129 FERC ¶ 61,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wyoming Interstate Company, Ltd. Docket Nos. RP07-699-002
RP07-699-001
RP07-699-000
RP09-47-000

ORDER ON REHEARING AND TECHNICAL CONFERENCE

(Issued October 1, 2009)

1. On April 30, 2008, Wyoming Interstate Company, Ltd. (WIC) and the Indicated Shippers[1] filed requests for rehearing of the Commission's March 31, 2008 Order in Docket No. RP07-699-000.[2] In that order, the Commission conditionally accepted tariff revisions to WIC's fuel and lost and unaccounted for (L&U) (collectively, FL&U) tracking mechanism. WIC subsequently filed its first annual reimbursement percentage update under the revised mechanism in Docket No. RP09-47-000. The Commission accepted the annual reimbursement update, subject to conditions, and subject to the outcome of a staff technical conference.[3] For the reasons stated below, we grant in part, and deny in part, WIC's and Indicated Shippers' requests for rehearing of the March 31,

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[1] The Indicated Shippers are BP Energy Company, BP America Production Company (collectively, BP) and Marathon Oil Company (Marathon). At various stages of the proceedings addressed herein, BP (i.e., without Marathon) filed pleadings without referring to themselves as Indicated Shippers. For ease of reference, we will refer to all pleadings filed by BP or by BP and Marathon as being filed by Indicated Shippers.

[2] *Wyoming Interstate Company, Ltd*, 122 FERC ¶ 61,303 (2008) (March 31, 2008 Order).

[3] *Wyoming Interstate Company, Ltd*, 125 FERC ¶ 61,240 (2008) (November 26, 2008 Order).

2008 Order. As a result of our decision to grant rehearing of the March 31, 2008 Order, WIC's proposed tariff sheets in Docket No. RP09-47-000, which reflect the annual reimbursement percentage update pursuant to the revised mechanism accepted in the March 31, 2008 Order, are rejected as moot. WIC is directed to re-compute and file the reimbursement percentages in its annual filing in Docket No. RP09-47-000 without the cost/revenue true-up, within 30 days of the date of this order, consistent with the discussion below.

I. Background

2. WIC's tariff allows WIC to collect FL&U quantities in kind from customers through reimbursement percentages assessed on volumes transported. WIC revises and files these reimbursement percentages with the Commission at least once every year. Prior to WIC's filing in Docket No. RP07-699-000, WIC's tariff provided only for volumetric adjustments to the reimbursement percentages to eliminate any actual over- or under- collections of FL&U quantities. WIC's September 19, 2007 filing in Docket No. RP07-699-000 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 WIC argued would eliminate any actual over- or under-collections of the costs and revenues associated with FL&U.

A. Docket No. RP07-699-000: WIC's Proposed Cost/Revenue True-up

1. Details of Filing

3. In its September 19, 2007 filing in this docket, WIC proposed an economic cost/revenue true-up mechanism to track the changes in financial value of FL&U in addition to the volumetric tracking of gas quantities used and retained.[4] WIC also proposed to broaden its FL&U mechanism to include the net cost or revenue related to gas balancing activities. WIC 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 FL&U reimbursement percentage on all transactions.

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[4] To calculate the components of the sources and distributions of gas balance-related activity as a dollar value, WIC will use the actual amounts it paid or received to purchase or sell gas or multiply the over- or under-recovered volume 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 retention percentages, WIC will 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 equivalent to the cost or revenue impact of the total gas balance related items.

Therefore, WIC's proposed cost/revenue true-up would track, and recover through the FL&U reimbursement percentages, the costs and revenues attributable to fuel, linepack adjustments, system balancing activities, gas purchases and sales, and other credit/debit activity such as cash-outs. WIC argued that because the cost and revenue impacts of fuel cannot be separately identified from system gas balancing impacts, it was necessary to consider all of these items in one tracking mechanism. WIC described its proposal as intended to keep both the pipeline and shippers economically neutral in light of timing differences and price variations caused by the monthly differences in actual versus reimbursed FL&U quantities, including those related to various gas cost operational and imbalance activities which take place on the pipeline. WIC made assurances that its workpapers supporting the expanded recovery mechanism would fully detail all sources and distributions of gas, including FL&U and any operational gas over- or under-recoveries. WIC also stated that the resultant cost/revenue true-up would be credited to shippers and/or charged to shippers in subsequent FL&U 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 WIC's proposal was barred by the terms of a rate moratorium established in a 2000 settlement resolving WIC's most recent section 4 rate case.[5] WIC argued that the settlement did not address WIC's FL&U mechanism and, therefore, did not limit WIC's ability to modify it here.

5. Additionally, WIC proposed changing the definition of fuel gas to include "transportation-related" gas, instead of "compression" gas.

2. March 31, 2008 Order Conditionally Accepting Cost/Revenue True-up

6. On October 31, 2007, the Commission issued an Order Accepting and Suspending Tariff Sheets and Establishing a Technical Conference, which accepted the tariff revisions to be effective April 1, 2008, subject to conditions and a technical conference.[6] Based on further review of the filing and the comments received at the technical conference, the Commission issued the March 31, 2008 Order in which it accepted WIC's proposed monetized cost/revenue true-up, subject to conditions, to be effective April 1, 2008. The Commission found that WIC's proposed modifications were not

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[5] *See Wyoming Interstate Co., Ltd.*, 92 FERC ¶ 61,256 (2000) (approving Wyoming Interstate Co., Ltd., April 25, 2000 Stipulation and Agreement, Docket No. RP99-381-006).

[6] *Wyoming Interstate Co., Ltd.*, 121 FERC ¶ 61,114 (2007).

barred by a settlement that resolved WIC's most recent rate case,[7] because WIC's tracked costs, including the design of its L&U tracking mechanism, were not listed among the settlement rates that would apply during the term of the settlement.[8]

7. The Commission also found that, although WIC's volumetric FL&U tracking and true-up mechanism kept WIC and its shippers volumetrically neutral, it did not ensure that WIC and its shippers were kept revenue neutral with respect to gas used in WIC's operations. The Commission found that WIC's monetized cost/revenue true-up should enable it to more accurately track its costs and revenues with respect to FL&U, and noted that WIC's proposal was similar to mechanisms that had been recently accepted in *El Paso* and *Colorado Interstate Gas Co*.[9] Nevertheless, the Commission required WIC's annual updates to be transparent and understandable, and supported with substantial detail.

8. The Commission next rejected Indicated Shippers' argument against including Operational Balancing Agreement (OBA) related imbalances in WIC's proposed tracking mechanism, finding that although WIC and its shippers may remain volumetrically neutral with respect to OBAs, they continue to face economic volatility with respect to OBA-related imbalances and the fluctuating price of gas. To ensure economic neutrality and to prevent the possibility of double recovery, the Commission required that WIC clearly delineate OBA-related costs and revenues from other costs and revenues in its annual filings.

9. Accordingly, the Commission accepted WIC's cost/revenue true-up mechanism, subject to the following conditions aimed at ensuring transparency in WIC's accounting: (1) WIC 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 WIC cannot flow through an over-collection in a given year because of the limits of its FL&U reimbursement percentage, WIC will be required to provide cash or invoice credit refunds to its customers, including interest at the Commission's interest rate; and (3) WIC must file annual updates that fully document purchases and sales of fuel gas volumes, and that distinguish purchases and sales for system balancing purposes and, if any, for providing flexibility under its various services.

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[7] *Wyoming Interstate Co., Ltd.*, 92 FERC ¶ 61,256 (2000).

[8] *See id.* P 28 (addressing Wyoming Interstate Co., Ltd., April 25, 2000 Stipulation and Agreement, Docket No. RP99-381-006, at 2 and App. A).

[9] March 31, 2008 Order, 122 FERC ¶ 61,303 at P 30-31 (citing *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305, at P 207-08 (2006); *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,191 (2008)).

The Commission also required purchases and sales for system balancing to be kept separate and recovered through the cash-out provisions rather than the fuel mechanism.

10. The Commission established an April 1, 2008 effective date for WIC's cost/revenue true-up mechanism, holding that WIC may not apply the new mechanism to any over- or under-recoveries that occurred prior to that date, finding that to do otherwise would violate the filed rate doctrine and the rule against retroactive ratemaking and would be inconsistent with the Commission's decision in *Crossroads*.[10] Finally, the Commission rejected WIC's proposal to amend the definition of fuel gas to include "transportation-related" gas, instead of "compression" gas because WIC did not show that such "transportation-related" gas costs were not already recovered in its rates.

B. Docket No. RP09-47-000: Annual Reimbursement Adjustment Filing

11. Roughly a year after first proposing its new combined FL&U and cost/revenue true-up mechanism, on October 31, 2008, WIC 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 September 1, 2007 through August 31, 2008.[11] With respect to the cost/revenue true-up, WIC filed "primary case" tariff sheets[12] and "alternate case" tariff sheets,[13] proposing different methodologies for calculating the cost/revenue true-up. In its primary case, WIC acknowledged that the Commission required WIC to distinguish between purchases and sales used for system balancing and those used to provide service flexibility. Accordingly, WIC's primary case includes two sets of workpapers: (1) fuel-related imbalance workpapers, which outline costs and revenues of fuel and related system balancing L&U costs and revenues; and (2) shipper-related imbalance workpapers, which delineate the assignment of FL&U and related gas balance costs and

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[10] *Id.* P 38 (citing *Crossroads Pipeline Co.*, 119 FERC ¶ 61,221, at P 24 (2007) (*Crossroads*) ("[T]he Commission has held that when . . . a pipeline implements a new tracker and true-up mechanism, it may not include in the initial true-up any under-recoveries that occurred prior to the effective date of the tariff provision.").

[11] WIC also submitted a report of operational purchases and sales for the period April 1, 2008 through August 31, 2008, and an informational section in support of its alternate case, which demonstrated the results of 12 months of cost/revenue true-up data for the period September 1, 2007 through August 31, 2008.

[12] Twenty-Third Revised Sheet No. 4C and Fifth Revised Sheet No. 4D to its FERC Gas Tariff, Second Revised Volume No. 2.

[13] Alternate Twenty-Third Revised Sheet No. 4C and Alternate Fifth Revised Sheet No. 4D to its FERC Gas Tariff, Second Revised Volume No. 2.

revenues to shipper imbalance activity. WIC asserted, however, that the effect of the requirement that it distinguish between shipper-related imbalances and fuel-related imbalances is that, under the primary case, WIC would retain a net revenue of $158,144, for which it has no applicable rate, surcharge, or tracking mechanism to flow such revenues through to shippers. WIC states that its alternate case fully assigns these revenues in recognition that the system operates as an integrated whole. Accordingly, WIC included an "alternate case" (and tariff sheets) in which WIC incorporates the fuel-related and shipper imbalance-related costs and revenues tracked on both sets of the above mentioned workpapers. WIC requested that the Commission accept either its primary case or alternate case tariff sheet, to be effective December 1, 2008.

12. In its primary case, WIC indicated that the fuel-related imbalance costs it incurred during the data collection period amount to a balance due WIC of $2,625,414.[14] WIC stated that to determine the cost/revenue true-up percentages, the $2,625,414 balance would be divided by the average system cash-out value of $6.3435/Dth to reach a Dth-equivalent of 413,875 Dth. WIC stated that this volume is then allocated among each incrementally priced system and divided by the system throughput for the incremental system to determine a cost/revenue true-up component for each system. The cost/revenue true-up component was then added to the volumetric true-up component to reach the overall L&U true-up percentage.

13. WIC argued, however, that while the $2,625,414 balance due to WIC accounts for operational purchases and sales arising from fuel-related imbalances, it does not account for operational purchases and sales arising from shipper-related imbalances. WIC explained that in allocating imbalances between fuel-related activities and shipper-related activities, WIC begins with all activity on the system and removes anything that can be specifically identified as related to shipper imbalances. WIC stated that it accounts for shipper-related imbalances by assigning costs related to operational purchases and linepack changes that are used to balance shipper-related activity on the system. WIC explained that it first assigns operational purchase costs to shipper imbalances; then if the

[14] WIC bases this figure on the following: (1) net FL&U over- and under-collections reflecting a disposition of 452,426 Dth, at a cost of $1,444,342; (2) operational purchases of 281,604 Dth, at $2,248,776; (3) shipper/operator imbalance cash-outs of 211,690 Dth, at $1,804,676; (4) capitalized linepack and other gas activities resulting in a disposition of 1,336 Dth, with a value of $7,625. Importantly, WIC notes that for the period between April and August 2008, total gas balance sources amounted to 493,294 Dth, with an associated value of $4,053,452, while total gas balance dispositions amounted to 493,294 Dth, with an associated value of $1,428,039. Accordingly, WIC concludes that the net timing differences between gas acquisition and disposition result in $2,625,414 due to WIC.

shipper imbalance is not zero after the application of the operational purchases, further offsets are made using linepack.[15] WIC further explained that fuel-related imbalances are sometimes used to offset shipper-related imbalances when appropriate, such as when WIC uses shipper imbalances to make up for under-recovery of fuel. WIC stated that rather than sell the shipper imbalance gas and purchase the under-recovered fuel, it offsets the two amounts.

14. WIC stated that net imbalance quantities taken from the pipeline by shippers amounted to 319,579 Dth.[16] WIC further stated that the overall effect of the assignment of costs/revenues to shipper imbalance activities produced net revenue to the system of $158,144, which WIC will retain due to the absence of any applicable rate, surcharge, or tracking mechanism to flow such revenues through to shippers.

15. Protests were filed in response to WIC's annual fuel adjustment filing, primarily in response to the cost/revenue true-up. Indicated Shippers argued that WIC is seeking to expand the scope of the fuel tracking mechanism to include system balancing activities that are not related to fuel and related gas costs and revenues. Indicated Shippers also expressed concerns that WIC has not adequately explained the methodology by which it allocates system balancing costs and revenues between shipper-related imbalances and fuel-related imbalances. Additionally, Indicated Shippers argued that WIC's cost/revenue true-up should not recover imputed costs, stating that the Commission's rate policy requires rates to reflect a pipeline's actual costs, rather than imputed costs.[17]

16. Williams raised a number of initial observations, which it argued merit further review of WIC's filing, including the following: despite an effective date of April 1, 2008 for the cost/revenue true-up, WIC has included a pre-April 1, 2008 cumulative imbalance of 385,382 Dth to capture and economically value monthly activity in its cost/revenue true-up percentage; WIC erroneously included and economically valued a beginning cumulative linepack imbalance of roughly 90,000 Dth, which should also be

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[15] With respect to this process, WIC notes the following: (1) WIC did not make any operational purchases in April or May, so only linepack was used to offset shipper imbalance and any activity not offset by linepack was fuel-related; (2) in June, shipper-related imbalances showed a net increase to the system and were offset by linepack as operational purchases could not be used to offset such increases; and (3) in July and August, shipper-related imbalances were completely offset by operational purchases.

[16] WIC notes that this netting excludes 211,690 Dth that were placed on the system and used to offset fuel under-recoveries.

[17] Indicated Shippers, November 12, 2008 Protest at 5 (citing *Northern Border Pipeline Co.*, 103 FERC ¶ 61,134, at P 82 (2003)).

removed; and WIC's allocation of costs and revenues to daily operations related to shipper imbalances and service flexibility has produced unusual results.

17. On November 26, 2008, the Commission issued an order accepting and suspending the primary case tariff sheet, to be effective December 1, 2008, rejecting the alternate case tariff sheet, and establishing a technical conference.[18] 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 has indeed brought greater accuracy to WIC's FL&U calculation.[19]

18. The technical conference was held on January 28, 2009. 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 WIC's initial filing; whether WIC should be permitted to monetize amounts in existence prior to the effective date; and WIC's method of allocating amounts to fuel-related and shipper-related imbalances. [20]

19. In its comments, WIC disputes the notion that its computations are based on imputed costs. WIC states that it revalues encroachments on system gas in accordance with the fixed-asset method of accounting for its pipeline investment in system gas, as required by Order No. 581.[21] WIC nonetheless expressed a willingness revise its cost/revenue true-up such that WIC would defer its monthly revaluation of gas imbalances and flow through only the cost and revenue difference realized by cash purchases and sales. Under this method, WIC would continue to account for its gas balance items pursuant to Order No. 581, but would then defer the revaluation gains and/or losses until such accrued costs are realized by a cash transaction in future periods. WIC then argues that its method of allocating purchases and sales of gas between

[18] November 26, 2008 Order, 125 FERC ¶ 61,240 (2008).

[19] *Id.* P 29.

[20] 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.

[21] *Revisions to 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).

shipper-related and fuel-related imbalances is just and reasonable and reflects the fact that WIC does not purchase and sell gas separately for these different types of gas imbalances. WIC contends that what protesters refer to as "unusual results" in the allocation methodology simply reflect the integrated operation of WIC's system.

20. WIC then addresses Williams' objections to the 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. WIC notes that due to the Commission's requirement of an April 1, 2008 effective date, the relevant data period for the cost/revenue true-up was five months, while the relevant period for the volumetric true-up was the typical twelve months. WIC contends that it rightfully used the twelve-month (rather than five-month) average cash-out index price in calculating the Dth-equivalent of FL&U surcharges because, among other things, the longer average period has the effect of smoothing out any unusual prices and any over- or under-recoveries would eventually be trued-up.

21. Indicated Shippers comment on the cost/revenue true-up's general lack of transparency as well as a disconnect between WIC'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. Indicated Shippers argue that the cost/revenue true-up is ultimately not reflective of actual costs paid by or actual revenues received by WIC. Indicated Shippers also argue that WIC's cost/revenue true-up inappropriately includes cash-out costs incurred as a result of individual OBA contract terms, even though those OBAs are not filed with the Commission. Indicated Shippers next contend that WIC's annual filing inappropriately attempts to recover costs that pre-date the effective date of the cost/revenue true-up mechanism and thereby violate the filed rate doctrine. Lastly, Indicated Shippers argue that WIC's method of allocating costs between shipper-related and fuel-related imbalances is arbitrary and capricious. For example, Indicated Shippers point out that the average Dth cost of cash-out purchases allocated to fuel had a higher price than the purchase cost allocated to shipper imbalances.

22. In its comments, Williams proffers its own analysis of WIC's cost/revenue true-up that removes or corrects figures that Williams argues are improperly calculated. Williams' analysis raises numerous objections to WIC's application of the cost/revenue true-up, especially with respect to imbalances incurred prior to the cost/revenue true-up's April 1, 2008 effective date. Williams also asserts that WIC's workpapers are not in conformance with the illustrative workpapers filed in Docket No. RP07-699-000 because in those workpapers, there was no cumulative beginning balance that was included in the cost/revenue true-up calculation. Ultimately, Williams argues that its analysis shows that WIC's calculations are significantly flawed and that the Prior Period Economic Deficiency percentage, which WIC filed at .06 percent, should instead be .03 percent.

23. In its reply comments, WIC 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, WIC asserts that there is no requirement that true-up mechanisms reconcile only out-of-pocket or cash costs. WIC states that the revaluation costs reflected in the cost/revenue true-up are real costs included in WIC's financial statements pursuant to the accounting methods required by Order No. 581, and that the data can be audited by the Commission. With respect to OBA costs and revenues, WIC asserts that its allocation methodology strips any such costs/revenues out of the cost/revenue true-up by allocating them in the same way costs and revenues are allocated to shipper-related imbalances. WIC argues that any price variations that result from its allocation methodology are simply the result of the iterative allocation method utilized by WIC; however, they do not render the allocation methodology unreasonable. Finally, WIC argues that it properly valued the volumetric balance of gas on its system as of the cost/revenue true-up's effective date and that because such a valuation contains no adjustments in value that pre-date the effective date, there is no violation of the rule against retroactive ratemaking.

24. Williams reiterates its objections regarding the proposed effective date and further argues that WIC should not be permitted to include the beginning balance (as of the effective date) in its cost/revenue true-up. Williams also opposes WIC's proposal to defer the non-cash elements of cost/revenue true-up as a regulatory asset because it would preserve the economic benefit of monetizing the beginning balance that Williams continues to protest. Indicated Shippers argue that WIC's technical conference presentation detailing the cost/revenue true-up lacks transparency and omits key elements, such as WIC's OBAs. Indicated Shippers reiterate their objections to WIC's use of mark-to-market accounting in calculating actual FL&U use, and like Williams, argue that WIC's proposal to defer non-cash elements as a regulatory asset does not correct the mechanism's infirmities. Indicated Shippers also oppose the recovery of costs that pre-date the April 1, 2008 effective date of the cost/revenue true-up mechanism. Finally, Indicated Shippers object to the manner in which the cost/revenue true-up relies on the monthly cash-out mechanism to allocate cost/revenue true-up costs, which are incurred on a day-to-day basis. Indicated Shippers assert that the allocation of balancing costs based solely on the cashed-out quantities would under-allocate costs to shipper imbalances, and would force shippers that minimize their imbalances during the month to subsidize those shippers that accrue significant balances (which, under the cash-out mechanism, could be netted out on a monthly basis).

II. Discussion

25. Upon consideration of the arguments and issues raised in Indicated Shippers' and WIC's requests for rehearing of the March 31, 2008 Order, the Commission will generally grant rehearing with respect to the unworkability of the combined FL&U and cost/revenue true-up mechanism, as discussed below. As a result of our action, WIC must file revised tariff sheets reinstating the volumetric tracking mechanism in effect prior to WIC's filing in Docket No. RP07-699-000, to be effective April 1, 2008.

Consistent with this determination, WIC's requests for rehearing pertaining to the appropriate effective date and data collection period of the cost/revenue true-up are denied as moot. As explained below, however, WIC's request for rehearing pertaining to the appropriate definition of fuel gas is granted. Because of the action taken herein, the Commission dismisses as moot the tariff sheets WIC filed in Docket No. RP09-47-000, which established WIC's annual reimbursement percentages in accord with the mechanism accepted in the March 31, 2008 Order. In light of this decision, WIC is directed to re-compute and file the reimbursement percentages in its annual filing in Docket No. RP09-47-000, to be effective December 1, 2008, without the cost/revenue true-up, consistent with our discussion herein.

A. Rehearing Requests in Docket No. RP07-699-002

1. Indicated Shippers' Rehearing Request

26. In addition to arguing that the cost/revenue true-up is barred by the terms of a settlement reached in its last rate case, Indicated Shippers argue that WIC's cost/revenue true-up is not an accurate measure of WIC's actual costs and revenues because it is based largely on WIC's cash-out index prices, which are not necessarily the same prices that WIC pays or receives for over- or under-collections of FL&U, linepack adjustments, system balancing activities, or other credit/debit activity. Indicated Shippers also argue that WIC's method of dividing these hypothetical revenue figures by a hypothetical cash-out index price further divorces the cost/revenue true-up figures from WIC's actual costs and revenues. Indicated Shippers note that WIC fails to ever true-up this derived figure with WIC's actual costs and revenues.

27. Indicated Shippers next argue that WIC's cost/revenue true-up is not revenue neutral and may result in penalizing shippers. They contend that the cash-out prices used by WIC do not necessarily represent the market price in subsequent months. They also note that unlike WIC, shippers are without options, such as interim FL&U re-computations, to avoid or minimize WIC's FL&U charges even if the shipper has no imbalance whatsoever. Indicated Shippers suggest that if WIC wishes to adopt a truly revenue neutral tracker methodology, it should true-up its FL&U costs and revenues with its actual costs and revenues on a monthly basis so as to reduce the disparity in gas prices between the time when the operating costs and/or revenues are incurred and when they are recovered.

28. Indicated Shippers next challenge the Commission's findings with respect to OBAs and OBA-related imbalances, arguing that the Commission did not require WIC to produce copies of its OBAs and did not examine the terms and conditions of these OBAs. Moreover, Indicated Shippers state the Commission did not recognize WIC's reliance on OBAs, particularly its OBA with its affiliate pipeline Colorado Interstate Gas Company. Indicated Shippers note that they do not object to WIC fully recovering OBA imbalance costs that WIC actually incurs to support its system, stating that WIC has given no

indication that it is not already doing so. Indicated Shippers also argue that OBAs are intended to be self-contained mechanisms, in which imbalances are resolved in whatever manner is negotiated by the OBA parties; therefore, WIC's balancing requirements should not apply to OBAs.

29. Finally, Indicated Shippers state that the Commission's policy against cost trackers weighs against approving WIC's cost/revenue true-up, noting that with limited exceptions, the Commission requires rates to be developed in a general rate case so as to provide an incentive to pipelines to minimize costs and maximize service between rate cases. Moreover, Indicated Shippers argue that WIC's cost/revenue true-up will provide WIC a disincentive to filing a general rate case and note that WIC's last rate case was filed in 1999. Indicated Shippers argue that this length of time between rate cases indicates that WIC is over-recovering its costs. Therefore, Indicated Shippers contend that this provides another basis for the Commission to reject the cost/revenue true-up until such time as WIC files a general rate case, where all of its costs and revenues can be taken into account.

2. WIC's Rehearing Request

30. WIC states that the Commission erred by refusing to allow the annual true-up period for the cost/revenue true-up to include activity before April 1, 2008—the effective date of the tariff sheets. Alternatively, WIC argues that the Commission should permit the true-up to apply to activity beginning November 1, 2007. WIC also argues that the Commission erred in rejecting its proposal to change the definition of fuel gas from compressor gas to transportation-related gas. WIC argues that its reply comments showed that it does not currently recover transportation-related fuel in its base rates. WIC states that it has consistently recovered such fuel in its annual fuel filings, and the intent of its proposed change was to clarify its current practice.

Commission Determination

31. The Commission grants Indicated Shippers' request for rehearing regarding the cost/revenue true-up mechanism's revenue neutrality and workability, and finds WIC's cost/revenue true-up is unjust and unreasonable. The Commission's rate policies do not necessarily prohibit a monetized tracking mechanism, provided the pipeline can show that such a mechanism will accurately track its FL&U costs. Further, 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."[22] We find, however, that WIC's proposal does not satisfy Commission policy because it contains too many cost estimates, i.e.,

[22] *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 26 (2005).

valuations of gas quantities at the cash-out index price, to assure that its costs are accurately tracked. Our determination to grant rehearing is informed by the issues raised and comments filed in WIC's annual adjustment filing in Docket No. RP09-47-000, which have served to clarify our understanding of the cost/revenue true-up mechanism, and it is consistent with our recent rejection of an almost identical mechanism proposed by WIC's affiliate pipeline, Colorado Interstate Gas Company.[23] In that order, the objectionable features included, among other things: (1) the use of "deemed" costs and revenues based on the cash-out index price to determine the lost and unaccounted for percentage to be collected from shippers;[24] (2) the inappropriate broadening of the FL&U tracking mechanism to incorporate costs related to shipper imbalances; and (3) the lack of clarity with respect to the nature of the OBA-related imbalance costs and revenues to be flowed through the cost/revenue true-up.[25]

32. Because WIC's cost/revenue true-up mechanism is virtually identical to CIG's mechanism, the same infirmities that required rejection of CIG's cost/revenue true-up mechanism are also present here. Therefore, as in *Colorado Interstate Gas Co.*, we find that WIC's use of deemed costs and revenues, its inclusion of shipper-related imbalance costs and revenue, and its lack of transparency and predictability renders its cost/revenue true-up unjust and unreasonable.[26] Accordingly, we grant rehearing of the March 31, 2008 Order, and do not reach the now-moot issues raised by Indicated Shippers and WIC regarding the appropriate effective date and data collection period of the cost/revenue true-up, nor the rate moratorium issue raised by Indicated Shippers. WIC must file revised tariff sheets to reinstitute its volumetric tracking mechanism, effective April 1, 2008, within 30 days of the date of this order.

33. WIC also requests rehearing of the March 31, 2008 Order's rejection of WIC's proposal to expand the definition of fuel gas from gas required for "compression" purposes to gas required for "transportation-related" purposes. We grant WIC's request for rehearing of this point. WIC explains that it tracks compressor fuel (Account No.

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[23] *Colorado Interstate Gas Co.*, 128 FERC ¶ 61,117, at P 30-41 (2009) (setting forth the Commission's reasoning for rejecting a monetized cost/revenue true-up as part of a lost and unaccounted for tracking mechanism in great detail).

[24] *Id.* P 33-34 (citing *Colorado Interstate Gas Co.*, 126 FERC ¶ 61,085 (2009) and *ANR Pipeline Co.*, 80 FERC ¶ 61,173 (1997)).

[25] *Id.* P 39.

[26] Although we object to the use of certain deemed costs and revenues in WIC's FL&U tracking mechanism, we do not make any finding with respect to WIC's accounting practices or its compliance with Order No. 581.

810) separately from other transportation-related fuel, such as the fuel used in the operation of various pipeline equipment such as gas chromatographs, moisture analyzers, N2S analyzers, pressure regulators, and catalytic heaters to warm meter buildings (Account No. 812). WIC has shown that transportation-related fuel, reflected in Account Nos. 810 and 812, was not included in the base rates established in WIC's last rate case.[27] Moreover, WIC has consistently recovered transportation-related fuel (Account Nos. 810 and 812) in its fuel tracker. Accordingly, WIC has shown that these costs are not recovered anywhere in its base rates. Because WIC should be able to recover such costs in some form, and it has consistently used the fuel tracking mechanism to do so, we grant rehearing of the March 31, 2008 Order to permit WIC to change the definition of fuel gas from gas required for "compression" purposes to gas required for "transportation-related" purposes.

B. <u>Annual Filing Pursuant to Docket No. RP09-47-000</u>

34. Our decision to grant rehearing of the March 31, 2008 Order and require WIC to eliminate its cost/revenue true-up has a direct impact on WIC's annual filing in Docket No. RP09-47-000. On November 26, 2008, the Commission issued an order accepting and suspending the primary case tariff sheet, to be effective December 1, 2008, rejecting the alternate case tariff sheet, and establishing a technical conference.[28]

35. As discussed above, the Commission held a technical conference to discuss WIC's implementation of its cost/revenue true-up through its primary case tariff sheet. The technical conference comments confirmed the widespread view that WIC's cost/revenue true-up was an unworkable and unreasonable mechanism. Rather than increasing transparency, WIC's annual filing was opaque and failed to achieve the level of transparency necessary to ensure that shippers were accurately assessed for FL&U. Accordingly, in light of our decision to grant Indicated Shippers' request for rehearing of the March 31, 2008 Order, the tariff sheets filed in Docket No. RP09-47-000 (both the primary and alternate case), which adjust the reimbursement percentages pursuant to the cost/revenue true-up, are moot. WIC must re-file its annual update pursuant to the reinstated volumetric tracking mechanism within 30 days of the date of this order for the period beginning December 1, 2008. Any over- or under-recoveries that result from the implementation of the cost/revenue true-up will be trued-up as part of WIC's subsequent annual adjustment filing.

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[27] WIC, April 30, 2008 Rehearing Request at 10 (citing Hearing Exhibit No. WIC-26, Docket No. RP99-381-006).

[28] November 26, 2008 Order, 125 FERC ¶ 61,240.

The Commission orders:

(A) Indicated Shippers' and WIC's requests for rehearing in Docket No. RP07-699-002 are granted, in part, and in part dismissed as moot, as discussed in the body of this order.

(B) WIC's revised tariff sheets filed in RP07-699-000 are accepted, in part, with respect to the definition of "fuel gas" and rejected, in part, with respect to the cost/revenue true-up mechanism, as discussed in the body of this order.

(C) WIC's revised tariff sheets, filed in Docket No. RP07-699-001 to comply with the March 31, 2008 Order, are dismissed as moot.

(D) WIC 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 April 1, 2008, consistent with this decision.

(E) WIC's proposed Twenty-third Revised Sheet No. 4C and Fifth Revised Sheet No. 4D to its FERC Gas Tariff, Second Revised Volume No. 2 in Docket No. RP09-47-000 are rejected as moot.

(F) WIC is directed to file revised reimbursement percentages in Docket No. RP09-47-000, to be effective December 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.