

138 FERC ¶ 61,155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Black Marlin Pipeline Company

Docket Nos. RP10-1215-002
RP11-2361-002
RP11-2361-001

(not consolidated)

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued March 1, 2012)

1. This order addresses Black Marlin Pipeline Company's (Black Marlin) January 20, 2012 compliance filing (January 20 filing) in response to the Commission's December 22, 2011 order¹ and Black Marlin's request for rehearing of the December 22 Order regarding its request for waiver or in the alternative an extension of time to comply with certain North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ) Standards. For the reasons discussed below, the Commission denies rehearing of the December 22 Order and accepts the revised tariff record listed in footnote no. 9, effective November 1, 2010.

Background

2. In Order No. 587-U, the Commission incorporated by reference into its regulations Version 1.9 of the NAESB WGQ standards. On September 1, 2010, in Docket No. RP10-1215-000, Black Marlin filed a tariff record to comply with Order No. 587-U.² By Order issued October 28, 2010, the Commission accepted Black Marlin's tariff record

¹ *Black Marlin Pipeline Company*, 137 FERC ¶ 61,233 (2012) (December 22 Order).

² *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, FERC Stats. & Regs. ¶ 31,307 (2010).

to become effective as proposed, subject to conditions.³ Specifically, the October 28 Order directed Black Marlin to include NAESB WGQ Version 1.9 Standards 4.3.96-4.3.98 in its tariff database.⁴

3. On November 12, 2010, Black Marlin submitted a revised tariff record, in Docket No. RP10-1215-001, in compliance with the October 28 Order. Black Marlin's filing also included a request for clarification of the October 28 Order regarding its previous request for extension of time of certain NAESB WGQ Version 1.9 Standards. Subsequently, on August 10, 2011 (August 10 filing), in Docket No. RP11-2361-000, Black Marlin submitted a revised tariff record which amended its November 12 filing.

4. In support of its November 12 filing, Black Marlin requested the Commission clarify its October 28 Order and reconsider Black Marlin's request for an extension of time of the NAESB WGQ Interactive/Internet web site related standards, title transfer tracking related standards, and capacity release data sets due to Black Marlin's operational, customer and market circumstances.

5. The December 22 Order: (1) granted Black Marlin an extension of time to comply with the NAESB WGQ Version 1.9 title transfer tracking related standards;⁵ (2) granted Black Marlin's request for waiver of the electronic components of the Interactive/Internet web site requirements;⁶ (3) denied Black Marlin's request for an extension of time to comply with NAESB WGQ Version 1.9 Imbalance Trading Related Business Practice

³ *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order on Filings in Compliance with Order No. 587-U, 133 FERC ¶ 61,096, at P 8-9 (2010) (October 28 Order).

⁴ *Id.*

⁵ *See* December 22 Order, 137 FERC ¶ 61,233 at P 9 (granting an extension of time to comply with NAESB WGQ Version 1.9 Standards: 1.3.17, 1.3.18, 1.3.64 through 1.3.74, 1.3.76, and 1.3.77).

⁶ *Id.* P 10 (granting waiver for NAESB WGQ Version 1.9 data sets: EDI Related Definitions: 4.2.10 through 4.2.13, 4.2.16 through 4.2.20, and 10.2.1 through 10.2.36; Nominations Related Data Sets: 1.4.1 through 1.4.7; Flowing Gas Related Data Sets: 2.4.1 through 2.4.18; Invoicing Related Data Sets: 3.4.1 through 3.4.4; Capacity Release Data Sets: 5.4.1 through 5.4.23; EDI Related Standards: 1.3.47 through 1.3.50, 1.3.52 through 1.3.63, 1.3.79, 2.3.32 through 2.3.35, 2.3.51 through 2.3.53, 2.3.65, 3.3.23, 3.3.24, 4.3.39, 4.3.42 through 4.3.62, 4.3.65 through 4.3.69, 4.3.72 through 4.3.76, 4.3.78 through 4.3.87, 10.3.5, 10.3.7, 10.3.8, 10.3.12, 10.3.15, 10.3.17, 10.3.18, 10.3.21, 10.3.22, and 10.3.25 through 10.3.27).

Standards and Capacity Release Related Business Practice Standards;⁷ and (4) directed Black Marlin to file revised tariff records incorporating the NAESB WGQ Version 1.9 Standards for which an extension of time to comply was denied.⁸

Compliance Filing and Request for Rehearing

6. On January 20, 2012 Black Marlin filed a revised tariff record in Docket No. RP11-2361-001 to comply with the December 22 Order.⁹ Black Marlin indicates that it has incorporated the NAESB WGQ Version 1.9 Business Practices Standards into its tariff in compliance with the December 22 Order.

7. Concurrently, on January 20, 2012, Black Marlin filed a request for rehearing of the December 22 Order in Docket Nos. RP10-1215-002 and RP11-2361-002 requesting waiver of the NAESB WGQ Version 1.9 Imbalance Trading Related Business Practice Standards and Capacity Release Related Business Practice Standards.¹⁰ In support of its rehearing request, Black Marlin argues that the Commission erred by ordering Black Marlin to adopt: (1) standards associated with imbalance trading, when its imbalance activities were eliminated four years ago; and (2) capacity release standards, when it cannot operationally offer firm service. Black Marlin also argues, because no imbalances occur, there is no need for further revision to NAESB standards already adopted by reference for imbalance trading.

8. Black Marlin indicates that it currently has exemptions from certain sections of its tariff and provisions of the Commission's Part 284 open access regulations due to Black Marlin's current market and operational circumstances.¹¹ Black Marlin explains

⁷ *Id.* P 11 (denying an extension of time to comply with NAESB WGQ Version 1.9 Standards: Imbalance Trading Related Standards 2.3.40 through 2.3.44, Capacity Release Related Standards: 5.3.10 through 5.3.12, 5.3.30 through 5.3.34, 5.3.41 through 5.3.43, and 5.3.48).

⁸ *Id.*

⁹ Section 23, NAESB Standards, 1.3.0 to Second Revised Volume No. 1, FERC NGA Gas Tariff.

¹⁰ NAESB WGQ Version 1.9 Standards: Imbalance Trading Related Standards 2.3.40 through 2.3.44, Capacity Release Related Standards: 5.3.10 through 5.3.12, 5.3.30 through 5.3.34, 5.3.41 through 5.3.43, and 5.3.48.

¹¹ See *Black Marlin Pipeline Co.*, 134 FERC ¶ 61,223 (2011); *Black Marlin Pipeline Co.*, 130 FERC ¶ 61,141 (2010); *Black Marlin Pipeline Co.*, 126 FERC ¶ 61,187 (2009); *Black Marlin Pipeline Co.*, 122 FERC ¶ 61,300 (2008).

that these operational challenges were detailed in Docket No. RP11-1714.¹² Black Marlin asserts that it no longer schedules gas and transportation activity for each month, and its transportation activity is based on actual deliveries and not on scheduled deliveries. As a result, Black Marlin argues that it does not have trading imbalances. Black Marlin states that it is critical that this mode of operation continues so that it can continue providing transportation services for its only offshore shipper.

9. Similarly, Black Marlin notes that capacity release is not feasible on its system given its current operational limitations and its single firm shipper which was detailed in its prior compliance filings.

10. Finally, Black Marlin states that it is not clear how it can be granted waiver of conducting transactions electronically, but then be informed by the Commission that the above NAESB Standards do not require electronic processing. For example, Black Marlin cites NAESB WGQ Version 1.9 Standard 5.3.48 which states that the “Releasing Shipper should provide capacity recall notification to the Transportation Service Provider through the TSP’s *Customer Activities Website*.”¹³ Black Marlin asserts that it does not possess the customer activities website functionality addressed by this standard. Therefore, Black Marlin requests clarification from the Commission on this point.

Notice

11. Public notice of the January 20 compliance filing was issued on January 24, 2012, allowing for protests to be filed as provided in Rule 154.210 of the Commission’s Rules of Practice and Procedure. No protests or adverse comments were filed.

Discussion

12. Regarding Black Marlin’s compliance filing submitted in Docket No. RP11-2361-001, the revised tariff record listed in footnote no. 9 complies with the Commission’s December 22 Order and is accepted effective November 1, 2010.

¹² Black Marlin, Request for Rehearing, Docket No. RP11-2361-002, at 5 (filed January 20, 2012) (citing *Black Marlin Pipeline Co.*, 134 FERC ¶ 61,223). We note that, although Black Marlin references Docket No. RP11-1714-000, the actual case number is “RP11-1716-000.”

¹³ Black Marlin, Request for Rehearing a 4.

13. Regarding Black Marlin's request for rehearing of the December 22 Order filed in Docket Nos. RP10-1215-002 and RP11-2361-002, the Commission denies this request for the reasons discussed below.

14. As noted in the December 22 Order, Black Marlin has justified a waiver of the requirements to conduct transactions electronically. However, Black Marlin has not justified its request for an extension of time of the NAESB WGQ Version 1.9 Business Practice Standards, specifically the Imbalance Trading Related Business Practice Standards and Capacity Release Related Business Practice Standards.¹⁴ The Commission typically denies waivers or extensions of time to comply with business practice standards because these standards establish the basic principles by which business is required to be conducted by natural gas pipelines. Such standards are important to a well-functioning market. Nonetheless, while Black Marlin believes such a waiver or extension of time to comply is justified, it has failed to detail specific reasons why it seeks the waiver or extension of time to comply with the standard nor did it address alternative methods by which it could comply with the standard.¹⁵

15. Further, compliance with the requirements of the business practice standards does not require a pipeline to use electronic processing if the pipeline is unable to use this method. For example, Black Marlin may comply with the capacity release and imbalance trading business practices regardless of electronic implementation through manual or other methods to the extent it is not able to perform these functions electronically.

16. In response to Black Marlin's claim that the NAESB WGQ Standards are inapplicable given its operational circumstance, the Commission's policy is that waivers or extensions of time will not be granted for standards which merely describe the process in which a business function is to be performed but do not require the pipeline to perform the business function.¹⁶ In this case, Black Marlin's operational circumstances, and

¹⁴ NAESB WGQ Version 1.9 Standards: Imbalance Trading Related Standards 2.3.40 through 2.3.44, Capacity Release Related Standards: 5.3.10 through 5.3.12, 5.3.30 through 5.3.34, 5.3.41 through 5.3.43, and 5.3.48.

¹⁵ See *Carolina Gas Transmission Corp.*, 131 FERC ¶ 61,211, at P 4 (2010); *MoGas Pipeline LLC*, 131 FERC ¶ 61,251, at P 7 (2010); *Granite State Gas Transmission, Inc.*, 132 FERC ¶ 61,262, at P 8 (2010).

¹⁶ October 28 Order, 133 FERC ¶ 61,096 at P 9; November 30 Order, 133 FERC ¶ 61,185 at P 7.

subsequent approved tariff exemptions,¹⁷ do not require it to perform the business function (e.g. imbalance trading or capacity release transactions), it is not required to follow the standard hence Black Marlin requires no waiver or extension of time. However, given a change in Black Marlin's market or operational circumstances, the standard(s) will already be in the tariff and Black Marlin will, at that time, be required to perform the business standard (i.e. capacity release or imbalance trading).

The Commission orders:

(A) Black Marlin's revised tariff record listed in footnote no. 9 is accepted, effective November 1, 2010.

(B) Black Marlin's request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁷ See *Black Marlin Pipeline Company*, 134 FERC ¶ 61,223; *Black Marlin Pipeline Company*, 130 FERC ¶ 61,141; *Black Marlin Pipeline Company*, 126 FERC ¶ 61,187; *Black Marlin Pipeline Company*, 122 FERC ¶ 61,300. Black Marlin filed for an extension of such tariff exemptions until March 1, 2013, in Docket No. RP12-330-000.