138 FERC ¶ 61,220
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 28, 2012

In Reply Refer To:
Ruby Pipeline, L.L.C.
Docket No. RP12-395-000

Ruby Pipeline, L.L.C.
P.O. Box 1087
Colorado Springs, CO 80944

Attention: Susan C. Stires, Director
Regulatory Affairs

Reference: Non-Conforming Service Agreement

Ladies and Gentlemen:

1. On February 22, 2012, Ruby Pipeline, L.L.C. (Ruby) filed tariff records[1] to report a non-conforming service agreement that it entered into with Cascade Natural Gas Corporation (Cascade). The Commission accepts the contract and the associated tariff records effective April 1, 2012, subject to conditions as discussed below.

2. In the instant filing, Ruby submitted a new Rate Schedule FT discount rate agreement that will provide Cascade with firm transportation service on a seasonal basis,[2] but which contains terms that deviate from Ruby's Rate Schedule FT Form of Service Agreement. The service agreement contains non-conforming provisions related to off-system capacity, termination rights, and maximum delivery quantity (MDQ) provisions, among other things. The Commission will discuss below those non-conforming provisions that it finds to be not permissible.

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[1] *See* Appendix.

[2] The agreement has an initial MDQ of 10,000 Dth/d, with service provided November 1st through April 30th each year, until April 30, 2037.

3. Public notice of the filing was issued on February 22, 2012. 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), all timely filed motions to intervene and any unopposed motions to intervene out-of-time 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. The Indicated Shippers[3] filed a motion to intervene and protest. On March 9, 2012, Anadarko Energy Services Company and Marathon Oil Company withdrew their protests as Indicated Shippers. On March 16, 2012, the remaining Indicated Shippers, Occidental Energy Marketing, Inc., and Shell Energy North America (US), L.P., also withdrew their protests.

4. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.[4] In *Columbia Gas,* the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties.[5] However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.[6] Therefore, there are two general categories of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination.

5. Although Ruby did not identify that the seasonal basis of the agreement as a material deviation, the Commission finds that the terms of the agreement, which permit Cascade to utilize a seasonal service, are unduly discriminatory and therefore constitute an impermissible material deviation from Ruby's form of service agreement.

6. Ruby's Rate Schedule FT and form of service agreement do not expressly provide shippers paying recourse rates the option of obtaining contracts with seasonal contract

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[3] The Indicated Shippers consist of Anadarko Energy Services Company, Marathon Oil Company, Occidental Energy Marketing, Inc., and Shell Energy North America (US), L.P.

[4] 18 C.F.R. § 154.1(d); 18 C.F.R. § 154.112(b).

[5] *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001).

[6] *Id*.

demands. The ability to obtain a seasonal service is a valuable right since it allows shippers to pay reduced reservation charges during times of the year when they have less need for service. Therefore, to permit such a service for Cascade alone constitutes a substantial risk of undue discrimination.[7] Accordingly, the Commission will accept the agreement subject to the condition that Ruby, within 30 days of this letter order, either eliminate the provision granting seasonal service, or revise its Rate Schedule FT and *pro forma* service agreement to clarify that this seasonal variation in maximum daily quantity is part of the recourse service available to all shippers taking service under the rate schedule.

7. Ruby states that the agreement provides for an initial MDQ of 10,000 Dth/d with an optional election to increase the MDQ to a maximum of 30,000 Dth/d. The agreement allows Cascade to execute this option by November 1, 2014. Cascade must provide Ruby with 60 days notice prior to increasing its MDQ. Further, the agreement states:

> If at any time on or before November 1, 2014, Transporter receives a bona fide offer from a third party to contract for Shipper's uncommitted MDQ, Transporter shall provide written notice to Shipper and Shipper shall have sixty (60) days to elect to increase its MDQ up to 30,000 Dth/day.[8]

8. The option to vary the MDQ of an agreement, outside of the stated tariff procedures, is a valuable right that is not currently provided for by Ruby's tariff to all customers.[9] Therefore, to permit such an option for Cascade alone constitutes a substantial risk of undue discrimination. Accordingly, the Commission will accept the agreement subject to the condition that Ruby eliminate the provision providing Cascade the option to increase its MDQ from the agreement, within 30 days of this letter order.

9. Ruby notes that section 4.6 of the General Terms and Conditions (GT&C) of its tariff provides that Ruby may enter into a transportation agreement with a downstream party for the benefit of a shipper. Section 17 of the Cascade service agreement provides that Ruby shall "exercise commercially reasonable efforts to acquire 10,000 Dth/d of transportation capacity on the Gas Transmission Northwest, LLC (GTN) pipeline system." Subject to Ruby obtaining capacity from GTN, Ruby will release the capacity to Cascade:

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[7] *See Texas Eastern Transmission, LP,* 102 FERC ¶ 61,028, *reh'g denied,* 106 FERC ¶ 61,066 (2004).

[8] Cascade Agreement at p 12.

[9] *See, e.g., Questar Pipeline Co.,* 131 FERC ¶ 61,011, at P 5 (2010).

> pursuant to the provisions of the GTN FERC Gas Tariff at 60% of the maximum reservation rate for the period of May 1st through October 31st….and at the maximum reservation rate for all other periods covered by the release.[10]

10. Commission policy allows pipelines to acquire third-party capacity on other interstate pipelines and requires that the capacity be treated as an extension of its own facilities and thus subject to its own tariff.[11] Indeed, Ruby's tariff requires that it "render service for its Shippers on the acquired capacity, pursuant to Transporter's Tariff" (section 4.6(a)) and requires that any off-system capacity acquired but not used be offered to other shippers on a secondary or interruptible basis, pursuant to Transporter's FERC Gas Tariff (section 4.6(c)). However, the non-conforming agreement explicitly states that Ruby will release the acquired capacity to Cascade pursuant to the provisions of GTN's tariff. This appears to contravene both Commission policy as well as Ruby's tariff. If Ruby intends to acquire downstream capacity for Cascade on GTN that capacity must be made available to Cascade through Ruby's existing tariff mechanism. Therefore, Ruby is directed to revise section 17 of the service agreement such that any capacity purchased on GTN may be made available to Cascade only through the provisions of Ruby's tariff.

By direction of the Commission. Chairman Wellinghoff is not participating.

Kimberly D. Bose,
Secretary.

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[10] Cascade Agreement at p 17.

[11] *Texas Eastern Transmission Corp.,* 93 FERC ¶ 61,273 (2000).

**Appendix**

Ruby Pipeline, L.L.C.
FERC NGA Gas Tariff
Ruby Tariff

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