

168 FERC ¶ 61,193
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Cactus II Pipeline LLC

Docket Nos. IS19-731-000
IS19-731-001

ORDER ACCEPTING TARIFF

(Issued September 25, 2019)

1. On August 2, 2019, Cactus II Pipeline LLC (Cactus II) filed FERC Tariff No. 2.0.0 (Tariff).¹ On August 26, 2019, Cactus II filed to amend its proposed tariff in FERC Tariff No. 2.0.1 (Amended Tariff).² We accept the Amended Tariff, which supersedes the Tariff, effective August 2, 2019, as proposed.

I. Background

A. Tariff

2. The Tariff institutes new movements and rates on Cactus II's newly developed pipeline system in Texas. The Tariff also included a Capital Surcharge, to be effective on April 1, 2020, for the purpose of amortizing capital expenditures associated with increased construction costs.

3. Cactus II requested waivers to file the proposed Capital Surcharge on more than 60 days' notice and to allow the other rates to become effective on less than one day's notice. The Tariff transmittal letter states that the new rates are filed "as Settlement Rates under 18 C.F.R. 342.4(b)" and that Cactus II is filing a sworn affidavit that states that the initial rates are agreed to by at least one non-affiliated person who intends to use the service.

¹ Cactus II Pipeline LLC, FERC Oil Tariff, Cactus II Pipeline LLC Tariff Filings, [Rates Tariff, Cactus FERC 2.0.0, 2.0.0](#).

² Cactus II Pipeline LLC, FERC Oil Tariff, Cactus II Pipeline LLC Tariff Filings, [Rates Tariff, Cactus FERC 2.0.0, 2.0.1](#).

B. Interventions and Protest

4. On August 19, 2019, ConocoPhillips Company and Encana Marketing (USA) Inc. (collectively, Joint Protesters) moved to intervene and filed a protest challenging the Capital Surcharge. Joint Protesters argue that Cactus II failed to demonstrate that the proposed Capital Surcharge is just and reasonable, and that it is premature to establish a surcharge with an effective date of April 1, 2020. Joint Protesters request that the Commission reject the proposed Capital Surcharge.³

5. Joint Protesters also contend that Cactus II incorrectly seeks to establish initial committed rates as settlement rates. Joint Protesters argue that the June 3, 2019 Order⁴ on Cactus II's Petition for Declaratory Order explained that the Commission's regulations require a carrier proposing an initial committed rate to meet the requirements for initial rates under 18 C.F.R. § 342.2 of the Commission's regulations, and only subsequent adjustments to the committed rates will be treated as settlement rates under 18 C.F.R. § 342.4(c).⁵

C. Amended Tariff and Answer

6. On August 26, 2019, Cactus II filed the Amended Tariff and an answer to the Protest. The Amended Tariff removes the Capital Surcharge in its entirety. In addition, Cactus II clarifies in the transmittal letter to the Amended Tariff that the new rates in the Tariff are established under 18 C.F.R. § 342.2(b), and that the reference to filing the new rates as "Settlement Rates under 18 C.F.R. § 342.4(b)" was an inadvertent clerical error. Cactus II argues in its answer that the Protest should be dismissed as moot. No protest or adverse comment was filed in response to the Amended Tariff.

II. Discussion

7. We accept the Amended Tariff. Cactus II removed the proposed Capital Surcharge in its entirety before its effective date. As a result, the Commission need not address any issues or arguments related to the withdrawn proposal, including those raised in the Protest.

³ Protest at 3-7.

⁴ *Cactus II Pipeline LLC*, 167 FERC ¶ 61,205 (2019) (June 3, 2019 Order).

⁵ Protest at 4-5.

8. Cactus II also addressed the incorrect statement in the transmittal letter to the original Tariff that the new rates were filed “as Settlement Rates under 18 C.F.R. § 342.4(b).”⁶ Rather, as Cactus II recognizes, initial rates must meet the requirements under 18 C.F.R. § 342.2.⁷ In this filing, Cactus II met the requirements for filing initial rates under 18 C.F.R. § 342.2(b) by including a sworn affidavit stating that the initial rates are agreed to by at least one non-affiliated shipper who intends to use the service.

The Commission orders:

Tariff No. 2.0.1 is accepted, effective August 2, 2019, as discussed in the body of this order. Tariff No. 2.0.0 is rejected as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶ Tariff No. 2.0.0, Transmittal Letter at 2.

⁷ Amended Tariff No. 2.0.01, Transmittal Letter at 1; *see also* June 3, 2019 Order, 167 FERC ¶ 61,205 at P 29.