128 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Colorado Interstate Gas Company — Docket Nos. RP07-666-000, RP07-666-001, RP07-666-002, RP08-600-000, RP08-600-001

ORDER ON REHEARING AND TECHNICAL CONFERENCE

(Issued July 31, 2009)

1. This order addresses, the Indicated Shippers'[1] request for rehearing of the Commission's February 29, 2008 Order in Docket No. RP07-666-000, filed on March 31, 2008.[2] In that order, the Commission conditionally accepted tariff revisions to Colorado Interstate Gas Company's (CIG) fuel and lost, unaccounted for and other fuel (LUF) tracking mechanism.[3] CIG subsequently filed its first annual reimbursement percentage update under the revised mechanism in Docket No. RP08-600-000. The

[1] The Indicated Shippers are BP Energy Company, BP America Production Company and Marathon Oil Company.

[2] *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,191 (2008) (February 29, 2008 Order).

[3] The February 29, 2008 Order also addressed CIG's proposal, in Docket No. RP07-667-000, to adjust its cash-out System Index Price and cash-out Index Price (collectively, cash-out prices). Although the Commission previously addressed the proposals in Docket Nos. RP07-666-000 and RP07-667-000 in the same order, it did not consolidate the two dockets. This order addresses only CIG's proposal to modify its fuel and LUF tracking mechanism. The Commission addressed a rehearing request concerning Docket No. RP07-667-000 in another order. *Colorado Interstate Gas Co.*, 125 FERC ¶ 61,152 (2008).

Commission accepted the annual reimbursement update, subject to conditions, and subject to the outcome of a staff technical conference.[4] For the reasons stated below, we grant rehearing of the February 29, 2008 Order and direct CIG to reinstate its volumetric tracking mechanism. As a result of our decision to grant rehearing of the February 29, 2008 Order, CIG's proposed tariff sheets in Docket No. RP08-600-000, which reflect the annual reimbursement percentage update pursuant to the revised mechanism accepted in the February 29, 2008 Order, are rejected as moot. CIG is directed to re-compute and file the reimbursement percentages in its annual filing in Docket No. RP08-600-000 without the cost/revenue true-up, within 30 days of the date of this order, consistent with the discussion below. As such, CIG's request for rehearing in Docket No. RP08-600-001 is dismissed as moot.

I. Background

2. CIG's tariff permits CIG to collect fuel and LUF quantities in kind from customers through reimbursement percentages assessed on volumes transported. CIG revises and files these reimbursement percentages with the Commission on a periodic basis.[5] Prior to CIG's filing in Docket No. RP07-666-000, CIG's tariff provided only for volumetric adjustments to the reimbursement percentages to eliminate any actual over- or under-collections of fuel and LUF quantities. CIG's August 31, 2007 filing in RP07-666-000 proposed a "monetized" cost/revenue true-up to track the changes in financial value in addition to the volumetric tracking of gas quantities used and retained, which CIG argued would eliminate any actual over- or under-collections of costs and revenues associated with fuel and LUF.

A. Docket No. RP07-666-000: CIG's Proposed Cost/Revenue True-up

1. Details of Filing

3. In CIG's filing in this docket, CIG proposed an economic cost/revenue true-up mechanism to track the changes in financial value of fuel and LUF in addition to the volumetric tracking of gas quantities used and retained.[6] CIG also proposed to broaden

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[4] *Colorado Interstate Gas Co.*, 124 FERC ¶ 61,311 (2008).

[5] CIG adjusts the reimbursement percentages for gas used as compressor fuel on an annual basis. CIG adjusts LUF on a quarterly basis. The "other fuel gas," which is adjusted quarterly, reflects gas consumed in processing activities, and is different from compressor fuel gas.

[6] To calculate the dollar value of the components of the sources and distributions of compressor fuel and gas balance-related activity, CIG proposed to use the actual

(continued…)

its fuel and LUF mechanism to include the net cost or revenue related to gas balancing activities. CIG argued that because the impact of gas balancing activity is system-wide, it was reasonable to include the true-up of costs and revenues arising from gas balancing as a part of the LUF reimbursement percentage on all transactions. Therefore, CIG's proposed cost/revenue true-up would track, and recover through the LUF reimbursement percentage, the costs and revenues attributable to fuel, shrinkage, linepack adjustments, system balancing activities, gas purchases and sales, and other credit/debit activity such as cash-outs. CIG argued that because the cost and revenue impacts of fuel cannot be separately identified from the whole system gas balancing impacts, it was necessary to consider all of these items in its proposal. CIG presented its proposal as keeping both the pipeline and shippers economically neutral in light of timing differences and price variations caused by the monthly differences in actual versus reimbursed LUF quantities, including those related to various gas cost operational and imbalance activities which take place on the pipeline. CIG made assurances that its workpapers supporting the expanded recovery mechanism would fully detail all sources and distributions of gas, including fuel, LUF and any operational gas over- or under- recoveries. CIG also stated that the resultant cost/revenue true-up would be credited to shippers and/or charged to shippers in subsequent fuel and LUF filings in a transparent and understandable manner.

4. In addition to arguments on the merits of the cost/revenue true-up, the parties offered differing views as to whether CIG's proposal was barred by the terms of a rate moratorium established in a 2006 settlement resolving CIG's most recent section 4 rate case.[7] CIG argued that the moratorium contained in the settlement applied only to its "base tariff rates." Furthermore, CIG noted that the tariff sheets containing CIG's fuel and LUF retention and cash-out mechanisms were not among those covered by provisions of the 2006 settlement. Therefore, CIG argued that its proposal was not barred by the rate moratorium contained therein.

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amounts it paid or received to purchase or sell gas, and to multiply the over- or under-recovered volumes due to shipper imbalances by the cash-out index price for the month the activity occurred. In addition, when converting the total annual cost or revenue adjustment amount to a volumetric quantity to be included in the LUF reimbursement percentage, CIG proposed to divide the sum of the monthly dollar values by the average cash-out index price for the entire data collection period to generate a volume that is ostensibly equivalent to the cost or revenue impact of the total gas balance related items.

[7] *See Colorado Interstate Gas Co.*, 116 FERC ¶ 61,126 (2006) (approving Colorado Interstate Gas Co., June 20, 2006 Stipulation and Agreement, Docket No. RP06-397-000).

2. <u>February 29, 2008 Order Conditionally Accepting Cost/Revenue True-up</u>

5. On September 27, 2007, the Commission issued an Order Accepting and Suspending Tariff Sheets and Establishing Technical Conference which accepted the tariff revisions to be effective March 1, 2008, subject to conditions and a technical conference.[8] Based on further review of the filing and the comments received at the technical conference, the Commission issued the February 29, 2008 Order in which it accepted CIG's proposed monetized cost/revenue true-up, subject to conditions, to be effective March 1, 2008. The Commission found that CIG's proposed modifications were not barred by a settlement that resolved CIG's most recent rate case, because the settlement applied to CIG's base transportation rates rather than the costs attributable to a tracking mechanism.

6. The Commission also found that, although CIG's then existing fuel and LUF tracking and true-up mechanism kept CIG and its shippers volumetrically neutral, it did not necessarily ensure that CIG and its shippers were kept revenue neutral with respect to gas used in CIG's operations. The Commission found that CIG's monetized cost/revenue true-up should enable it to more accurately track its costs and revenues with respect to fuel and LUF, and noted that CIG's proposal was similar to one recently accepted, albeit without critical discussion, in *El Paso*.[9]

7. With respect to specific concerns raised by protesters, the Commission generally found them to be unsubstantiated. For example, the Commission reviewed arguments of Williams Power Company, Inc. (Williams), which asserted that CIG's proposal would lead to over-collections of fuel and LUF quantities, and found that the prospect of an over-recovery was premature and that interested parties could challenge CIG's detailed support of its reimbursement percentages when CIG makes its first annual filing to recover compressor fuel utilizing the new true-up mechanism.

8. The Commission also rejected arguments that CIG's linepack "encroachment" costs are included in CIG's rate base and therefore should be excluded from CIG's cost/revenue true-up. The Commission noted that while linepack costs in CIG's Account No. 117 are included in CIG's rate base, the costs associated with daily purchases and sales due to shortfalls and over-recoveries are not included in rate base, and therefore

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[8] *Colorado Interstate Gas Co.*, 120 FERC ¶ 61,287 (2007).

[9] *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305, at P 207-08 (2006) (*El Paso*).

could be included in the new monetized cost/revenue true-up. Additionally, the Commission rejected protesters' request that backhaul shippers be exempt from CIG's proposed cost/revenue true-up, noting that all shippers contribute to the need for CIG to make operational gas purchases and that the Commission's general policy is that all shippers pay LUF charges.

9. The Commission found that CIG had shown that its existing tracking mechanism could produce inaccurate results and that its monetization proposal was intended to ensure that it remain revenue neutral in its purchases and sales of operational gas. Accordingly, the Commission accepted CIG's cost/revenue true-up mechanism, subject to the following conditions aimed at ensuring transparency in CIG's accounting: (1) CIG must establish and maintain sub-accounts 117.2 (System Balancing Gas) and 117.4 (Gas Owed to System Gas) as defined under Part 201 of the Commission's Regulations; (2) in the event that CIG cannot flow through an over-collection in a given year because of the limits of its LUF reimbursement percentage, CIG will be required to provide cash or invoice credit refunds to its customers, including interest at the Commission's interest rate; and (3) CIG must file annual updates that fully document purchases and sales of fuel gas volumes and distinguish purchases and sales for system balancing purposes and, if any, for providing flexibility under its various services.

B. Docket No. RP08-600-000: Annual Reimbursement Adjustment Filing

10. Roughly a year after first proposing its cost/revenue true-up, on August 29, 2008, CIG made its first annual filing to adjust its reimbursement percentages, in which it incorporated the cost/revenue true-up, reflecting a data collection period of October 2007 through June 2008. With respect to the cost/revenue true-up, CIG filed a "primary case" tariff sheet[10] and an "alternate case" tariff sheet,[11] each of which included supporting workpapers, proposing different methodologies for calculating the cost/revenue true-up. In its primary case, CIG acknowledged that the Commission required CIG to distinguish between purchases and sales for system balancing and those for shipper imbalances and service flexibility. Accordingly, CIG's primary case includes two sets of workpapers: (1) fuel-related imbalance workpapers, which track fuel and related system balancing LUF costs and revenues; and (2) shipper-related imbalance workpapers, which track the assignment of LUF costs and revenues to shipper imbalance activity. CIG's primary case reimbursement percentage incorporates only those costs and revenues tracked in the first

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[10] Second Revised Sheet No. 11A to its FERC Gas Tariff, First Revised Volume No. 1.

[11] Alternate Second Revised Sheet No. 11A to its FERC Gas Tariff, First Revised Volume No. 1.

set of workpapers related to fuel. CIG asserted, however, that it is more appropriate to assign the costs of all purchases and sales to the LUF charge, and accordingly, it included an alternate case (and tariff sheets) in which CIG incorporates the fuel-related and shipper imbalance-related costs and revenues tracked on both sets of the above-mentioned workpapers. CIG requested that the Commission accept either its primary case or alternate case tariff sheet, to be effective October 1, 2008.

11. In its primary case, CIG indicates that the fuel-related imbalance costs it incurred during the data collection period amount to a balance due CIG of $18,540,965.[12] CIG proposes to partially offset the $18,540,965 balance due CIG under the cost/revenue true-up by the $2,363,321 balance due shippers under the volumetric true-up component of its tracking mechanism. CIG states that to determine the cost/revenue true-up percentage, the net amount due CIG of $16,177,644 would be divided by the average system cash-out rate of $7.2842/Dth to yield a Dth-equivalent of 2,220,922. CIG further states that when divided by normalized 12-month total system throughput of 780,133,540 Dth, the cost/revenue true-up percentage is 0.28 percent.

12. CIG contends, however, that while this 0.28 percent cost/revenue true-up percentage accounts for operational purchases and sales due to fuel-related imbalances, it does not account for operational purchases and sales due to shipper-related imbalances. Accordingly, CIG incorporates in its filing shipper-related imbalance workpapers, which reflect the operational purchases and sales due to shipper-related imbalances. To calculate these costs and revenues, CIG first nets total shipper credit imbalance cash-outs against total shipper debit imbalance cash-outs, which yields a total of 1,884,352 Dth taken from the pipeline (credit cash-out imbalance), with an associated value of $9,131,480. CIG then provides a summary of net shipper imbalance activity by adding net shipper transmission imbalances with shipper imbalance cash-outs, yielding a total

[12] CIG bases this figure on the following: (1) net fuel and LUF over- and under-collections reflecting a disposition of 690,031 Dth, or $10,300,368; (2) operational sales, including Dth-equivalent of liquid processing revenues, of 4,524,750 Dth, or $31,936,711; (3) operational purchases, including electric compression Dth-equivalent, of 3,846,912 Dth, or $29,213,839; (4) imbalance cash-outs and operational sales related to processing revenues of 4,524,750 Dth, or $31,936,711; (5) shipper/operator imbalance cash-outs and operational purchases of 1,227,779 Dth, or $5,554,051; and (6) capitalized linepack and other gas activities resulting in a disposition of 87,855 Dth, or $460,061. Importantly, CIG notes that total gas balance dispositions amounted to 5,459,986, with a value of $22,798,110 and total gas balance sources amounted to 5,459,986, with a value of $41,339,075. Accordingly, CIG concludes that the timing difference between these sources and dispositions of gas result in $18,540,965 due to CIG.

quantity taken from the pipeline of 2,280,713 Dth. CIG explains that, due to timing differences in the value of such quantities, the amount shippers should remit to CIG associated with these volumes is $8,636,654.

13. In order to distinguish between operational purchases and sales made to account for fuel-related imbalances and shipper-related imbalances, CIG employed an allocation methodology in which it first assigns operational purchases that it made during the data collection period to the $8,636,654 of shipper-related imbalance costs. CIG justifies this method of cost allocation on the premise that it buys gas quantities to offset the quantities taken by shippers in excess of the amount of gas delivered by those shippers before buying any gas to offset fuel-related under-recoveries, linepack and system balancing needs. CIG explains that if a shipper imbalance was not zero after the application of the operational purchases, further offsets would be made using system storage, linepack, and if required, operational sales. Utilizing this allocation methodology, CIG concludes that the overall effect of the assignment of costs and revenues to shipper imbalance activities is a net cost to CIG of $4,169,924. CIG contends that this cost is not reflected in its primary case cost/revenue true-up percentage of 0.28 percent; it is, however, included in CIG's alternate case cost/revenue true-up percentage of 0.36 percent.

14. CIG explains that one of the key drivers of gas balance variability is the over- and under-collections of fuel and LUF and shipper and operator imbalance activities. Furthermore, CIG states that it must purchase and sell gas at market rates and that delays between the time of the creation of a fuel imbalance and the fuel true-up will lead to cost and revenue variability. CIG notes that during this true-up period, published market prices for CIG's north system gas increased from a low of $2.794/Dth in October 2007 to a high of $8.438/Dth in May 2008 and that prices on CIG's south system increased from a low of $5.394/Dth in November 2007 to a high of $10.550 in June 2008. CIG states that such price escalations are a direct contributing factor of the net system cost due to fuel imbalances and related gas balance changes that are reflected in its proposed primary and alternate case cost/revenue true-up percentages.

15. Several protests were filed in response to CIG's annual fuel adjustment filing, primarily in response to the cost/revenue true-up. Indicated Shippers took issue with CIG's method for allocating costs and revenues among shipper imbalances, fuel, linepack and other system balancing activities, raising numerous questions about the details of CIG's proposed allocation methodologies. Indicated Shippers also objected to CIG's failure to allocate extra costs to No-Notice shippers despite the fact CIG must devote substantial resources to that service. Williams raised a number of initial observations, which it argued compels further review of CIG's filing, including the following: CIG's filing assigns an $18 million economic true-up cost to shippers to account for the purported effect of CIG's own over-statement of the reimbursement rates, despite CIG's volumetric over-collection of fuel and LUF; CIG has gone back to October 1, 2007 to capture and economically value monthly activity despite a March 1, 2008 effective date

for the cost/revenue true-up; CIG fails to offset the positive cost/revenue true-up component by the negative current period LUF reimbursement percentage, and instead sets the latter component to zero, thereby setting up another LUF over-collection in the next true-up period; while accounting for the run-up in gas prices during the collection period, CIG's filing does not account for the subsequent run-down in gas prices; and CIG's filing is complicated by the numerous out-of-period LUF adjustments made throughout the year.[13]

16. On September 30, 2008, the Commission issued an order accepting and suspending the primary case tariff sheet, to be effective October 1, 2008, rejecting the alternate case tariff sheet, and establishing a technical conference.[14] The Commission established the technical conference to address not only specific issues raised by the filings, but also to afford the parties an opportunity to determine whether the cost/revenue true-up brought greater accuracy to CIG's LUF calculation.[15]

17. The technical conference was held on November 18, 2008. Subsequently, the parties to the proceeding filed initial and reply comments. The comments focused primarily on issues related to the proper date upon which data calculation should begin for the cost/revenue true-up in light of the Commission's five-month suspension of CIG's

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[13] *See Colorado Interstate Gas Co.*, 122 FERC ¶ 61,304 (2008) (granting CIG's request to account for over-collections of transportation fuel gas between July 1, 2007 and December 31, 2007 by making an out-of-time adjustment to its transportation fuel reimbursement percentage from 1.55 percent to 1.46 percent, effective April 1, 2008, and making a cash-out payment of $2,482,253 to shippers); *Colorado Interstate Gas Co.*, Docket No. RP08-264-000 (April 23, 2008) (unpublished letter order) (granting CIG's request to account for over-collections of storage fuel gas between January 1, 2007 and December 31, 2007 by making an out-of-time adjustment to its storage fuel reimbursement percentage from 0.86 percent to 0.73 percent, effective May 1, 2008, and making a cash-out payment of $1,059,840 to shippers); *Colorado Interstate Gas Co.*, 124 FERC ¶ 61,192 (2008) (rejecting CIG's request to make an out-of-time adjustment to the true-up component of its transportation fuel and storage fuel reimbursement percentages by decreasing them to zero).

[14] *Colorado Interstate Gas Co.*, 124 FERC ¶ 61,311 (2008) (September 30, 2008 Order). On October 31, 2008, CIG filed a request for rehearing of the September 30, 2008 Order in which CIG argues that the Commission erred in rejecting its alternate case tariff sheet. As discussed below, because of our decision to grant partial rehearing of our February 29, 2008 Order, we dismiss this rehearing request as moot.

[15] *Id.* P 37.

initial filing; whether CIG should be permitted to monetize amounts in existence prior to the effective date; and CIG's method of allocating amounts to fuel-related and shipper-related imbalances.[16]

18. In its comments, CIG asserts that Indicated Shippers' protests are based on factual misconceptions and fail to consider the importance of the overall gas balance analysis in computing CIG's cost/revenue true-up. Moreover, CIG objects to Indicated Shippers' characterization of certain costs and revenues as "hypothetical," noting that its calculations are derived from real costs and revenues, as accounted for through the fixed asset method, in accordance with Order No. 581.[17] CIG then addresses Williams' objections, focusing on the appropriate effective date for the cost/revenue true-up and the use of a beginning balance as of the cost/revenue true-up's effective date in determining the reimbursement percentages. CIG argues that despite Williams' concerns regarding over-collection by CIG, the purpose of the cost/revenue true-up mechanism is revenue neutrality. Accordingly, CIG indicates its willingness to accommodate Williams by either agreeing to defer to a future period the revaluation of the gas imbalance in its cost/revenue true-up and flow through only the cost and revenue difference realized by cash purchases and sales, or to extend the data collection period to reflect the "run-down" in prices cited by Williams.

19. Indicated Shippers comment on the cost/revenue true-up's general lack of transparency as well as a disconnect between CIG's actual out-of-pocket costs and the accounting methods reflected in the cost/revenue true-up, which Indicated Shippers characterize as mark-to-market accounting.[18] Indicated Shippers argue that the cost/revenue true-up is ultimately not reflective of actual costs paid by or actual revenues

[16] Arguments pertaining to the appropriate effective date, and the monetization of balances existing at that time, have no bearing on our ultimate disposition in this matter, i.e., whether the cost/revenue true-up is just and reasonable. Accordingly, the details of these arguments are not reproduced here.

[17] *Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies*, Order No. 581, FERC Stats. & Regs. ¶ 31,026 (1995), *order on reh'g*, Order No. 581-A, FERC Stats. & Regs. ¶ 31,032 (1996) (Order No. 581).

[18] Indicated Shippers filed their initial comments one day out-of-time. While we expect parties to live up to agreed-upon filing dates, we do not believe that undue prejudice will result from accepting Indicated Shippers' late-filed comments. Technical conferences are informal proceedings intended to develop a complete record upon which to make an informed decision. The initial comments of Indicated Shippers, active participants at the technical conference, contribute to a more complete record.

received by CIG. For example, Indicated Shippers note that changes in linepack, the value of which CIG incorporates in its cost/revenue true-up, do not represent an out-of-pocket cost to CIG, but instead reflect typical operational characteristics of a pipeline. Indicated Shippers also object to CIG's monthly revaluations of cumulative balances of fuel and LUF, noting that such revaluations do not represent an out-of-pocket expense to CIG. Indicated Shippers also object to CIG's inclusion of costs related to storage gas losses at Fort Morgan that CIG was denied recovery of by the Commission.[19]

20. In its comments, Williams proffers its own analysis of CIG's cost/revenue true-up under two scenarios that differ based on the appropriate effective date of the cost/revenue true-up mechanism. Williams' analyses raise numerous issues regarding CIG's method of applying the cost/revenue true-up, focusing on the economic impact of imbalances incurred prior to the cost/revenue true-up's effective date. Williams also raises concerns as to the appropriate impact of CIG's out-of-period fuel and LUF adjustment filings on the instant adjustment. Ultimately, Williams argues that its analysis shows that CIG's calculations are significantly flawed and that rather than a cost/revenue true-up of 0.28 percent, the appropriate figure should be negative 0.01 percent.

21. In their reply comments, CIG and Williams primarily focus on the appropriate date for the data collection period to begin and to what extent the cost/revenue true-up should reflect a beginning balance as of the appropriate date. CIG also moves to strike Indicated Shippers comments as untimely filed, but nonetheless includes responses to Indicated Shippers' arguments. CIG asserts that Indicated Shippers' objections to its gas balance revaluation methodologies is a collateral attack on the February 29, 2008 Order accepting the cost/revenue true-up. CIG argues that in light of the Commission's acceptance of the cost/revenue true-up, it is required to revalue its system fuel and encroachment imbalances, as submitted in this filing. Moreover, CIG asserts that there is no requirement that true-up mechanisms reconcile only out-of-pocket or cash costs. CIG states that the revaluation costs reflected in the cost/revenue true-up are real costs included in CIG's financial statements pursuant to the accounting methods required by Order No. 581, and that the data can be audited by the Commission. CIG also contends that it is not attempting to recover any costs related to the loss of gas at the Fort Morgan storage field, nor is it attempting to recover amounts already refunded through its out-of-period fuel and LUF adjustments. CIG argues that while these volumes appear on CIG's

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[19] *See Colorado Interstate Gas Co.*, 121 FERC ¶ 61,161 (2007), *order on reh'g*, 123 FERC ¶ 61,183 (2008) (denying CIG's proposal to include in its fuel and LUF tracking mechanism the costs of a storage gas loss at CIG's Fort Morgan storage facility). An appeal of this order is currently pending before the United States Court of Appeals for the District of Columbia Circuit (Docket No. 08-1243).

operational purchases and sales report, they are offset by equivalent volumes elsewhere on the report, and reflect the fundamental principle that the overall volume of gas must ultimately balance.

22. Williams reiterates its objections regarding the proposed effective date and further argues that CIG should not be permitted to include the beginning balance (as of the effective date). Indicated Shippers reiterate their objections to CIG's use of mark-to-market accounting in calculating actual fuel and LUF use. Indicated Shippers assert that the cost/revenue true-up nullifies the status of system gas as a rate base item by including the change in its value (purportedly recorded for accounting purposes) in its fuel and LUF rates rather than in actual costs and revenues associated with the purchase and sale of system gas. Indicated Shippers believes that this attempt to create a rate impact based on accounting practice is improper. In addition, Indicated Shippers state that it would be unjust to allow CIG to impose unrealized costs associated with a rising price environment when prices have subsequently declined. CIG's existing methodology and resulting rates, which utilize mark-to market valuations that constantly fluctuate, is believed by Indicated Shippers to be unreasonable and prone to large fluctuations. Moreover, Indicated Shippers assert that CIG's cost/revenue true-up methodology never achieved the transparency that the Commission had intended when it was originally accepted.

23. In its reply comments, PSCo focuses its comments on concerns regarding the alternative methods of calculating the reimbursement percentages proposed by CIG in its initial comments.

II. <u>Discussion</u>

24. Upon consideration of the arguments and issues raised in Indicated Shippers' request for rehearing of the February 29, 2008 Order, the Commission will grant rehearing. This determination to grant rehearing is informed by the issues raised and comments filed in CIG's annual adjustment filing in Docket No. RP08-600-000, which have served to clarify our understanding of the cost/revenue true-up mechanism. Our decision to grant rehearing is fundamentally based on our finding that CIG's method of monetizing its fuel and LUF tracking mechanism, as proposed in Docket No. RP07-666-000, is not just and reasonable. Accordingly, we grant Indicated Shippers' request for rehearing and direct CIG to remove its cost/revenue true-up mechanism from its tariff. CIG must reinstate the volumetric tracking mechanism in effect prior to CIG's filing in Docket No. RP07-666-000, to be effective March 1, 2008. CIG filed tariff sheets to comply with the February 29, 2008 Order in Docket No. RP07-666-002. Because of the action taken herein, the Commission dismisses these tariff sheets as moot. In light of this decision, CIG is directed to re-compute and file the reimbursement percentages in its annual filing in Docket No. RP08-600-000, to be effective October 1, 2008, without the cost/revenue true-up, consistent with our discussion herein. As such, CIG's request for rehearing in Docket No. RP08-600-001 is dismissed as moot.

A. Rehearing Request of Indicated Shippers in Docket No. RP07-666-000

25. In its request for rehearing of the February 29, 2008 Order, Indicated Shippers argued (1) that the Commission erred in finding that CIG's cost/revenue true-up mechanism[20] does not violate the settlement moratorium established in the resolution of CIG's last rate case; (2) that the Commission erred in permitting the monetization of numerous elements of the pipeline-shipper transaction, including net fuel, changes in linepack, system storage, net shipper imbalances, and current system balance activity; (3) that such monetization inappropriately turns CIG's fuel tracker into a hedging mechanism; (4) that the Commission erred in relying on the tracking mechanism approved in *El Paso*;[21] (5) that the cost/revenue true-up inappropriately socializes costs associated with shipper-related imbalances to all shippers; (6) that the cost/revenue true-up misallocates costs associated with operational balancing agreements (OBA) to non-OBA parties; and (7) that the cost/revenue true-up would inappropriately force transportation shippers, who pay an LUF reimbursement percentage, to subsidize storage shippers, who do not. Because we find merit in the second, fifth and sixth arguments listed above, we describe them in more detail below.

26. Indicated Shippers argue that CIG's cost/revenue true-up is flawed both in concept and in its proposed implementation. Indicated Shippers contend that the chief flaw is the monetization of numerous elements of the pipeline-shipper transaction, including net fuel, changes in linepack, system storage, net shipper imbalances, and current system balance activity. Indicated Shippers argue that because commercial transactions focus on the thermal content of gas, any adjustment to that thermal quantity via some type of fuel or other charge must be kept as small as possible to minimize disruptions caused by the discrepancy between receipt and delivery volumes. Indicated Shippers further argue that volatility in the price of gas would lead to a significant thermal adjustment under CIG's volume-to-value-to-volume cost/revenue true-up mechanism[22] as compared with the pure volumetric mechanism CIG previously used.

[20] Indicated Shippers refer to CIG's proposal as the "system operational surcharge." For consistency and ease of discussion, we use CIG's term, "cost/revenue true-up" throughout.

[21] *El Paso*, 114 FERC ¶ 61,305.

[22] Indicated Shippers assert that the new monetization methodology essentially values the thermal content of fuel, LUF and operational gas volumes at a certain point in time, and then reconverts that dollar value into a different volume (thermal content) based on the prevailing prices at a later point in time.

27. Indicated Shippers argue that monetization of fuel, LUF, and operational volumes essentially transforms the fuel tracker into a hedging mechanism. Indicated Shippers state that the Commission overlooked its argument that by ensuring financial neutrality despite gas price fluctuations, monetization essentially serves the same purpose as hedging, and that because shippers engage extensively in hedging, pipelines need not do so on shippers' behalf. Indicated Shippers state that while shippers tailor their hedging to reflect their commercial goals and anticipated market conditions, CIG's monetization of these volumes represents a mandatory hedging device imposed by CIG that is outside the control of shippers and does not serve their interests.

28. Indicated Shippers also argue that by allocating system operational costs based on throughput alone, the cost/revenue true-up improperly socializes these costs, and therefore does not allocate them in a manner that reflects cost causation. Instead, Indicated Shippers assert that because a significant component of system operational quantities would be related to imbalances, the causation of such imbalances should be a factor in allocating costs.[23]

29. Additionally, Indicated Shippers argue that CIG's cost/revenue true-up would misallocate imbalance cash-out costs associated with OBAs by allocating OBA costs to non-OBA parties. Indicated Shippers contend that imbalances related to OBAs are resolved pursuant to the terms of the OBA as negotiated by OBA parties. Thus, Indicated Shippers argue that OBAs are intended to be self-contained mechanisms, in which the pipeline's balancing requirements do not apply. Indicated Shippers conclude that because OBA-related imbalances are a negotiated issue among OBA parties, they should not be socialized and should not be reflected in the cost/revenue true-up.

B. <u>Commission Determination</u>

30. The Commission grants rehearing of the February 29, 2008 Order and rejects CIG's cost/revenue true-up as unjust and unreasonable. The Commission accepted the cost/revenue true-up on the basis that a monetized true-up mechanism could more accurately track CIG's actual costs and revenues.[24] In doing so, the Commission's presumption was that CIG would be tracking actual costs and revenues, not implied

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[23] Indicated Shippers note that CIG has shipper-specific imbalance data such that it could allocate these costs based on each shipper's imbalance.

[24] In this regard, operational considerations may require CIG to sell excess fuel gas on one day and purchase fuel gas at a later date. If gas prices have risen during that period, CIG could be unable to recover its actual costs under its previous tracking of "in-kind" fuel quantities.

amounts that would preclude effective verification. Importantly, the Commission noted that CIG would have to file annual updates of sufficient transparency to permit adequate review of activity under the cost/revenue true-up.[25] Accordingly, the Commission explained that protesters' objections to the mechanism were premature or speculative at that point, as described in the summary above.

31. Since the February 29, 2008 Order, CIG has filed its first annual reimbursement adjustment utilizing that mechanism (described above).[26] As the actual functioning of CIG's economic true-up mechanism has now been made clearer, the Commission has re-assessed the reasonableness of the mechanism, the method by which CIG calculates costs and revenues, and its ability to accurately track costs and revenues in a transparent manner. Having actual data from the annual update pending before us, we are now in the position to assess the full ramifications of CIG's proposal. We find that CIG's cost/revenue true-up mechanism is fatally flawed because of its inability to accurately track costs and revenues (due in large part to its significant reliance on cost estimates and deemed costs), its expansion of the universe of costs contemplated by fuel and LUF tracking mechanism to include shipper-related imbalance costs, and its general lack of transparency. Accordingly, we determine that CIG's cost/revenue true-up is unjust and unreasonable.

32. The Commission's policy does not necessarily prohibit a monetized tracking mechanism, provided the pipeline can show that such a mechanism will accurately track its fuel and LUF costs.[27] It is well-established that when a pipeline is permitted to "track changes in a particular cost item without regard to changes in other cost items . . . there should be a guarantee that changes in that cost item are tracked accurately."[28] We find,

[25] February 29, 2008 Order at P 35.

[26] Additionally, CIG's affiliates have filed similar mechanisms, as well as annual filings pursuant to such mechanisms. *See, e.g.*, Wyoming Interstate Company, Ltd., Docket Nos. RP07-699-000 (cost/revenue true-up proposal) and RP09-47-000 (annual update filing); Cheyenne Plains Gas Pipeline Co., LLC, Docket Nos. RP08-362-000 (cost/revenue true-up proposal) and RP09-566-000).

[27] For the purposes of tracking mechanisms used in the ratemaking process, "costs" can be measured by dollars or volumes.

[28] February 29, 2008 Order at P 29 (citing *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 26 (2005)). Commission policy requires that tracking mechanisms contain true-up mechanisms to ensure the accuracy of tracked costs and prevent any over- or under-recoveries. *ANR Pipeline Co.*, 110 FERC ¶ 61,069 at P 26. In the instant case, the cost/revenue true-up is flawed by the inclusion of too many estimated costs, which

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however, that CIG's proposal does not satisfy Commission policy because it contains too many cost estimates to assure that its actual costs are accurately tracked. At the time of the February 29, 2008 Order, we did not fully appreciate the extent of cost estimation that CIG's cost/revenue true-up entails. Having gained additional insight into the cost/revenue true-up through CIG's annual adjustment process, we now find that CIG's proposal requires that CIG make too many cost and revenue estimates for fuel and changes in linepack, system storage, net shipper imbalances, and current system balance activity. These estimates replace volumetric data that are premised upon sound and long-established foundations, such as plant-cost accounting (linepack and system storage) or Commission-approved meter and billing business practices (customer imbalances). CIG has been unable to show that its estimate-based proposal improves upon the existing system for identifying and recovering LUF costs. To the contrary, CIG's proposal inserts inaccuracies and uncertainties inimical to a just accounting of its fuel use and LUF volumes/costs.

33. CIG's tracking mechanism would recover shortfalls or flow through over-recoveries of cost and revenue values accrued on its books, but not yet actually incurred.[29] Recovery of such estimated values contravenes Commission policy against recovery of what amount to "deemed" costs, as discussed in *ANR Pipeline Company*,[30] and more recently in *Colorado Interstate Gas Company*.[31] In *ANR*, the Commission addressed an effort by the pipeline in its monthly cash-out report to offset costs of gas it "deemed" to have purchased (but did not actually purchase) on the spot market to replace gas delivered to customers in excess of receipts.[32] In that case, the Commission determined that the pipeline should only charge customers the actual cost of purchased

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effectively defeat the accuracy-ensuring function of the true-up.

[29] While we do not take issue with CIG's accounting practices in this respect, we note that accounting principles, such as those adopted by the Commission in Order No. 581, FERC Stats. & Regs. ¶ 31,026, *order on reh'g*, Order No. 581-A, FERC Stats. & Regs. ¶ 31,032 do not drive the ratemaking process. *See Pub. Serv. Comm'n of New York v. FERC*, 813 F.2d 448, 456 n.12 (D.C. Cir. 1987) ("[T]he Commission's accounting system alone cannot be said to dictate the Commission's ratemaking policies.") (citing *Alabama-Tennessee Natural Gas Co. v. FPC*, 359 F.2d 318, 336 (5th Cir.), *cert. denied*, 385 U.S. 847 (1966))).

[30] *ANR Pipeline Co.*, 80 FERC ¶ 61,173 (1997) (*ANR*).

[31] *Colorado Interstate Gas Co.*, 126 FERC ¶ 61,085 (2009) (CIG).

[32] *ANR*, 80 FERC at 61,726.

gas, rather than charging customers for "deemed" purchases at the index price.[33] In *CIG*, the Commission addressed an effort by the pipeline to offset penalty credits (to be returned to shippers) by costs associated with the value of gas between the time of an imbalance cash out and the subsequent purchase or sale of gas to resolve the related physical imbalance.[34] In that case, the Commission rejected CIG's proposal, finding that it could have led to a differential between the cost of gas valued at the cash-out price and the ultimate cost of the actual purchase, which could yield an inappropriate gain or a loss to the pipeline.[35] Both *ANR* and *CIG* dealt with "deemed" purchases in the context of a cash-out mechanism, while the cost/revenue true-up here applies to a fuel and LUF tracking mechanism. However, our concern about a pipeline's recovery of costs that it has not actually incurred from its customers remains relevant in both contexts. Tracking mechanisms must be designed to accurately track and recover the distinct set of costs actually incurred (hence the Commission's requirement that trackers contain a true-up mechanism).[36]

34. Additionally, under the cost/revenue true-up, CIG would monetize various categories of gas quantities, such as changes in storage gas, linepack, and net shipper imbalances, by multiplying those quantities by an index price each month and adding those monthly figures together to determine an annual total value of system balance activity. The resulting dollar figure (i.e., the value of activity in those different gas accounts) would then be incorporated into the cost/revenue true-up,[37] and used to determine the net cost/revenue true-up value. These valuations are a form of "deemed" valuation of gas that is not linked to an actual purchase or sale of gas. As such, they cannot be shown to increase the accuracy of tracked costs and in fact could have the effect of making CIG's tracking mechanism less accurate, a result that would run counter to our policy on tracking costs as expressed in *ANR Pipeline Co*. We therefore find that CIG's proposal to flow through such deemed "costs" and "revenues" is contrary to Commission policy. Specifically, in any tracking mechanism designed to recover fuel and LUF values rather than, or in addition to, in-kind quantities, CIG would only be

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[33] *Id.* at 61,729.

[34] *CIG*, 126 FERC ¶ 61,085 at P 6.

[35] *Id.* P 24.

[36] *ANR Pipeline Co.*, 110 FERC ¶ 61,069 at P 28.

[37] This figure would be net of CIG's total revaluation activity for the year, i.e., the monthly change in the cumulative beginning balance multiplied by the difference between the current month's index price and the previous month's index price.

permitted to include costs and revenues that have been actually expended or realized; CIG may not include costs or revenues that may have accrued on its books pursuant to its accounting methodologies, but which have not yet been expended or realized through an arms-length cash transaction with a third party.

35. Moreover, we find that CIG's monthly revaluation of its system balance activity also represents a form of impermissible "deemed" cost recovery. In monthly revaluations of cumulative system balance activity, CIG deems that it has incurred a cost or revenue each month for its cumulative system balance activity based on the index price for that month as compared against the index price for the previous month. Because these monthly revaluations reflect an accrued cost, not actually incurred by CIG, we find them to be inappropriate as inputs to CIG's LUF tracking mechanism. Our decision does not affect the use of such monthly revaluations as accounting techniques pursuant to the Commission's accounting rules in Order No. 581. Rather, our finding here denies CIG's proposed use of these monthly revaluations as the basis for recovering costs through its fuel and LUF tracking mechanism.[38]

36. The basic principle of CIG's proposed cost/revenue true-up is that it monetizes all sources and dispositions of gas in order to isolate the costs and revenues associated with its fuel, LUF and imbalance-related gas. As discussed above, we now find that such an all-encompassing method of monetization is not just and reasonable because it relies, in part, on CIG including "costs" and "revenues" in its tracking mechanism that are merely estimates and that it might not have actually incurred or, in fact, might never incur. Such costs include, but are not limited to, "deemed" gas purchases at CIG's cash-out index price (even where no actual purchase occurred) and CIG's monthly revaluations of system balance activity based only on the current value of gas, rather than on actual cost/revenue incurrence due to an actual purchase or sale. Because these booked costs do not necessarily reflect a change in CIG's cash flow, they are not properly included as tracked costs to be flowed through and recovered from CIG's shippers.

37. In addition, CIG's proposal improperly broadens the scope of its fuel and LUF tracking mechanism to include costs related to shipper imbalances that are misplaced in a fuel and LUF mechanism.[39] CIG already has in place mechanisms for metering,

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[38] *See supra* note 29 (noting the Commission's longstanding policy that accounting principles do not drive rate recovery).

[39] Adding to our concerns is the fact that CIG has included estimates of storage gas, linepack, OBA-related imbalances, and net shipper imbalances in this mechanism. This expansion of the LUF mechanism renders cost elements more uncertain because CIG's filing does not adequately show the manner in which such costs and revenues would be treated in its cash-out mechanism or base rates as opposed to which and/or how

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allocation, billing and managing customer imbalances. Allocation of actual receipts and deliveries, billing and imbalance management occur after the fact, sometimes months after actual activity. These are accounting activities that do not, in and of themselves, generate LUF data. CIG has failed to identify why these volumetric imbalance accounting activities should be part of a monetized LUF tracking mechanism. There is a fundamental difference between shipper imbalance costs, which depend on shipper behavior and are therefore unpredictable and subject to large year-over-year changes, and fuel and LUF-related costs, which reflect only pipeline operational activity, and therefore remain more consistent and predictable. The cost/revenue true-up incorporates shipper imbalance costs and revenues into the LUF tracking mechanism that are more appropriately borne by the shippers causing such imbalances. Therefore, upon further review, we find that CIG has not shown that it is just and reasonable to consider such fundamentally different types of costs and revenues together in a broadened LUF mechanism.

38. The requirement that CIG keep shipper-related imbalance costs separate from fuel-related costs was intended to foster transparency. However, as we have learned through CIG's implementation of the cost/revenue true-up mechanism, CIG's original cost/revenue true-up proposal does not sufficiently limit CIG's discretion in implementing the mechanism. The result is that CIG has developed a method of cost allocation (described in Paragraph 13, above), in which CIG first assigns operational purchase costs to shipper-related imbalances before assigning such costs to fuel-related imbalances.[40] Although CIG argues that it is more appropriate to consider all gas balance items together, comingling those items does not further transparency or a fair allocation of costs. In acquiescing to the Commission's direction to separately track operational purchases and sales related to shipper imbalance costs, CIG created an opaque allocation methodology using imputed rather than actual costs.

39. Additionally, upon further review, we find that the nature of the OBA-related imbalance costs and revenues that CIG intends to flow through its cost/revenue true-up is unclear. CIG has not demonstrated that it is appropriate to charge its customers for agreements that may not have cash-out mechanisms. Furthermore, even if all of CIG's OBAs included cash-out mechanisms, to the extent that such costs and revenues are derived from individual OBAs not filed with the Commission, any attempt to include such costs and revenues may run afoul of the filed rate doctrine.

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much of these costs would be included in the newly broadened cost/revenue true-up.

[40] CIG, August 28, 2008 Filing, Docket No. RP08-600-000, at 13.

40. The overall effect of CIG's proposal is to expand the nature of an LUF tracker from a residual mechanism—that essentially reflects what is left over once everything else on CIG's system has been accounted for—to a mechanism that actively estimates costs and revenues where no market transaction has taken place. LUF mechanisms, however, were never intended to play an active role in determining the prices and quantities of transportation imbalances. Rather, the recovery of LUF quantities is intended to compensate a pipeline for amounts lost or found in the course of normal pipeline operations that cannot be otherwise accounted for. We find that LUF tracking mechanisms must remain limited in scope and consider only those actual amounts that are unaccounted for once a pipeline properly accounts for all costs and revenues in a manner authorized by its tariff and the Commission's regulations.

41. Since we find CIG's use of deemed costs and revenues, its inclusion of shipper- and OBA-related imbalance costs and revenues, and its general lack of transparency and predictability renders its cost/revenue true-up unjust and unreasonable, we grant rehearing of the February 29, 2008 Order, and need not reach the additional issues raised by Indicated Shippers on rehearing. CIG must file revised tariff sheets to reinstitute its volumetric tracking mechanism, effective March 1, 2008, within 30 days of the date of this order.

B. Annual Filing Pursuant to Docket No. RP08-600-000

42. Our decision to grant rehearing of the February 29, 2008 Order and require CIG to eliminate its cost/revenue true-up has a direct impact on filings currently before us with respect to CIG's annual filing in Docket No. RP08-600-000. On September 30, 2008, the Commission issued an order accepting and suspending the primary case tariff sheet, to be effective October 1, 2008, rejecting the alternate case tariff sheet, and establishing a technical conference.[41] CIG filed a request for rehearing of the September 30, 2008 Order in Docket No. RP08-600-001 to the extent that it rejected the alternate case tariff sheet. We find CIG's request for rehearing to be moot in light of our decision above to require CIG to remove its cost/revenue true-up, reinstate its volumetric true-up, and refile its annual update according to the volumetric true-up. The only distinction between CIG's primary case tariff sheet and its alternate case tariff sheet pertains to the cost/revenue true-up, which we have found to be unjust and unreasonable. Therefore, CIG's request for rehearing in Docket No. RP08-600-001 is dismissed as moot.

43. Following the September 30, 2008 Order, the Commission held a technical conference to discuss CIG's implementation of its cost/revenue true-up through its primary case tariff sheet. At the technical conference, and in comments made thereafter,

[41] September 30, 2008 Order, 124 FERC ¶ 61,311.

participants focused only on issues concerning the cost/revenue true-up. The technical conference comments confirmed the widespread view that CIG's cost/revenue true-up was an unworkably complex mechanism. Rather than increasing transparency, CIG's annual filing was opaque and failed to achieve the level of transparency necessary to ensure that shippers were accurately assessed for fuel and LUF. Moreover, CIG's filing of multiple out-of-cycle adjustments throughout the year[42] further obscured the Commission's (and customers') ability to determine whether the cost/revenue true-up was implemented in such a way that could be found to be just and reasonable. Again, in light of our decision to grant Indicated Shippers' request for rehearing in Docket No. RP07-666-000, the primary and alternate tariff sheets filed in Docket No. RP08-600-000, which adjust the reimbursement percentages pursuant to the cost/revenue true-up, are rejected as moot. CIG must refile its annual update pursuant to the reinstated volumetric tracking mechanism within 30 days of the date of this order, to be effective October 1, 2008. Any over- or under-recoveries that result from the implementation of the cost/revenue true-up will, of course, be trued-up as part of CIG's 2009 annual adjustment filing.

The Commission orders:

(A) Indicated Shippers' request for rehearing in Docket No. RP07-666-001 is granted, as discussed in the body of this order.

(B) CIG's revised tariff sheets filed in RP07-666-000 are rejected, as discussed in the body of this order.

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[42] *See Colorado Interstate Gas Co.*, 122 FERC ¶ 61,304 (granting CIG's request to account for over-collections of transportation fuel gas between July 1, 2007 and December 31, 2007 by making an out-of-time adjustment to its transportation fuel reimbursement percentage from 1.55 percent to 1.46 percent, effective April 1, 2008, and making a cash-out payment of $2,482,253 to shippers); *Colorado Interstate Gas Co.*, Docket No. RP08-264-000 (April 23, 2008) (unpublished letter order) (granting CIG's request to account for over-collections of storage fuel gas between January 1, 2007 and December 31, 2007 by making an out-of-time adjustment to its storage fuel reimbursement percentage from 0.86 percent to 0.73 percent, effective May 1, 2008, and making a cash-out payment of $1,059,840 to shippers); *Colorado Interstate Gas Co.*, 124 FERC ¶ 61,192 (rejecting CIG's request to make an out-of-time adjustment to the true-up component of its transportation fuel and storage fuel reimbursement percentages by decreasing them to zero).

(C) CIG's revised tariff sheets, filed in Docket No. RP07-666-002 to comply with the February 29, 2008 Order, are dismissed as moot.

(D) CIG is hereby directed to file revised tariff sheets within thirty (30) days of the date of this order to reinstitute its volumetric tracking mechanism, to be effective March 1, 2008, consistent with this decision.

(E) CIG's proposed Second Revised Sheet No. 11A to its FERC Gas Tariff, First Revised Volume No. 1 in Docket No. RP08-600-000 is rejected as moot.

(F) CIG's request for rehearing in Docket No. RP08-600-001 is dismissed as moot.

(G) CIG is directed to file revised reimbursement percentages in Docket No. RP08-600-000, to be effective October 1, 2008, within thirty (30) days of this order, consistent with the discussion herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.