

142 FERC ¶ 61,007
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Trailblazer Pipeline Company LLC

Docket No. RP13-376-000

ORDER ON TARIFF FILING

(Issued January 3, 2013)

1. On December 6, 2012, Trailblazer Pipeline Company LLC (Trailblazer) filed revised tariff records¹ to reflect clarifying information and updated addresses and various contact information. Trailblazer requests that the Commission grant all waivers of its regulations necessary for the proposed tariff records to become effective, December 7, 2012. As discussed below, we grant waiver of the Commission's notice requirement and accept the Option A tariff records, subject to conditions, to be effective December 7, 2012.² Moreover, pursuant to section 5 of the Natural Gas Act (NGA), we find Trailblazer's force majeure and waiver and indemnification provisions to be unjust and unreasonable and direct Trailblazer to revise those provisions of its tariff or show cause why it should not be required to do so.

I. Background and Details of Filing

2. Trailblazer explains that the proposed revisions include changing the text of each applicable tariff record to reflect new physical addresses, email addresses, phone numbers, and website addresses and removing section 32.1 naming Natural Gas Pipeline Company of America (NGPL) as the Operator of Trailblazer. NGPL will no longer be responsible for operating Trailblazer; Trailblazer will assume that responsibility. Also, section 32.2(b) has been removed as the information contained in that section is now

¹ See Appendix for a list of the revised tariff records.

² The Option B tariff records were provided only in the event the Commission did not issue an affirmative order in Docket No. RP12-1089-000, concerning Trailblazer's implementation of revised NAESB standards pursuant to Order No. 587-V. On December 19, 2012, Trailblazer's NAESB filing in Docket No. RP12-1089-000 was accepted by delegated order.

redundant to the edited information in 32.2(a) in which “Trailblazer” replaced “Operator” in the text. Trailblazer claims that no other changes to the applicable Rates, Rate Schedules, General Terms and Conditions (GT&C), or Forms of Service Agreements are being proposed in the filing. Therefore, this filing will have no effect on its revenues and costs.

II. Public Notice, Comments, and Interventions

3. Public notice of Trailblazer’s filing was issued on December 7, 2012. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations, 18 C.F.R. § 154.210 (2012). Pursuant to Rule 214, (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motions 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 December 18, 2012, Indicated Shippers³ filed a protest.

4. In their protest, the Indicated Shippers request that the Commission require Trailblazer to revise the force majeure and waiver and indemnification provisions of its tariff to comply with Commission precedent. The Indicated Shippers state that although Trailblazer’s filing does not propose any change in the force majeure and waiver and indemnification provisions of Trailblazer’s tariff, the Commission should require Trailblazer to modify these provisions in the instant docket.

5. The Indicated Shippers observe that Section 32 of the GT&C of Trailblazer’s proposed tariff provides that a shipper “waives any and all claims against Trailblazer” and “shall indemnify and save harmless Trailblazer” for claims arising out of Trailblazer’s performance “[i]n the absence of gross negligence, recklessness or willful misconduct on the part of Trailblazer.” They contend that this provision does not comply with applicable Commission precedent. Consequently, the Indicated Shippers request the Commission to require Trailblazer to revise its tariff to replace the gross negligence standard with the simple negligence standard.

6. The Indicated Shippers also contend that the Commission should direct Trailblazer to revise its force majeure language to comply with Commission precedent. The Indicated Shippers notes that Section 25.2 of the GT&C of Trailblazer’s tariff defines a force majeure to include “interruptions by government or court orders, [and] present or future orders of any regulatory body having proper jurisdiction.”

³ For the purpose of this filing, the Indicated Shippers are BP Energy Company, ConocoPhillips Company, Shell Energy North America (US), L.P., and SWEPI LP.

III. Discussion

7. As discussed below, we find Trailblazer's force majeure and waiver and indemnification provisions to be unjust and unreasonable and direct Trailblazer to revise those provisions of its tariff or show cause why it should not be required to do so. We accept and suspend Trailblazer's revised tariff records, to be effective December 7, 2012, subject to conditions.

A. Waiver and Indemnification Provisions

8. The Commission applies two general principles to the issue of liability: there should be no liability without fault, and a pipeline or shipper should not be able to avoid all liability caused by its own negligence or intentional actions.⁴ The Commission has prohibited pipelines from limiting their liability in a way that would immunize them from direct damages resulting from simple negligence.⁵ This provides an incentive to operate their systems in a reasonable and prudent manner.⁶ Moreover, the Commission has prohibited pipelines from limiting liability due to their "sole" negligence because such a limitation would rule out a situation where the pipeline and another party are both negligent.⁷ Trailblazer's tariff provides that a shipper "waives any and all claims against Trailblazer" and "shall indemnify and save harmless Trailblazer" for claims arising out of Trailblazer's performance "[i]n the absence of gross negligence, recklessness or willful misconduct on the part of Trailblazer." This provision is therefore inconsistent with Commission policy, and we therefore find it to be unjust and unreasonable. Furthermore, the Commission has prohibited pipelines from insulating their exposure to not only direct damages, but also indirect damages resulting from their gross negligence, bad faith or willful misconduct.⁸

⁴ *Discovery Gas Transmission LLC*, 133 FERC ¶ 61,264, at P 9 (2010) (citing *White River Hub, LLC*, 129 FERC ¶ 61,035, at P 16 (2009); *Texas Gas Transmission, LLC*, 129 FERC ¶ 61,003, at P 9 (2009); *Arkla Energy Resources Co.*, 64 FERC ¶ 61,166, at 62,490 (1993)).

⁵ *See, e.g., Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095, at P 58 (2009).

⁶ *Id.* (citing cases).

⁷ *Id.* P 59.

⁸ *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 54 (2008).

9. Because Trailblazer's indemnification provisions violate Commission policy, we direct Trailblazer to revise these indemnification provisions of its tariff or show cause why it should not be required to do so.

B. Force Majeure Definition

10. Consistent with our determination in *Gas Transmission Northwest LLC*,⁹ we find that the portion of Trailblazer tariff defining *force majeure* events to include, among other things, "interruptions by government or court orders [and] present or future orders of any regulatory body having proper jurisdiction" is unjust and unreasonable. Therefore, pursuant to section 5 of the NGA, we direct Trailblazer, within 30 days of the date this order issues, to revise section 25.2 of its GT&C to exclude outages that are within the pipeline's control or expected to result from regulatory requirements, or show cause why it should not be required to make this change.

C. Suspension

11. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.¹⁰ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹¹ Such circumstances exist here, where Trailblazer is revising its tariff to incorporate changes associated with new owners.

The Commission orders:

(A) Trailblazer's Option A revised tariff records are accepted and suspended, and permitted to become effective December 7, 2012, subject to conditions, as discussed above.

⁹ 141 FERC ¶ 61,101, at PP 48-49 (2012) (citing *Texas Eastern Transmission LP*, 140 FERC ¶ 61,216, at PP 82-88 (2012)).

¹⁰ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹¹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension).

(B) Pursuant to section 5 of the Natural Gas Act, Trailblazer must file revised records within 30 days of the date of this order, revising the liability waiver and indemnification provisions in section 32 and the definition of force majeure provisions in section 25.2 of its GT&C to comply with Commission policy or show cause why it should not be required to do so.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Trailblazer Pipeline Company LLC FERC NGA Gas Tariff Fifth Revised Volume No. 1

The Following Option A Tariff Records Are Accepted Effective December 7, 2012

[Sheet No., Fifth Revised Volume No. 1, 1.0.0](#)
[Sheet No. 2, Table of Contents, 5.0.0](#)
[Sheet No. 23, Rate Schedule FTS - Section 3.2, 1.0.0](#)
[Sheet No. 36, Rate Schedule ITS - Section 3.2, 1.0.0](#)
[Sheet No. 177, General Terms and Conditions - Sections 18.2 through 18.6, 1.0.0](#)
[Sheet No. 230, General Terms and Conditions - Sections 27, 27.1 and 27.2, 1.0.0](#)
[Sheet No. 236, General Terms and Conditions - Sections 32, 32.1 and 32.2, 1.0.0](#)
[Sheet No. 238, General Terms and Conditions-Sections 34, 34.1 through 34.3, 3.0.0](#)
[Sheet No. 244, General Terms and Conditions - Sections 37.2 and 37.3, 5.0.0](#)
[Tariff, Original Volume No. 2, 1.0.0](#)

The Following Option B Tariff Records Are Rejected As Moot

[Sheet No., Fifth Revised Volume No. 1, 1.0.1](#)
[Sheet No. 2, Table of Contents, 5.0.1](#)
[Sheet No. 23, Rate Schedule FTS - Section 3.2, 1.0.1](#)
[Sheet No. 36, Rate Schedule ITS - Section 3.2, 1.0.1](#)
[Sheet No. 177, General Terms and Conditions - Sections 18.2 through 18.6, 1.0.1](#)
[Sheet No. 230, General Terms and Conditions - Sections 27, 27.1 and 27.2, 1.0.1](#)
[Sheet No. 236, General Terms and Conditions - Sections 32, 32.1 and 32.2, 1.0.1](#)
[Sheet No. 238, General Terms and Conditions-Sections 34, 34.1 through 34.3, 3.0.1](#)
[Sheet No. 244, General Terms and Conditions - Sections 37.2 and 37.3, 5.0.1](#)
[Tariff, Original Volume No. 2, 1.0.1](#)