144 FERC ¶ 61,118
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Ruby Pipeline, L.L.C. | Docket Nos. RP12-840-001
RP12-840-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued August 8, 2013)

1. On August 27, 2012, Ruby Pipeline, L.L.C. (Ruby) submitted a compliance filing containing revised tariff[1] records and a separate request for rehearing of the Commission's July 2012 Order.[2] The July 2012 Order granted limited waiver and accepted, subject to conditions, Ruby's proposed tariff records reflecting changes to Ruby's fuel and lost and unaccounted for (FL&U) reimbursement percentage and its electric power cost (EPC) rate. In this order, we grant Ruby's request for rehearing and accept Ruby's proposed tariff records to be effective September 27, 2012.

I. Background

2. Sections 13 and 28 of Ruby's General Terms and Conditions (GT&C) require Ruby to adjust its FL&U reimbursement percentage and its EPC rate at least once every three months. On June 29, 2012, Ruby submitted a revised tariff record reducing the FL&U retention percentage to 0.00 percent, and Ruby proposed an EPC rate of $0.025/Dth. Because Ruby's proposed FL&U retention percentage was set at 0.00 percent and Ruby had accumulated over-collections of FL&U during prior periods, Ruby's tariff required it to cash-out the over-collected quantities and to credit to Shippers the value of such quantities. Rather than directly crediting the over-collected fuel quantities to its shippers, Ruby requested waiver of the Commission's regulations and its tariff to apply these prior period FL&U over-collections to offset prior period EPC under-collections, thereby reducing the proposed EPC rate.

3. In response to that filing, BP Energy Company (BP) submitted a protest asserting that Ruby's tariff provisions require Ruby to provide a report of its operational purchases

[1] Ruby Pipeline, L.L.C., FERC NGA Gas Tariff, Ruby Tariff Part IV: GT&C, Section 27 – Incidental Purchases and Sales, 1.0.0

[2] *Ruby Pipeline, L.L.C.*, 140 FERC ¶ 61,075 (2012) (July 2012 Order).

and sales. BP argued that this report was necessary to evaluate whether it was appropriate for Ruby to use the Opal, Kern River index price to assign a cash value to the prior period fuel over-collections used to offset the prior period EPC over-collections.

4. The Commission's July 2012 Order held that Ruby's tariff required it to provide an operational purchases and sales report specifying the source of the operational gas purchased or sold, the date of such purchase or sale, the volume, the purchase or sale price, the costs and revenues from such purchases and sales, the disposition of the associated costs and revenues and an explanation of the purpose of any operational transaction, for each purchase or sale of gas.

5. The Commission further concluded that Ruby's tariff did not contain provisions requiring the posting and bidding of operational sales of gas. The Commission held that current Commission policy requires that all operational sales of gas be subject to bidding.[3] The Commission directed Ruby to file revised tariff records requiring that the operational gas for "sale and purchase" be posted for bidding. The Commission stated that, in the alternative, Ruby may show cause why it should not be required to post for bidding all such operational sales and purchases.

II. Rehearing

1. Ruby's Rehearing Request

6. On August 27, 2012, Ruby submitted a request for rehearing of the Commission's July 2012 Order. In its request for rehearing, Ruby argues that the Commission has repeatedly and consistently found that its posting requirement for bidding applies exclusively to operational gas sales, and not to purchases.[4] Ruby accordingly requests that the Commission reconsider its finding in the July 2012 Order that Ruby include a requirement that the operational gas for "sale and purchase" be posted for bidding pursuant to the existing bidding procedures in its GT&C.

[3] *Id*. P 14.

[4] Ruby Rehearing Request at 3 (citing *Wyoming Interstate Co., Ltd*., 111 FERC ¶ 61,215, at PP 26-30 (2005) (*WIC*); *Colorado Interstate Gas Co*., 111 FERC ¶ 61,216, at PP 15-16 (2005) (*CIG*); *Southern Natural Gas Co.*, 133 FERC ¶ 61,183, at P 12 (2010); *Blue Lake Storage Co*., 132 FERC ¶ 61,177, at P 7 (2010); *Dominion Transmission, Inc*., 106 FERC ¶ 61,029, at P 17, *order on reh'g*, 107 FERC ¶ 61,315, at P 9 (2004); *Texas Gas Transmission, L.L.C.*, 139 FERC ¶ 61,126, at P 18 (2012); *Columbia Gulf Transmission Co.*, 118 FERC ¶ 61,066, at P 2 (2007)).

2. Determination

7. The Commission grants rehearing. The Commission has held that all operational *sales* of gas must be subject to bidding. However, we confirm that the Commission's precedent does not require pipelines to post operational *purchases* for bid.[5] We do not intend to impose such posting and bidding requirements for purchases here. Accordingly, we grant Ruby's request for rehearing on this issue, and clarify that the July 2012 Order only should be understood to require posting and bidding for operational sales of gas.

III. Compliance Filing

A. Ruby's Compliance Filing

8. In its compliance filing, Ruby submitted a tariff record containing an informational report detailing Ruby's operational purchases and sales of gas for the 3-month period ending May 31, 2012. However, the report did not identify the source of the operational gas purchased or sold. Ruby's proposed tariff records included a posting requirement for operational gas sales. However, Ruby's filed tariff records did not include posting and bidding for operational gas purchases. Consistent with the July 2012 Order's directive to show cause as well as the arguments made in its rehearing request, Ruby asserted that it should not be required to post for bidding its operational gas purchases.

1. Notice of Filing, Interventions and Responsive Pleadings

9. Public notice of Ruby's initial filing was issued on August 28, 2012. Protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). On September 10, 2012, BP submitted a protest to Ruby's compliance filing and BP submitted an errata on September 11, 2012, to correct a typographical error. On September 18, 2012, Ruby submitted an answer. On September 25, 2012, BP submitted an answer to Ruby's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests or answers unless otherwise permitted by the decisional authority. Accordingly we reject Ruby's September 18, 2012 answer and BP's September 25, 2012 answer.

10. On April 17, 2013, BP submitted a motion for Commission action. On May 1, 2013, Ruby submitted an answer to BP's motion. Subsequently, on May 15, 2013, Ruby filed an answer and BP filed second answer on May 24, 2013. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to answers unless otherwise permitted by the decisional authority. We reject Ruby's May 15, 2013 answer and BP's May 24, 2013 answer.

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[5] *WIC*, 111 FERC ¶ 61,215 at PP 26-30; *CIG*, 111 FERC ¶ 61,216 at PP 15-16.

2. BP's September 11, 2012 Protest

11. In its protest to Ruby's compliance filing, BP argues that the Commission should require Ruby to do three things (1) use the Malin index price to value the fuel over-recoveries as opposed to the Opal, Kern River index price used by Ruby, (2) include in its operational sales and purchases report the names of all entities from which Ruby purchased or sold gas for operational purposes, and (3) post, in compliance with the July 2012 Order, all operational purchases and sales for competitive bidding. BP states that if Ruby uses the Opal, Kern River index price, shippers will need to pay $22,857 more in electric compression costs than they would if Ruby used the Malin Index price.

3. BP's Motion Requesting Action and Ruby's Answer

12. In its April 17, 2013 motion, BP requests Commission action. BP also states that since the issuance of the July 2012 Order, shippers have paid $22,857 more in electric compression costs than would have been the case if Ruby had used the Malin index price. BP argues that since its September 11, 2012 protest, the Commission found in another proceeding that Ruby's use of the Opal, Kern River index price instead of the Malin index price was not just and reasonable.[6]

13. On May 1, 2013, Ruby filed an answer to BP's Motion. Ruby acknowledges that the Commission subsequently required Ruby to change its method for returning over-collections to shippers when the FL&U Reimbursement Percentages would have resulted in a negative quantity. However, Ruby argues that the Commission may not change the tariff provision retroactively. Ruby states that its then-existing tariff required it to use the Opal, Kern River Price to cash out the over-collected fuel quantities.

IV. Discussion

A. Ruby's Utilization of the Opal Price Index

14. The Commission finds that Ruby's filings in this proceeding followed the provisions of its then-existing tariff to calculate the sums due to its shippers for fuel over-collections. In this proceeding, the calculation of the FL&U Reimbursement Percentages would have resulted in a negative quantity. At the time of its June 2012 filing, Ruby's tariff provided:

> Should the calculation of the FL&U Reimbursement Percentages result in a negative quantity, such negative quantities will be cashed out using the

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[6] BP's April 17, 2013 Motion at P 3 (citing *Ruby Pipeline, L.L.C.*, 140 FERC ¶ 61,256 (2012) (September 2012 Order); *Ruby Pipeline, L.L.C.*, 142 FERC ¶ 61,104 (2013) (February 2013 Order)).

> Cash Out Index Price for the Month the fuel imbalance occurred and credited to Shippers. Transporter will submit to the Commission any workpapers supporting the cash out of negative quantities and will credit to Shippers the value of such quantities within 90 Days of FERC approval.[7]

Ruby's tariff defined the "Cash Out Index Price" as:

> "Cash Out Index Price" - shall mean the highest of the index prices described in Section 10.3, if Shipper owes balances to Transporter (including overrun Gas). The "Cash Out Index Price" shall be the lowes of the index prices described in Section 10.3 of the GT&C, if Transporter owes balances to Shipper.[8]

15. Consistent with these tariff provisions, Ruby used its FL&U cash-out price to credit its shippers the value of these quantities. Under Ruby's then-existing tariff, the over-collected fuel was to be valued at the Opal, Kern River price (which was, as specified by Ruby's tariff, "the lowest of the index prices specified in section 10.3 of the GT&C"). Ruby merely sought waiver of its tariff for the "netting of fuel over-collections against the EPC under-collection" as opposed to returning the fuel over-collection directly to its shippers.[9] This waiver did not change the manner in which Ruby's tariff assigned a cash value to the fuel over-collection. Ruby followed its tariff to calculate the cash value assigned to the over-collection of fuel which was offset by its EPC under-collections.

16. After Ruby made its June 2012 filing the Commission, pursuant to section 5 of the Natural Gas Act, directed Ruby to modify its methodology for returning over-collections to shippers when the FL&U Reimbursement Percentages would have resulted in a negative quantity.[10] However, any future tariff changes are prospective only and thus do

[7] Ruby Pipeline, L.L.C., FERC NGA Gas Tariff, Ruby Tariff, Part IV: GT&C, Section 13 – Fuel and L&U, 0.0.0, 136 FERC ¶ 61,058 (2011).

[8] Ruby Pipeline, L.L.C., FERC NGA Gas Tariff, Ruby Tariff, Part IV: GT&C, Section 1 - Definitions, 1.0.0, Delegated Letter Order (Docket No. RP12-950-000, April 26, 2012).

[9] July 2012 Order, 140 FERC ¶ 61,075 at P 4.

[10] September 2012 Order, 140 FERC ¶ 61,256 (2012), *order on compliance*, February 2013 Order, 142 FERC ¶ 61,104 (2013).

not apply to this proceeding.[11] Accordingly, we accept Ruby's proposed adjustment to its FL&U as consistent with its then-existing tariff.

B. Ruby's Operational Purchases and Sales Report Requirements

17. The July 2012 Order directed Ruby to file an operational purchases and sales report identifying, among other things, "the source of the operational gas purchased or sold."[12] Ruby did not seek rehearing of this directive in the July 2012 Order. Yet, the operational purchases and sales report provided by Ruby in its compliance filing failed to identify the counterparties to Ruby's operational gas purchases and sales.

18. However, in Docket No. RP12-1013-000, *et al*, the Commission also required Ruby to submit a revised operational purchase and sales report identifying the counterparties to Ruby's operational gas purchases and sales.[13] In its October 30, 2012 compliance filing in Docket No. RP12-1013-001, Ruby provided an operational purchases and sales report which identified every counterparty from which it purchased and to which it sold gas for the August 2011-July 2012 period. Accordingly, this operational sales and purchases report covers the March 2012-May 2012 period at issue in this proceeding, and it is not necessary for Ruby to make a further compliance filing.

C. Ruby's Bidding Requirements

19. Consistent with our decision to grant rehearing as discussed previously, the Commission accepts Ruby's proposal to post for bidding all operational sales of gas but not to post for bidding operational purchases.

The Commission orders:

(A) Ruby's request for rehearing is granted with respect to the posting and bidding of operational purchases.

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[11] September 2012 Order, 140 FERC ¶ 61,256 at P15.

[12] July 2012 Order, 140 FERC ¶ 61,075 at P 13.

[13] September 2012 Order, 140 FERC ¶ 61,256.

(B) The tariff record in footnote 1 is accepted to be effective September 27, 2012.

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.