150 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Transwestern Pipeline Company, LLC Docket No. RP15-23-001

ORDER GRANTING REHEARING

(Issued January 22, 2015)

1. On October 30, 2014, the Commission issued a suspension order on Transwestern Pipeline Company, LLC's (Transwestern) Natural Gas Act (NGA) general section 4 rate case.[1] The order accepted and suspended Transwestern's tariff records to be effective April 1, 2015, and established a hearing. On November 26, 2014, the Indicated Shippers[2] filed a request for rehearing of the order on the issue of Transwestern's proposed Adjusted Straight Fixed Variable (SFV) rate design. For the reasons discussed below, the Commission grants the Indicated Shippers' request for rehearing.

Background

2. On October 1, 2014, Transwestern submitted a rate filing to comply with the terms of a 2011 settlement that required Transwestern to file a new NGA general section 4 rate case by October 1, 2014.[3] The 2011 settlement, among other things, required Transwestern to implement a fuel tracker with an annual true-up mechanism and to propose tariff revisions to comply with the Commission's policy on reservation charge crediting.

3. As relevant to Indicated Shippers' request for rehearing, Transwestern proposed to move from a SFV rate design to an Adjusted SFV rate design by moving five percent of its return on equity and associated federal and state income taxes from the reservation

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[1] *Transwestern Pipeline Co., LLC*, 149 FERC ¶ 61,094 (2014).

[2] For purposes of this proceeding the Indicated Shippers are BP Energy Company, Chevron U.S.A. Inc., ConocoPhillips Company, Cross Timber Energy Services, Inc., Shell Energy North America (US), L.P., and SWEPI LP.

[3] *Transwestern Pipeline Co., LLC*, 137 FERC ¶ 61,095 (2011).

component of its rates to the usage component of its rates. Transwestern also filed an illustrative exhibit which classified Transwestern's cost-of-service under the SFV rate design in the event the Commission were to reject the Adjusted SFV rate design.

4. On October 30, 2014, the Commission issued an order accepting and suspending Transwestern's tariff records to be effective April 1, 2015, subject to refund and the outcome of a hearing. The Commission determined that Transwestern's filing raised contested issues that warrant further investigation. The Commission stated that the hearing would explore all issues raised by Transwestern's filing including, but not limited to, cost-of-service, rate design, fuel and other non-rate tariff issues.

5. On November 26, 2014, the Indicated Shippers filed a request for rehearing and expedited consideration of the October 30, 2014 Order.

Indicated Shippers' Rehearing Request

6. Indicated Shippers ask that the Commission issue an order by March 1, 2015,[4] rescinding acceptance of Transwestern's Adjusted SFV usage rates, subject to refund, and instead, on rehearing, reject Transwestern's Adjusted SFV rate design, and the resulting usage rates.

7. Indicated Shippers assert that the Commission erred when it failed to summarily reject Transwestern's Adjusted SFV rate design and proposed usage rates, and instead set that issue for an unnecessary hearing on the merits. Indicated Shippers submit that summary rejection is appropriate where there is no legal basis for a pipeline's filing in light of applicable Commission precedent.

8. Indicated Shippers argue that there is no legal basis for Transwestern's proposed Adjusted SFV rate design and the associated usage rates. Indicated Shippers contend that the Commission's regulations and precedent establish that pipelines must calculate rates using a SFV rate design, whereby all fixed costs are assigned to the reservation component of the rates.[5] Indicated Shippers assert that the Commission has established

[4] Indicated Shippers state that absent Commission action, Transwestern's proposed usage rates will take effect April 1, 2015, subject to refund. Indicated Shippers contend that non-Straight Fixed Variable rates distort the natural gas markets and these effects cannot be corrected through refunds. Indicated Shippers request action by March 1, 2015, to accommodate monthly bidding activities.

[5] 18 C.F.R. § 284.7(e) (2014); *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs., Regulations Preambles ¶ 30,939, at 30,434 (1992) (Order No. 636); *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, at 30,605 (1992) (Order No. 636-A).

one delineated exception to its precedent requiring pipelines to adopt a SFV rate design. Indicated Shippers submit that the Commission will only consider changes to the SFV rate design where the affected parties agree that the pipeline can use a different methodology.[6] Indicated Shippers argue that the Commission does not endorse, and has rejected, the type of unilateral imposition of a deviation from a SFV rate design as Transwestern proposed here.[7] Indicated Shippers submit that since numerous shippers protested the usage rates and requested the Commission to summarily reject the usage rates, it is clear that the affected parties do not agree to the Adjusted SFV rate design. Thus, Indicated Shippers assert that Transwestern cannot argue that its Adjusted SFV rate design falls into the one exception to the Commission's SFV rate design mandate.

9. Indicated Shippers submit that even assuming that Transwestern's limited factual testimony on its Adjusted SFV rate design is true and correct, that testimony is irrelevant. Indicated Shippers assert that Transwestern's direct case wholly failed to address, much less satisfy, Transwestern's threshold burden of demonstrating that the SFV rate design is no longer needed to meet the Commission's goals in Order No. 636.

10. Indicated Shippers argue that the October 30, 2014 Order failed to consider how accepting Transwestern's usage rates subject to refund would affect the natural gas markets, and thereby undermine the goals of the SFV rate design set out in Order No. 636. Indicated Shippers submit that producers and marketers on Transwestern compete with producers and marketers on other pipelines to serve the same markets. Indicated Shippers contend that shippers on other pipelines with lower usage charges would have an advantage over equally efficient shippers on Transwestern, who will be penalized for Transwestern's unlawful usage rates. Indicated Shippers assert that where the goal is to establish usage rates that promote the efficient operation of real-time, day-to-day gas markets, the Commission's post hoc refund authority is an ineffectual remedy. Indicated Shippers submit that the Commission will not be able to retroactively repair the distorted market conditions that arise from the Adjusted SFV rates during the period they are in effect.

11. Indicated Shippers argue that the Commission denied their request for summary rejection of the proposed Adjusted SFV rate design without expressly stating it was doing so, or providing any rationale or explanation for its decision, which does not constitute reasoned decisionmaking.

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[6] Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,434.

[7] *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at PP 308-310 (2006).

Discussion

12. In Order No. 636, the Commission stated that it was:

> [A]mending…the regulations to require pipelines to recover their transportation costs under the straight fixed variable (SFV) method of assigning all fixed costs related to transportation to the reservation charge. The Commission, however, will not rigidly preclude the pipeline, its customers, and interested state commissions, producers, marketers, brokers, end users, and others from agreeing to an alternative method that deviates from SFV and may be appropriate to that particular pipeline system. If the parties affected by a pipeline's rate design agree to a different method, the Commission will consider giving effect to the parties' agreement.[8]

In this proceeding, the proposal to deviate from the SFV rate design was not only protested by Indicated Shippers but by a number of other shippers or parties representing a cross-section of Transwestern's pipeline system. Thus, there has been no agreement by the parties affected by the rate design to a method other than SFV rate design.

13. The Commission has not allowed a pipeline to implement a shift to non-SFV rates in an NGA section 4 rate filing and, having considered the arguments on rehearing, will not do so here where the proposal was heavily protested, and there is currently no substantial support among the parties for any departure from SFV. For example, in *Texas Gas Transmission Corporation*, the pipeline first proposed SFV rates in its general section 4 rate filing[9] but then later filed a settlement with non-SFV rates supported by almost all parties including state commissions.[10] In *Kern River Gas Transmission Company*, the Commission summarized its policy on permitting non-SFV rates as permitting an exemption from the SFV rate design "where the vast majority of the parties agree to a settlement providing for a different rate design method and there are no assertions of specific adverse competitive effects."[11] The Commission, however, held that Kern River, which at the time had non-SFV rates by virtue of past settlements, must return to SFV rates because only one customer supported a continuation of the non-SFV rates. In addition, a refund remedy here may not alleviate the impacts to competition among gas sellers that Order No. 636 was designed to eliminate.[12] Accordingly, the

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[8] Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,434.

[9] *Texas Gas Transmission Corp.*, 91 FERC ¶ 61,215, at 61,779 (2000).

[10] *Texas Gas Transmission Corp.*, 98 FERC ¶ 61,244, at 61,993 (2002).

[11] *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at PP 308-310 (2006).

[12] *See, e.g.*, Order No. 636 at 30,433.

Indicated Shippers' request for rehearing is granted and Transwestern's unilateral proposal to implement Adjusted SFV rates is rejected.

14. The rejection of Transwestern's Adjusted SFV rate design is, however, without prejudice to subsequent consideration of a settlement with a non-SFV rate design that is supported by a large majority of Transwestern's customers.[13]

15. In order to comply with the terms of the 2011 settlement requiring Transwestern to file a general section 4 rate case by October 1, 2014, Transwestern is directed to submit a filing within 30 days of the date of this order revising its October 1, 2014 rate filing to reflect an SFV rate design, as required by Commission regulations and policy.

<u>The Commission orders</u>:

(A) Indicated Shippers' request for rehearing is granted as discussed above.

(B) Transwestern's Adjusted SFV rate design contained in its October 1, 2014 section 4 filing in Docket No. RP15-23-000 is rejected.

(C) Transwestern is directed to submit a filing within 30 days of the date of this order revising its October 1, 2014 rate filing to reflect an SFV rate design.

By the Commission. Commissioner Honorable is voting present.

(S E A L)

Kimberly D. Bose,
Secretary.

[13] While not on point here, where the pipeline has in fact already filed a general section 4 rate case the Commission similarly would consider, and not summarily reject, a broadly supported settlement filed by a pipeline in lieu of a general section 4 rate case, even if the settlement contained a deviation from the SFV rate design. Thus, as long as the departure from the SFV-mandated rate design was supported by the vast majority of a pipeline's shippers and other relevant parties, the Commission would consider it.