. REX states that BHS service would not be charged a commodity rate because it would be performed without compression and thus would not expend non-fuel variable costs associated with compression. REX proposes the following BHS recourse rates:

³ REX May 6, 2011 Filing at 2 (citing *Northern Border Pipeline Co.*, 97 FERC ¶ 61,162 (2001); *Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,083 (1998), *reh'g denied*, 84 FERC ¶ 61,319 (1998); *Millennium Pipeline Co.*, 127 FERC ¶ 61,309 (2009))

⁴ Zone 1 encompasses all points west of REX's Cheyenne Hub located in Weld County, Colorado. Zone 2 encompasses all points east of the Cheyenne Hub to and including the PEPL Interconnect located in Audrain County, Missouri. Zone 3 encompasses all points east of the PEPL Interconnect to and including delivery points in Clarington, Ohio.

Receipt Zone	Delivery Zone	Maximum Reservation \$/Dth/Month	Maximum Commodity \$/Dth/Month	Minimum Commodity \$/Dth/Month
Zone 1	Zone 1	4.6675	0	0
Zone 2	Zone 1	15.5460	0	0
	Zone 2	10.8785	0	0
Zone 3	Zone 1	33.1450	0	0
	Zone 2	28.4775	0	0
	Zone 3	17.5990	0	0

5. REX explains that fuel will be assessed if the gas delivered to shippers is transported through a booster compressor. Otherwise, REX states that only the system-wide lost and unaccounted for charge will be assessed.

6. Public notice of REX's May 6, 2011 filing was issued on May 11, 2011, and public notice of REX's May 18, 2011 amended tariff records was issued on May 19, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2011)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. On May 18, 2011, at 5:01:41 PM, Ultra Resources, Inc. (Ultra) submitted late comments. The Commission accepts Ultra's late comments given Ultra's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. In response to REX's May 18, 2011 filing, Ultra also filed comments on May 20, 2011. On May 25, 2011, REX filed an answer. The Commission accepts REX's answer because it has assisted our decision-making process.

7. Ultra asserts that REX's proposal is inconsistent with how Order Nos. 636⁵ and 637⁶ balanced the respective financial risks of pipelines and shippers. According to Ultra, Order No. 636 required pipelines to base their rates on a Straight-Fixed-Variable (SFV) rate design which recovered return on equity and associated income taxes in reservation rates instead of commodity rates. Ultra states that the SFV rate design shifted to firm shippers paying reservation rates the financial risk formerly assumed by pipelines for recovering those cost components. Ultra asserts that in return for requiring shippers to assume this financial risk, Order Nos. 636 and 637 gave shippers certain rights, including the ability to release capacity, to segment capacity, and to nominate alternate point capacity on a secondary basis (i.e, flexible receipt and delivery points). Ultra argues that it was anchor shippers like Ultra that financed REX and committed to pay demand charges sufficient for REX to service its debt. In turn these shippers expected to have full segmentation rights in return. Ultra points out that the current market conditions that prompt REX to offer the new BHS service are the same conditions that impel Ultra and other anchor shippers to want to use every segmentation right they have under Order No. 637, *et al.*, to the fullest extent possible. Ultra claims that REX is seeking to re-write its tariff to capture market opportunities (for which the pipeline bore no risk), where the anchor shippers like Ultra took that risk and reasonably thought full segmentation opportunities would be theirs for committing the dollars for building the REX infrastructure.

8. Ultra claims that REX's proposal gives an unwarranted competitive advantage to transactions under the new Rate Schedule BHS over backhaul transactions nominated as a result of segmentation or capacity release under Rate Schedule FTS forward haul contracts. Ultra states that REX's proposal assigns a higher scheduling priority to backhauls under BHS over backhaul nominations under Rate Schedule FTS, which are

⁵ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

⁶ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

given a secondary out-of-path scheduling priority.⁷ Ultra maintains that such scheduling priorities would degrade FTS shippers' ability to utilize segmentation, to release capacity, and to nominate alternate points for backhaul transactions. Rather, Ultra asserts that secondary out-of-path FTS backhaul service is the operational equivalent of the proposed BHS service, since both services would be performed only by displacement and would be predicated on the availability of adequate forward haul volumes provided by FTS shippers. Thus, Ultra reasons that secondary out-of-path FTS backhaul service should be treated the same as primary in-path BHS service.

9. Ultra requests that the Commission require REX to clarify that the priority assigned to new BHS service does not undermine or limit FTS shippers' flexible point and segmentation rights. Ultra states that the revisions should allow FTS shippers to segment a portion of their capacity and, with respect to that segmented capacity, designate new primary receipt and delivery points which would create a new primary path to perform backhaul service by displacement under the FTS rate schedule, where operationally feasible. Ultra states that in order to be true to full segmentation rights under Order No. 637 that were intended for anchor shippers, the anchor shippers' backhaul nominations under rate schedule FTS should take priority over Rockies Express' BHS service.

10. Ultra is also concerned that BHS shippers could use their ability to segment, release, and flex to alternate points to obtain firm forward haul service on a secondary out-of-path basis, and thereby compete with and degrade FTS shippers' rights to secondary (out of path) forward haul nominations. Ultra also expresses concern that customers using secondary point rights under rate schedule BHS to obtain forward haul services may not pay fuel charges. Additionally, Ultra states there is no functional difference between ITS service or Authorized Overruns of FTS service on the one hand, and a secondary out-of-path nomination to create a "flex forward" service. Ultra therefore argues that secondary out-of-path nominations by BHS shippers in order to effectuate a forward haul service should not have a higher priority than ITS or Authorized Overrun nominations.

11. Consequently, Ultra avers that the priority should be given in the following order: (1) primary in path service under Rate Schedule FTS, (2) backhaul by displacement under rate schedule FTS and primary path BHS, (3) secondary out-of-path forward-haul service under rate schedule FTS, and (4) interruptible transportation service, authorized overrun service, park and loan service, pooling and wheeling service, and secondary out-of-path forward haul service under rate schedule BHS.

⁷ Under REX's proposal, primary in-the-path FTS nominations are given the highest priority, followed next by primary in-the-path BHS nominations, followed by FTS and BHS secondary out-of-path nominations.

12. In its Answer, REX asserts that its filing does not affect the existing segmentation and capacity release rights of current shippers. REX reiterates that service under the BHS service proposal will only be available to the extent that firm capacity and sufficient forward-haul volumes are available. In response to Ultra's concerns, REX emphasizes that its proposed tariff sheets clearly limit the proposed BHS service such that shippers may not use secondary point rights to convert BHS service to forward-haul service. REX further states that the priority of service contained within its proposal is consistent with Commission policy. Specifically, REX contends that the presence of firm backhaul service does not diminish existing shippers' firm primary point rights.⁸ REX also alleges that other pipelines with firm backhaul service have tariff provisions allowing for primary backhaul service to take priority over out-of-path backhauls associated with a firm transportation rate schedule and over quantities nominated at secondary points.

13. The Commission accepts the proposed tariff records, subject to conditions. The Commission has previously accepted tariff provisions implementing similar types of backhaul services.⁹ Consistent with the scheduling priorities outlined in REX's proposal, existing FTS customers retain their rights to utilize capacity release, segmentation, and secondary points, and REX's proposal does not degrade their service in any significant way. The proposed Rate Schedule BHS does, however, provide prospective and current customers with additional transmission options and flexibility. Although this service may compete with capacity released by existing FTS customers, this should not be construed as upsetting any implicit balance of risk and reward that was never explicitly contracted. A pipeline is always permitted to file to revise its tariff provisions if the change is just and reasonable, and the increased competition for released capacity is not a justification for rejecting the proposal given the additional flexibility that the proposed BHS service will provide to all, and the attendant increased use of the REX infrastructure.

14. The Commission therefore rejects Ultra's argument that a backhaul nomination under Rate Schedule FTS should have an equal or superior scheduling priority to a backhaul nomination pursuant to Rate Schedule BHS.¹⁰ As the Commission has

⁸ REX May 25 Answer at 7 (citing *Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,083 at 61,406 (1998); *reh'g denied*, 84 FERC ¶ 61,319 (1998), *order granting clarification*, 85 FERC ¶ 61,264 (1998)).

⁹ *Northern Border*, 97 FERC ¶ 61,162; *Tennessee*, 84 FERC ¶ 61,083, *reh'g denied*, 84 FERC ¶ 61,319; *Millennium*, 127 FERC ¶ 61,309.

¹⁰ To be firm service, a service must have equal priority to all other classes of firm service. 18 C.F.R. § 284.7 (2011). Although REX refers to Rate Schedule BHS as providing firm service, it is not "true" firm service because BHS service is assigned lower priority than firm service under Rate Schedule FTS.

explained elsewhere,¹¹ the primary right in a transportation contract is defined by the direction of the contract flow (either backhaul or forward haul) between a primary receipt point and a primary delivery point. Under Rate Schedule BHS, customers have primary rights associated with backhaul service. In contrast, under Rate Schedule FTS, the FTS shipper has primary rights associated with forward-haul service. Thus, when a backhaul is a reversal of the contract flow (as it would be under Rate Schedule FTS), it is an out-of-path, secondary firm transaction.¹²

15. However, the Commission will require REX to modify its proposal so that a BHS service customer may use secondary points in a manner that would allow for forward-haul movement. REX's proposed prohibition against using secondary points in this manner is contrary to the Commission's policy of flexible receipt and delivery points.¹³ Consistent with Commission policy, such a movement would receive secondary out-of-path priority,¹⁴ and as a result, this use of secondary points would not degrade other customers' in-path, firm service rights. Additionally, in its compliance filing, REX should explain how it will charge for fuel when a customer exercises its secondary point rights to make a forward-haul movement using their BHS rate schedule.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ *Tennessee Gas Pipeline Co.*, 99 FERC ¶ 61,017, at P 91 (2002); *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127, at P 48 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

¹² *Tennessee*, 99 FERC 61,017 at P 91.

¹³ *Northern Border*, 97 FERC at 61,722.

¹⁴ *Tennessee*, 99 FERC 61,017 at P 91.

Appendix

Rockies Express Pipeline LLC
Tariffs
FERC NGA Gas Tariff

Tariff Records Accepted Effective June 6, 2011, Subject to Conditions

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