

168 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Transwestern Pipeline Company, LLC

Docket No. RP15-23-011

ORDER ON COMPLIANCE FILING

(Issued August 9, 2019)

1. On May 17, 2019, Transwestern Pipeline Company, LLC (Transwestern) filed tariff records¹ to comply with directives in the Commission's April 18, 2019 Order.² In that order, the Commission found that Transwestern's administration of its capacity release program was not in compliance with the Commission's capacity release policies, and was therefore not just and reasonable, and directed conforming changes. The revised tariff records incorporate changes to Transwestern's firm rate schedules that clarify the determination of reservation charges applicable to replacement shippers and subsequent transportation charges that may be incurred by these shippers and releasing shippers under certain circumstances, together with corresponding changes to Section 30 of the General Terms and Conditions (GT&C) of Transwestern's tariff. As discussed more fully below, we accept the referenced tariff records effective on the date this order issues, subject to the revisions required by this order.

I. Background

2. As relevant here, Section 3.1(b) of Transwestern's firm rate schedules provides that, if the shipper uses a secondary receipt or delivery point outside its primary path (i.e., the path from its primary receipt point to its primary delivery point), the shipper will pay "an additional Reservation Charge, not to exceed the maximum applicable tariff rate, as negotiated between Shipper and Transporter." On February 6, 2013, Transwestern posted a notice clarifying how it intended to apply Section 3.1(b) of its firm rate schedules,

¹ Transwestern Pipeline Company, LLC, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, [1. Rate Schedule FTS-1, Firm Transportation Service, 3.0.0](#); [6. Rate Schedule LFT, Limited Firm Transportation Service, 3.0.0](#); and [GT&C Section 30., Capacity Release, 5.0.0](#).

² *Transwestern Pipeline Co. LLC*, 167 FERC ¶ 61,040 (2019) (April 18 Order).

including in the context of capacity release (February 2013 Notice). The February 2013 Notice stated:

Clarification of Alternate Points Outside Shipper's Path/Rate Area

In response to several questions that Transwestern has received, and to ensure the consistent application of relevant tariff provisions, Transwestern wishes to clarify the use of alternate points outside a Shipper's path/rate area, for all capacity release or other bid solicitation activities.

Shippers that acquire capacity through capacity release, or directly from Transwestern in a bid solicitation for available capacity, are not entitled to use alternate points outside the awarded path/rate area at the bid rate. Moreover, any offers to pay incremental charges for use of alternate points outside the offered path/rate area are not considered in the bid evaluation.

Consistent with Section 3.1(b) of Transwestern's firm transportation rate schedules, the acquiring Shipper and Transwestern must agree to the rate for usage of any alternate points located outside the Shipper's path. Such rate will apply on a daily basis for as long as any alternate point outside the path is utilized.³

3. In the April 18 Order, the Commission found that the requirement for the replacement shipper to agree with Transwestern as to the rate for service to secondary points within the zone for which it was paying but outside its primary path was contrary to the Commission's longstanding capacity release policies.⁴ The Commission explained that the reservation charge component of the replacement shipper's rate for all service within the applicable rate zone, both within and outside the primary path, must be the capacity release rate determined through negotiations between the releasing shipper and the replacement shipper, taking into account any required bidding on the release. The

³ The Indicated Shippers provided a copy of the February 2013 Notice in their Nov. 16, 2015 Initial Brief, Appendix A, In Docket No. RP15-23-000.

⁴ April 18 Order, 167 FERC ¶ 61,040 at P 48 (citing *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,286 (1992), *order on reh'g*, 62 FERC ¶ 61,311, at 62,991 (1993); *Transwestern Pipeline Co.*, 61 FERC ¶ 61,332, at 62,231-32 (1992), *compliance and reh'g order*, 62 FERC ¶ 61,090, *partial reh'g order*, 63 FERC ¶ 61,138 (1993)).

Commission pointed out that it has held that the pipeline plays no role in determining the reservation charge paid by the replacement shipper for its released capacity. Accordingly, the Commission concluded that Transwestern must charge the replacement shipper the reservation charge agreed to between the releasing shipper and replacement shipper through the capacity release bidding process or otherwise for any service within the rate zones for which the replacement shipper is paying, without regard to whether the replacement shipper is using a secondary point within its primary path or outside that path. However, the Commission also found that, if the replacement shipper seeks to use a secondary point outside the rate zone(s) included in the release, Transwestern may require it to pay an additional charge to be negotiated between Transwestern and the replacement shipper.

4. The Commission also rejected the claims made by shippers in this proceeding that a replacement shipper is automatically entitled to pay the same discounted rate as the releasing shipper pays for service at a secondary point.⁵ The Commission stated that the replacement shipper must pay the rate agreed to between it and the releasing shipper regardless of any discount agreement between the pipeline and releasing shipper.⁶ However, the Commission held that, if the replacement shipper uses a point at which the releasing shipper does not have a discount, Transwestern may require the releasing shipper to pay any amount by which the maximum reservation charge exceeds the replacement shipper's reservation charge.⁷

5. Based on the above holdings, the Commission found that Transwestern's practice, as reflected in the February 2013 Notice, of requiring replacement shippers to negotiate with Transwestern the rates to be paid for use of secondary points outside their primary path but within their rate zone is contrary to Commission policy and thus unjust and unreasonable. The Commission also found, pursuant to section 5 of the Natural Gas Act (NGA), that Section 3.1(b) of Transwestern's firm rate schedules was unjust and unreasonable to the extent that section requires replacement shippers to negotiate with Transwestern the reservation charge to be paid by them for using secondary points outside their primary paths but within their rate zones. Therefore, the Commission required Transwestern to modify Section 3.1(b) of each of its firm rate schedules to clarify that the requirements of that section concerning the rates to be paid for use of secondary points outside a shipper's primary path do not apply to replacement shippers, if the secondary points are within the rate zones for which the replacement shipper is

⁵ *Id.* P 54.

⁶ *Id.* P 55 (citing *El Paso Natural Gas Co.*, 62 FERC ¶ 61,311 at 62,991).

⁷ *Id.* P 62.

paying.⁸

6. In the instant filing, Transwestern states that it proposes to revise Section 3.1(b)(2) of Rate Schedules FTS-1 and LFT to clarify that the requirements of that section concerning the rates to be paid for use of secondary points outside a shipper's primary path do not apply to a replacement shipper, if the secondary points are within the rate zones for which the replacement shipper is paying. Transwestern also clarifies that the initial releasing shipper will be billed any additional reservation charges for usage of secondary points within the zone in accordance with the releasing shipper's service agreement.⁹ In Section 3.1(b)(3), Transwestern proposes language allowing it to require a replacement shipper using secondary points outside the zones included in the release to pay an additional charge. Corresponding billing clarifications are proposed in GT&C Section 30, Capacity Release.

II. Notice and Responsive Pleadings

7. Public notice of the compliance filing was issued on May 20, 2019 with interventions and protests due as provided in section 154.210 of the Commission's regulations.¹⁰ Pursuant to Rule 214,¹¹ all timely filed motions to intervene and any unopposed motion to intervene filed 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.

8. On May 30, 2019, Indicated Shippers filed adverse comments to Transwestern's proposal.¹² Southwest Gas Corporation (Southwest) filed a protest. On June 3, 2019,

⁸ *Id.* P 63. The Commission clarified that Transwestern may require a replacement shipper to pay an additional charge for use of secondary points outside the rate zones for which it is paying. *Id.* P 63 n.88.

⁹ Although the requested modification is proposed herein for Section 3.1(b) of Rate Schedules FTS-1 and LFT, Transwestern clarifies that the modification will apply to Rates Schedules FTS-3 and FTS-5, which incorporate Section 3.1 by reference. Transwestern notes that the modifications do not apply to small shippers taking service under Rate Schedule FTS-2 under a one-part rate.

¹⁰ 18 C.F.R. § 154.210 (2018).

¹¹ 18 C.F.R. § 385.214 (2018).

¹² Indicated Shippers consist of BP Energy Company, Chevron U.S.A. Inc., ConocoPhillips Company, Shell Energy North America (US), L.P., and XTO Energy Inc.

Transwestern filed an answer. The Commission's Rules of Practice and Procedure do not permit answers to protests unless otherwise ordered by the decisional authority.¹³ We find good cause to accept the answer because it has assisted us in our decision making process.

9. According to Indicated Shippers, several of the proposed revisions to Transwestern's tariff do not comply with the April 18 Order and are potentially inconsistent with Transwestern's existing tariff language. First, Indicated Shippers note that revised Section 3.1(b)(2) of Rate Schedules FTS-1 and LFT states that Transwestern may require the releasing shipper "to pay an additional Reservation Charge." The Indicated Shippers argue that there needs to be a requirement that this amount be limited to the maximum reservation rate specified in the tariff. The Indicated Shippers note that the April 18 Order stated that Transwestern may only require the releasing shipper to pay "any amount by which the maximum reservation charge exceeds the replacement shipper's reservation charge."¹⁴

10. Furthermore, Indicated Shippers argue that Section 3.1(b)(3) of Rate Schedules FTS-1 and LFT does not provide for the possibility that the releasing and replacement shippers may have agreed to specific rates that would apply to points that are in rate zones that are not within the same rate zone as the primary path. Indicated Shippers argue that this is inconsistent with the April 18 Order, which in their view states that the Commission's policy is that the reservation charge component of a released rate is determined solely by the releasing shipper and the replacement shipper.¹⁵

11. Indicated Shippers contend that Section 3.1(b)(3) of Rate Schedules FTS-1 and LFT, as proposed, does not contemplate that the replacement shipper and the releasing shipper may have agreed to apply a rate other than the maximum tariff rate for points in rate zones that are not within the rate zone of the contract primary path. Accordingly, Indicated Shippers request that the Commission require Transwestern to clarify its proposed tariff language in Section 3.1(b)(3) of Rate Schedules FTS-1 and LFT, by adding the italicized language as follows:

If a Replacement Shipper nominates and transports using Alternate Receipt Point(s) or Alternate Delivery Point(s) that are outside the rate zones comprising the Primary Path or outside any other rate zone(s) that the Replacement Shipper is

¹³ 18 C.F.R. § 385.213(a)(2) (2018).

¹⁴ Indicated Shippers Comments at 4 (citing April 18 Order, 167 FERC ¶ 61,040 at P 62).

¹⁵ *Id.* at 6, (citing April 18 Order, 167 FERC ¶ 61,040 at P 48).

paying per the terms of the release between Releasing Shipper and Replacement Shipper, the Replacement Shipper shall pay an additional Reservation Charge at the maximum tariff rate for such zone, unless otherwise negotiated between Replacement Shipper and Transporter *or otherwise specified in the capacity release agreement between the Replacement Shipper and Releasing Shipper.*

According to Indicated Shippers, this additional language will allow for the possibility that the releasing and replacement shippers have agreed to a particular rate for alternate points that are not located within the rate zones of the primary path points.

12. Indicated Shippers request two additional corrections to the language Transwestern has proposed. Indicated Shippers argue that in Section 3.1(b)(1) of Rate Schedules FTS-1 and LFT, Transwestern should revise the term “The additional reservation rate” to “The additional Reservation Charge” to use consistent language to describe the applicable charge.¹⁶ In addition, Indicated Shippers identify a typographical error in proposed Rate Schedule FTS-1, Section 3.2.

13. Similar to Indicated Shippers’ objection, Southwest also argues that Section 3.1(b)(2) does not limit the additional reservation charge to the difference between the maximum reservation charge and the replacement shipper’s reservation charge. Therefore, Southwest contends, the compliance tariff language is inconsistent with the Commission’s order and creates an unnecessary ambiguity.

14. In its answer, Transwestern contends that its proposed language provides that the releasing shipper will not have to pay an additional reservation charge higher than the maximum applicable tariff rate. Transwestern points out that Section 3.1(b)(2) states that “any additional Reservation Charge ... shall apply to the initial Releasing Shipper in accordance with its Service Agreement.” According to Transwestern, the terms of the service agreement set out the rate of any additional reservation charge that the initial releasing shipper will pay, which pursuant to Section 3.1(b)(1) cannot exceed the maximum applicable tariff rate.¹⁷ Although Transwestern argues that no revisions are necessary, it states that it is agreeable to revising Section 3.1(b)(2) to expressly refer back to Section 3.1(b)(1).¹⁸

¹⁶ *Id.* at 7.

¹⁷ Transwestern Answer at 2.

¹⁸ *Id.*

15. Transwestern also states that it will revise Section 3.1(b)(1) of Rate Schedules FTS-1 and LFT to change the phrase “additional reservation rate” to “additional Reservation Charge” and to correct a typing error identified by Indicated Shippers.¹⁹

16. Finally, Transwestern responds to Indicated Shippers’ suggestion that proposed Section 3.1(b)(3) is not in compliance with the April 18 Order because it does not reflect that the releasing and replacement shippers “may have agreed to specific rates that would apply to points that are in rate zones that are not within the same rate zone(s) as the Primary Path.” Transwestern argues that Indicated Shippers are incorrect, because Section 3.1(b)(3) provides for just that potential scenario. According to Transwestern, Section 3.1(b)(3) only applies if a replacement shipper uses alternate points that are (1) “outside the rate zones comprising the Primary Path” or (2) “*outside any other rate zone(s) that the Replacement Shipper is paying per the terms of the release between Releasing Shipper and Replacement Shipper.*”²⁰ Based on its position that Section 3.1(b) already addresses Indicated Shippers’ concern, Transwestern contends that Indicated Shippers’ suggested revisions are unnecessary.

III. Commission Determination

17. Southwest and Indicated Shippers argue that Transwestern should include language in its proposed Section 3.1(b)(2) providing that the releasing shipper will not have to pay an additional reservation charge higher than the maximum applicable tariff rate.²¹ We find that this concern is adequately addressed by Transwestern’s agreement, in its answer, to revise proposed Section 3.1(b)(2) to provide that any additional reservation charge incurred by the releasing shipper will be in accordance with Section 3.1(b)(1). Section 3.1(b)(1) expressly provides that “Shipper will pay an additional Reservation Charge, not to exceed the maximum applicable tariff rate.” Thus, providing that any additional reservation charge incurred by the releasing shipper under Section 3.1(b)(2) will be in accordance with Section 3.1(b)(1) clarifies that such an additional reservation charge may not exceed the maximum applicable tariff rate.

18. We will not require a change to Section 3.1(b)(3) as proposed by Indicated Shippers. We agree with Transwestern that the currently proposed language adequately limits the requirement that the replacement shipper pay an additional reservation charge in situations where it uses a secondary point outside the rate zones for which it is paying.

¹⁹ *Id.* at 3.

²⁰ *Id.* (emphasis in original).

²¹ *See* April 18 Order, 167 FERC ¶ 61,040 at P 64: “[W]e remind Transwestern that it must permit a primary shipper to use points outside its primary path but within its rate zones, if the shipper is willing to pay the maximum rate and capacity is available.”

As Transwestern points out, proposed Section 3.1(b)(3) only requires a replacement shipper to pay an additional reservation charge if it uses secondary points that are (1) “outside the rate zones comprising the Primary Path” or (2) “*outside any other rate zone(s) that the Replacement Shipper is paying per the terms of the release between Releasing Shipper and Replacement Shipper.*” Thus, if the replacement shipper uses a secondary point in a rate zone that is outside the replacement shipper’s primary path but nevertheless is in a zone for which the replacement shipper is paying pursuant to the terms of the release, Transwestern will not charge the replacement shipper an additional reservation charge beyond the charge agreed to between the releasing and replacement shippers.

19. Finally, in its answer to the protests of Indicated Shippers and Southwest, Transwestern indicated it is agreeable to making two minor typographical edits to the proposed tariff language in its May 17, 2019 compliance filing, as discussed above. We therefore accept Transwestern’s tariff records effective on the date of this order, and direct Transwestern to submit an additional compliance filing incorporating the three changes it has agreed to make within 30 days of the date of issuance of this Order.

The Commission orders:

(A) The referenced tariff records are accepted, effective on the date this order issues.

(B) Transwestern is directed to file revisions to its tariff as directed above within 30 days of the date that this order issues.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.