110 FERC ¶ 61,157
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Calypso U.S. Pipeline, LLC	Docket No.	CP01-411-005
	Docket Nos.	CP01-411-006 and RP04-623-000 (Not Consolidated)

ORDER ON COMPLIANCE FILING AND SETTLEMENT

(Issued February 14, 2005)

1. On May 24, 2004, as supplemented on June 23, 2004, Calypso U.S. Pipeline, LLC (formerly, Tractebel Calypso Pipeline, LLC) filed a *pro forma* gas tariff, First Revised Pro Forma Volume No. 1, in Docket No. CP01-411-005, in compliance with the Commission's May 1, 2003, and March 24, 2004 Orders.[1] The May 1, 2003, and March 24, 2004 Orders required Calypso U.S. Pipeline, LLC (Calypso) to make certain modifications to its *pro forma* tariff and to comply with Order No. 637[2] and the standards promulgated by the North American Energy Standards Board (NAESB).[3] On September 29, 2004, Calypso filed an Offer of Settlement (Settlement) in Docket

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[1] *Tractebel Calypso Pipeline LLC*, 103 FERC ¶ 61,106 (2003) and 106 FERC ¶ 61,273 (2004).

[2] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, 65 Fed. Reg. 10,156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091 (2000) (Order No. 637), *order on reh'g*, Order No. 637-A, 65 Fed. Reg. 35,706 (June 5, 2000), FERC Stats. & Regs. ¶ 31,099 (2000) (Order No. 637-A), *order on reh'g*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002).

[3] *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-R, 68 Fed. Reg. 13,813 (Mar. 21, 2003), FERC Stats. & Regs. ¶ 31,141 (2003) (Order No. 587-R).

Nos. CP01-411-006 and RP04-623-000 between itself and Florida Gas Transmission Company (FGT) on issues related to its planned onshore interconnection with FGT. The Settlement includes an interconnection agreement dated September 23, 2004, between Calypso and FGT, as well as *pro forma* tariff sheets reflecting, in part, the terms of the Settlement. This order approves Calypso's *pro forma* tariff and the Settlement, subject to certain modifications discussed below, and directs Calypso to file its actual tariff at least 30 days but not more than 60 days prior to the commencement of service. This order benefits the public by ensuring that Calypso's tariff is consistent with Commission policy.

I. Background

2. The May 1, 2003 Order issued a preliminary determination approving Calypso's proposal to construct, own, and operate a natural gas pipeline that would provide service from the offshore boundary of the United States-Bahamas Exclusive Economic Zone (EEZ) to an interconnection with FGT in Broward County, Florida. The order directed Calypso to file revised *pro forma* tariff sheets addressing the NAESB Standards, the requirements of Order No. 637, and other tariff issues, within 60 days of the issuance thereof.

3. The March 24, 2004 Order issued a certificate of public convenience and necessity, blanket construction and transportation certificates, and a Presidential Permit, subject to Calypso filing revised *pro forma* tariff sheets and rates.

II. Public Notices, Interventions and Protests

4. Public notice of Calypso's filing in Docket No. CP01-411-005 was issued on May 27, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). None was filed.

5. Public notice of Calypso's filing in Docket Nos. RP04-623-000 and CP01-411-006 was issued on October 6, 2004, with interventions in Docket No. RP04-623-000, or protests in Docket Nos. RP04-623-000 or CP01-411-006 due in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214 (2004)). Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214 (18 C.F.R § 385.214 (2004)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage will not disrupt the proceeding or place additional burdens on existing parties.

III. Discussion

A. Pro Forma FERC Gas Tariff

6. On May 24, 2004, as supplemented on June 23, 2004, Calypso filed revised *pro forma* tariff sheets to comply with the Commission's May 1, 2003, and March 24, 2004 Orders, Order No. 637, and the NAESB Standards. We find that the proposed tariff sheets contain the revisions required by the Commission, and comply with Order No. 637 and with the NAESB Standards, subject to certain modifications as discussed below.

1. Rate Issues

a. Interruptible Revenue Crediting

7. The May 1, 2003 Order directed Calypso either to allocate costs to interruptible service or to credit IT revenues to its firm shippers. The March 24, 2004 Order clarified that Calypso should credit interruptible revenues to both firm and interruptible customers. Calypso proposes an Interruptible Revenue Crediting Provision in a new section 22 of the GT&C of its tariff that complies with the Commission's directive.[4]

b. ACA Charge

8. The May 1, 2003 Order directed Calypso to delete the Annual Charge Adjustment (ACA) from its rate sheets, since Calypso will not receive a bill for the ACA until it has been in operation for a year. Calypso has complied with this directive.

2. Tariff Issues

a. Order No. 587

9. In Order No. 587-R, the Commission adopted version 1.6 of the NAESB standards, as well as certain NAESB recommendations not included in version 1.6.[5] The May 1,

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[4] All section references are to Calypso's GT&C unless otherwise specified.

[5] Order No. 587-R, FERC Stats. & Regs. ¶ 31,141 (amending the Commission's regulations to incorporate by reference the most recent version of the standards, version 1.6, promulgated July 31, 2002, by the Wholesale Gas Quadrant (WGQ) of the NAESB, and the WGQ standards governing partial-day recalls).

2003 Order directed Calypso to provide a detailed narrative explaining how it complies with the NAESB Standards, and each standard's location in Calypso's tariff. Calypso has complied with this directive.

b. Order No. 637

1. Segmentation, Flexible Point Rights, Within Path Allocation Priority, and Discounting

10. In part, Order No. 637 required pipelines to implement segmentation to the extent operationally feasible, flexible point rights, within the path allocation priority, and the Commission's discounting policy.

(a) Calypso's Proposal

11. Calypso states that when the proposed pipeline is completed, it will have only one receipt point offshore at the EEZ boundary and one delivery point onshore at the interconnection with FGT, and therefore these requirements of Order No. 637 are not applicable to Calypso as the pipeline is currently configured.

(b) Commission Ruling

12. The Commission finds that segmentation of the type contemplated by Order No. 637 is currently not operationally feasible on Calypso's system, because it has only one delivery point and one receipt point. For the same reason, we find that the requirements of Order No. 637 concerning flexible point rights, within the path allocation priority, and discounting at secondary points do not apply at this time. In the future, if Calypso should make a system change that would allow it to segment or implement these other Order No. 637 requirements, it must file a proposal with the Commission at least 60 days prior to the time it has the ability to segment and/or implement these other Order No. 637 requirements.

2. Imbalance Services

13. Order No. 637 requires pipelines with imbalance penalty provisions in their tariffs to provide, to the extent operationally practicable, imbalance management services, such as park and loan service. Pipelines are prohibited from giving undue preference to their own balancing services over services provided by a third party. Calypso does not include imbalance penalty provisions in its tariff and is therefore not subject to this Order No. 637 requirement. Nevertheless, Calypso proposes to offer a park and loan service.

(a) Calypso's Proposal

14. Calypso proposes to implement a parking and lending service under Rate Schedule PALS. PALS service is only available on an interruptible basis, after all service has been scheduled and to the extent permitted by Calypso's system. The parking point may be any point on its system that has been designated as the parking point in Shipper's PALS Agreement. Gas may be parked for a minimum of one hour and a maximum of thirty days. Calypso proposes to charge a maximum rate of $0.00305 per MMBtu per hour for this service, which is based on 1/24 of the 100 percent load factor IT rate. Calypso proposes to credit revenues from the parking and lending service to both firm and interruptible shippers.

(b) Commission Ruling

15. The Commission approves Calypso's proposal subject to one condition. Calypso proposes to permit a shipper to nominate PALS service on an hourly basis. Calypso must explain how this will be accomplished under its proposed nomination and scheduling provisions which do not appear to explicitly provide for hourly nominations of the transportation service that would be required to move gas from or to PALS points. Calypso is directed to provide this clarification when it files its actual tariff sheet as directed in this order.

3. Penalties

16. Order No. 637 requires that a pipeline's penalties adhere to three principles.[6] First, a pipeline may include transportation penalties in its tariff only to the extent necessary to prevent the impairment of reliable service. Second, a pipeline must credit to shippers all revenues from all penalties net of costs. Third, a pipeline must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system as a whole.

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[6] Order No. 637, FERC Stats & Regs. ¶ 31,091, at 31,314. *See also* 18 C.F.R. § 284.12(c)(2)(v).

(a) Calypso's Proposal

17. Calypso's proposed tariff includes a $20 per MMBtu penalty[7] for violating an Operational Flow Order (OFO). In addition, section 2.7 of Rate Schedule PALS allows it to confiscate gas if the shipper fails to remove the gas as directed. Calypso has added section 24 to the GT&C to establish a mechanism for flowing through penalty revenues to non-offending firm or interruptible shippers. Calypso will allocate penalty revenues among non-offending shippers based on revenues. Section 24 also provides that Calypso will file a report to the Commission within 60 days of the credit being paid identifying the type of penalty revenues, the costs netted against the penalty revenues, the calculation of interest, and the resulting credit paid.

(b) Commission Ruling

18. Calypso's penalty provisions comply with Order No. 637 and are accepted. The proposed OFO penalty is only assessed when system integrity is threatened and is therefore reasonable. We also find that Calypso's proposal to confiscate gas left on the system under Rate Schedule PALS is an operationally justified deterrent to shipper behavior that could threaten the system or degrade service to firm shippers.[8] Finally, Calypso's proposed penalty crediting mechanism is consistent with Commission policy and is approved.[9]

4. OFOs

19. Order No. 637 requires a pipeline to take all reasonable actions to minimize the issuance and adverse impacts of OFOs or other measures taken to respond to adverse operational events on its system. Pipelines are required to adopt objective standards and procedures for the use of OFOs.[10] Specifically, the Commission required each pipeline's tariff to: (1) state clear, individualized standards, based on objective operational conditions, for when OFOs begin and end; (2) require the pipeline to post information

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[7] In paragraph (g) of section 16.B.1, Calypso also refers to a $25 per MMBtu penalty for violating an OFO. We will direct Calypso to clarify the level of its proposed OFO penalty and make it consistent throughout its tariff.

[8] *See, e.g., Blue Lake Gas Storage Co.*, 96 FERC ¶ 61,164 (2001).

[9] *See* Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, at 31,609-11. *See also Panhandle Eastern Pipe Line Co.*, 97 FERC ¶ 61,046, at 61,274 (2001).

[10] 18 C.F.R. § 284.12(c)(2)(iv)(2004).

about the status of operational variables that determine when an OFO will begin and end; (3) state the steps and order of operational remedies that will be followed before an OFO is issued; (4) set forth standards for different levels or degrees of severity of OFOs to correspond to different degrees of system emergencies the pipeline may confront; and (5) establish reporting requirements that provide information after OFOs are issued on the factors that caused the OFO to be issued and then lifted.[11]

(1) Calypso's Proposal

20. Calypso proposes OFO provisions in section 16.B of the GT&C that allow it to issue an OFO to alleviate conditions which threaten the safe operations or integrity of its transportation system. This provision provides examples of the operating conditions that may cause the issuance of an OFO, requires Calypso to take all reasonable actions to minimize the issuance and adverse consequences of the OFO, and specifies the actions an OFO may require shippers to take and the amount of time they have to comply. Calypso will post notice of an OFO on its website that includes information concerning the reason for issuing the OFO together with the operating variables that provide the basis for issuing the OFO.

(2) Commission Ruling

21. The Commission finds that Calypso's OFO provisions comply with the requirements of Order No. 637 to minimize the use and adverse impact of OFOs. Accordingly, we approve Calypso's proposed OFO provisions.

5. ROFR

22. In Order 637-A, the Commission stated that the ROFR will apply to multi-year seasonal contracts at the maximum rate for services not offered by the pipeline for a full 12 months.[12] In the Order on Remand, the Commission permitted pipelines to remove the five-year term matching cap from their ROFR tariff provisions.[13] In Order 636-A, the Commission permitted the existing capacity holder to elect to retain a portion of its capacity subject to the right of fist refusal, and permit the pipelines pre-granted abandonment to apply to the remainder of the service.[14]

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[11] Order No. 637, FERC Stats & Regs. ¶ 31,091, at 31,312-13.

[12] Order No. 637-A at 31,631.

[13] *See id*. at P 9-22.

[14] Order No. 636-A, 57 Fed. Reg. 36,128 (Aug. 12, 1992), FERC Stats. & Regs. ¶ 30,950, at 30,635 (1992) (Order 636-A).

(a) <u>Calypso's Proposal</u>

23. Calypso proposes several changes to the right of first refusal (ROFR) process in section 18 of the GT&C to conform to Commission policies and clarify its provisions. First, Calypso has provided in section 18.B that the right of first refusal applies to shippers that are paying the maximum rate and whose contracts have primary terms of at least one year or, if the service is not available for twelve consecutive months, has a primary term of more than one year. Calypso states that it offers no seasonal service but nevertheless has provided that multi-year seasonal contracts at the maximum rate will have the right of first refusal.

24. Second, Calypso has removed the five-year term matching cap to comply with the Commission's order on Remand in Docket No. RM98-10-011.[15] Third, Calypso has added a provision in section 18.B.4 that the shipper may exercise its right of first refusal with respect to all of its capacity or a volumetric portion of it. Fourth, Calypso has provided that the economic value of the bids will be determined using a net present value method over the term bid at the rate bid, and using as a discount factor the overall rate of return underlying Calypso's then effective rates. Lastly, Calypso has added a section providing that it is not obligated to issue any contract at a rate less than the maximum rate.

(b) <u>Commission Ruling</u>

25. We find that Calypso's proposed ROFR provisions are consistent with Commission policy and are approved.

6. <u>Other proposed changes</u>

26. Section 4 of *pro forma* rate schedules FTS and ITS provides, among other things, that the shipper will reimburse Calypso for incidental charges, which include filing fees, the costs of constructing or acquiring new facilities, or any other charges authorized by the Commission. Calypso has revised these sections to require prior Commission approval for all such charges. Consistent with our order in *AES Ocean Express LLC*, 103 FERC ¶ 61,030, at P 37 (2003), requiring specific Commission approval before seeking to recover any incidental charges, we approve Calypso's proposal.

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[15] *Interstate Natural Gas Ass'n of America v. FERC*, 258 F.3d 18 (D.C. Cir. 2002) (Order on Remand).

27. Calypso has modified section 14.F of the GT&C to provide that if the shipper does not pay an invoice and fails to provide assurances that the nonpayment will not recur, Calypso may suspend service, or if permitted by the service agreement, terminate service 30 days after providing shipper and the Commission written notice. We find that these are reasonable terms, and accordingly approve Calypso's proposal.

28. The Commission's authorizations were granted to Tractebel Calypso Pipeline, LLC. By letter dated December 20, 2004, the Commission was informed that the company had changed its name to Calypso U.S. Pipeline, LLC. Accordingly, we will direct Calypso to revise its actual tariff sheets to reflect this change in name.

C. The Settlement

1. Comments on Settlement

29. Calypso filed a Settlement which recites that Calypso and FGT have agreed to and executed an interconnection agreement dated September 23, 2004, included in the Settlement as Appendix A. Appendix B of the Settlement consists of *pro forma* tariff revisions reflecting those terms of the interconnection agreement as are relevant to matters appropriately included in a tariff. Section II of the Settlement states that Commission approval of the Settlement also constitutes approval of the *pro forma* tariff sheets.

30. Initial comments were filed by Calypso and Florida Power & Light Company (FP&L). Calypso filed reply comments.

31. Calypso's Initial Comments describe the major provisions of the interconnection agreement, noting that the agreement does not purport to resolve similar issues between FGT and AES Ocean Express LLC, set for hearing in Docket No. RP04-249.[16] Calypso states that it filed the interconnection agreement only to further "transparency in the interconnection process on the FGT system," and as a basis for the conforming revisions to its *pro forma* tariff. Calypso requests that, if the Commission does not believe it needs to approve the interconnection agreement, the Commission should so state. Calypso contends that such a statement would avoid commercial uncertainty and satisfy third-party interests that Calypso believes will likely require an answer to whether the interconnection agreement needs to be approved by the Commission.

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[16] 107 FERC ¶ 61,276 (2004).

32. FP&L requests that the parties to the interconnection agreement clarify and modify certain language in the interconnection agreement related to temperature requirements in the Gas Quality Specifications section. Calypso, in its Reply Comments, includes a fully executed Amendment to the interconnection agreement, dated October 19, 2004, executed by itself and FGT, which is intended to address FP&L's concerns.

2. Discussion

33. As discussed below, the Commission will approve the Settlement and the *pro forma* tariff revisions submitted in the Settlement, subject to conditions. The Commission will treat the interconnection agreement mutually agreed to by the parties as an informational filing that assists our understanding of the *pro forma* tariff revisions.[17]

a. Fuel Reimbursement Provision

34. As proposed in the May 24, 2004 filing, and amended by the September 29, 2004 filing, new section 23 permits Calypso to retain a percentage of transportation quantities as reimbursement for fuel used to heat deliveries at interconnection points, and for lost and unaccounted for gas. This section permits Calypso to file to adjust the reimbursement percentage every six months, after having made two initial start-up adjustment filings as described in the tariff. Section 23 describes the fuel reimbursement percentage as the sum of the current fuel reimbursement percentage, which captures Calypso's projected reimbursement requirements; and an annual fuel reimbursement surcharge, which trues up through the Deferred Fuel Reimbursement Account monthly over- and under-recoveries of reimbursement quantities. Section 23.C states that until there is a factual basis to develop projections of lost and unaccounted for gas, the starting point will be zero for losses, and deferred accounting will be used to track under-recoveries.

35. Section 154.403 of the Commission's regulations permits a pipeline to adjust fuel use percentages in periodic limited rate filings pursuant to the methodology set forth in the pipeline's tariff. Therefore, we will approve Calypso's fuel reimbursement proposal, subject to the following revisions. The tariff currently provides a method for calculating the effective dates of Calypso's periodic fuel adjustments dependent on the effective date of the tariff sheet. This method of determining the effective dates of adjustments could lead to confusion if section 23 is subsequently revised to be effective on a new date.

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[17] We do not require interconnection agreements to be filed with the Commission, but will consider such an agreement in the context of a dispute between parties alleging violations of Commission policy.

Therefore, 30 days after the tariff sheet has become effective in accordance with this order, Calypso is directed to file a tariff revision stating the specific calendar dates when its regular six-month fuel adjustments become effective. This will enable interested parties to anticipate such filings without having to know the initial effective date of Calypso's tariff.

36. Sheet No. 4 lists three categories of retention percentages, without indicating that two of the percentages are components of the third percentage actually assessed. Therefore, Calypso is directed to clarify Sheet No. 4 by listing its Fuel Reimbursement Percentage only once.

b. Gas Quality

37. Calypso's proposed paragraph (4) of section 2.B (Sheet No. 106) provides that, notwithstanding other requirements in section 2 of Calypso's tariff relating to gas quality, a "[s]hipper shall not cause gas to be transported on [Calypso]'s system that fails to conform to the gas quality specifications set forth [in FGT's tariff]".

38. We find the proposed language ambiguous, and therefore reject it without prejudice to Calypso further clarifying section 2 when it files actual tariff sheets, consistent with the discussion below. With one exception, Calypso's *pro forma* gas quality specifications in section 2 are identical to the gas quality specifications in section 2 of FGT's tariff.[18] Calypso's proposed paragraph (4) of section 2.B appears intended to put shippers on notice that Calypso intends to maintain consistency between its tariff and that of FGT as to gas quality. However, incorporating by reference tariff provisions of another pipeline while maintaining expressly stated tariff provisions addressing the same subject matter could potentially lead to the type of confusion the Commission sought to avoid when it forbade pipelines from incorporating by reference in their tariffs the NAESB Standards if such standards were expressly stated in the tariff. Therefore, depending on its intention, Calypso may propose tariff language to put shippers on notice that it will file tariff revisions when necessary to ensure conformity with FGT's gas quality provisions, but it can only impose gas quality requirements on shippers through expressly stated language in its tariff.

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[18] Calypso proposes a ¼ percent volumetric limit on oxygen in gas delivered into its system, whereas FGT's volumetric limit on oxygen is 1 percent.

c. **Indemnification**

39. In part, revised section 7(C) (Sheet No. 114) requires a shipper to indemnify Calypso for any damages assessed against Calypso for damages to FGT's system resulting from deliveries of regasified LNG into Calypso's system that do not meet Calypso's tariff specifications. Further, a shipper will indemnify Calypso against any liabilities arising from actions by FGT, a customer of FGT, or any other party, due to deliveries of regasified LNG that do not meet the requirements of Calypso's tariff. Finally, Calypso will indemnify a shipper against all claims for damage to the equipment of FGT or a third party if Calypso's gross negligence or willful misconduct, whether by act or omission, contributed to or caused the conditions giving rise to such damage.

40. We approve this provision as consistent with Commission precedent.

The Commission orders:

(A) Calypso's proposed Settlement and *pro forma* tariff sheets listed herein are hereby approved, subject to conditions, as discussed in the body of this order.

(B) Calypso is directed to file actual tariff sheets, revised to reflect its new name, at least 30 but not more than 60 days prior to the commencement of service, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.