

131 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Cheyenne Plains Gas Pipeline Company, LLC

Docket No. RP10-673-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEET, SUBJECT TO
CONDITION

(Issued May 28, 2010)

1. On April 30, 2010, Cheyenne Plains Gas Pipeline Company, LLC, (Cheyenne Plains) filed Tenth Revised Sheet No. 20 to its FERC Gas Tariff, Original Volume No. 1, to implement the annual adjustment of its Fuel and Lost and Unaccounted for Gas (FL&U) reimbursement percentages. These reimbursement percentages pertain to service Cheyenne Plains offers under Rate Schedules FT (Firm Transportation), IT (Interruptible Transportation), and SS (Interruptible Swing). Cheyenne Plains seeks an effective date of June 1, 2010. We accept and suspend Cheyenne Plains' Tenth Revised Sheet No. 20, to be effective June 1, 2010, subject to Cheyenne Plains filing additional information, as described below.

I. Background

2. Section 26 of the Cheyenne Plains' General Terms and Conditions (GT&C) requires Cheyenne Plains to file at least annually to revise its FL&U reimbursement percentages. Cheyenne Plains states that it must file with the Commission no later than April 30 of each calendar year for the recomputed percentages to become effective on June 1 of that year. The data collection period for an April 30 Filing is February 1 through January 31 of each year.

3. Section 26.4 of its GT&C sets forth procedures for Cheyenne Plains to calculate its FL&U reimbursement percentages. Cheyenne Plains' FL&U reimbursement percentages are made up of two components—a fuel component and a lost and unaccounted for (L&U) component. To calculate its fuel component, Cheyenne Plains adds together (1) an estimate of how much fuel it will need to support the anticipated transportation service for all shippers under all rate schedules during the upcoming fuel reimbursement period (base fuel percentage); and (2) an adjustment reflecting the

difference between actual quantities of fuel Cheyenne Plains used during the data collection period, and quantities of gas Cheyenne Plains retained for fuel during that collection period (adjustment fuel percentage).

4. Similarly, to calculate its L&U component, Cheyenne Plains adds together (1) an estimate of how much L&U it will experience supporting the anticipated transportation service for all shippers under all rate schedules during the upcoming reimbursement period (base L&U percentage); and (2) an adjustment reflecting the difference between actual quantities of L&U Cheyenne Plains experienced during the data collection period and quantities of gas Cheyenne Plains retained for L&U during that collection period (adjustment L&U percentage).

II. Details of the Filing

5. Cheyenne Plains uses a data collection period of February 1, 2009, through January 31, 2010. Cheyenne Plains proposes to increase its fuel reimbursement percentage from 0.94 percent to 1.35 percent. Cheyenne Plains also proposes to increase its L&U reimbursement percentage from 0.07 percent to 0.36 percent.¹ Cheyenne Plains states the increase in the fuel reimbursement percentage is attributable to two primary factors. First, throughput declined proportionately more than fuel consumption, which places upward pressure on the retention percentage. Second, monthly index gas prices, which are used to convert the electric commodity expense to Dth-equivalent quantities, doubled the thousand Dth-equivalent quantities being included in the calculation of the current fuel retention.

6. Additionally, Cheyenne Plains explains that it currently holds capacity on Wyoming Interstate Company, Ltd. (WIC) that is available for use by its shippers. Cheyenne Plains explains that prior to February 1, 2010, it recovered FL&U charges assessed by WIC for that capacity through its mainline FL&U rates. Cheyenne Plains supports this practice by stating that capacity was used by shippers in a manner that integrated on-system and off-system capacity. Cheyenne Plains further explains that in December 2009, WIC announced a change in how it would charge for FL&U associated with its off-system capacity, to be effective February 1, 2010. Cheyenne Plains states

¹ Cheyenne Plains explains that the reimbursement percentages proposed herein do not include any amounts related to its cost/revenue true-up, which Cheyenne Plains recently removed from its FL&U tracking mechanism in response to an April 1, 2010 Commission order in Docket No. RP09-566-000. *Cheyenne Plains Gas Pipeline Company, LLC*, 131 FERC ¶ 61,002 (2010). On May 20, 2010, the Commission accepted Cheyenne Plains' compliance filing in that docket. *See Cheyenne Plains Gas Pipeline Company, LLC*, Docket No. RP09-566-001 (May 20, 2010) (unpublished letter order).

that it is making a similar change in how it recovers off-system capacity FL&U costs to coincide with the change on WIC. Specifically, Cheyenne Plains states that beginning February 1, 2010, it will no longer incorporate the off-system FL&U costs into its mainline FL&U reimbursement percentages; instead, any shipper using off-system capacity, on either a primary or secondary basis, will be directly assessed the off-system fuel and/or L&U charge.

III. Public Notice, Interventions and Comments

7. Notice of Cheyenne Plains' filing was issued on May 3, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2009). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Sempra Energy Trading LLC (SET) and Encana Marketing (USA) Inc. (Encana) each filed a motion for leave to intervene out of time and protest.

8. SET contends that the off-system capacity surcharge provision in Cheyenne Plains' tariff has always required Cheyenne Plains to allocate off-system capacity charges, including fuel charges, exclusively to those shippers that use such capacity.² SET suggests that the allocation of off-system capacity fuel charges to shippers that do not benefit from the off-system capacity violates the long-standing Commission policy and practice of matching cost incurrence and cost responsibility.³ SET cites the following as support for its position: "[a]s with capacity acquired through pipeline construction, the pipeline's existing customers should not be adversely affected by the pipeline's acquisition of off-system capacity that may not serve or benefit them."⁴ SET contends that in order to avoid such adverse effects, a pipeline may only assess off-system capacity charges on those shippers actually benefitting from the use of the off-system capacity.

² See SET Protest at 4 (citing Cheyenne Plains' General Terms and Conditions § 27.2, First Revised Sheet No. 312; Rate Schedule FT § 3.3, Second Revised Sheet No. 104).

³ See *id.* at 6 (citing *ANR Pipeline Co.*, 91 FERC ¶ 61,195, at 61,687 (2000) (rejecting mechanism that would have allocated proposed cash-out price surcharges to all customers, not just those causing the imbalances)).

⁴ *Id.* (citing *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273, at 61,886 (2000)).

9. SET claims that Cheyenne Plains' proposed reimbursement percentages would allocate to all of the shippers on its mainline system fuel costs associated with WIC off-system capacity used by only one Cheyenne Plains shipper. SET claims that such cost allocation fails to hold the shipper using the off-system capacity responsible for the full cost of the off-system service. SET notes that Cheyenne Plains seeks to change the upstream FL&U recovery method for the period after February 1, 2010, such that the costs of off-system FL&U are directly assigned to the entities utilizing that capacity. However, SET argues that the April 30 Filing would require that all shippers pay charges associated with the true-up fuel calculation for off-system capacity from which only one shipper benefited during the January 2009 to February 2010 period.

10. SET requests that the Commission reject the April 30 Filing or condition any acceptance on Cheyenne Plains' recalculating the proposed true-up adjustment related to WIC FL&U costs so that the mainline shippers that did not use the off-system capacity on WIC, including SET, will not be required to pay for benefits (the use of WIC capacity) they did not receive.

11. Encana echoes SET's arguments opposing Cheyenne Plains' proposed recovery of off-system FL&U costs through the mainline FL&U reimbursement percentages. Encana states that it is encouraged by Cheyenne Plains' decision to adopt a methodology that will, in the future, allocate off-system FL&U charges to shippers using that off-system capacity. However, it opposes the recovery of off-system FL&U charges proposed here and seeks to have such costs removed from the mainline FL&U reimbursement percentages.

12. Additionally, Encana expresses concern regarding Cheyenne Plains' proposal to recover certain gas losses in its proposed L&U reimbursement percentage that Encana characterizes as abnormally large. Encana states that during the twelve-month reimbursement period, actual L&U generally ranged from approximately 18,000 Dth to 33,000 Dth per month. However, Encana points to above-average L&U amounts during three months: 105,172 Dth in September 2009; 141,128 Dth in November 2009; and 73,157 Dth in December 2009. Encana argues that Cheyenne Plains fails to provide any explanation supporting such "above-average" losses during these three months. Encana protests the inclusion of such losses to the extent they result from occurrences outside the scope of normal pipeline activities. In order to determine whether these losses are appropriate for recovery in the tracking mechanism, Encana urges the Commission to require Cheyenne Plains to file additional information detailing the nature of the losses sustained during the above-mentioned months and/or to establish a technical conference to explore the proposed FL&U reimbursement percentages in greater detail.

IV. Discussion

13. We accept and suspend Cheyenne Plains' proposed FL&U reimbursement percentages, subject to Cheyenne Plains filing additional information regarding the nature

of the gas losses in the three months highlighted by Encana. Because we are requiring Cheyenne Plains to file additional information detailing these losses, we find that a technical conference is unnecessary, and therefore deny Encana's request to establish a technical conference.

14. In its protest, SET cites portions of Cheyenne Plains' tariff that pertain to the allocation of third-party charges. However, these sections afford Cheyenne Plains a level of discretion in determining how fuel costs associated with off-system capacity should be recovered by the pipeline. Section 27.2 of Cheyenne Plains' GT&C states that "Shipper(s) *may*, on a non-discriminatory basis, be required to pay Transporter, in addition to any applicable rates and charges assessed pursuant to this Tariff, the rates and charges Transporter is obligated to pay such third party(s) for the off-system capacity."⁵ Moreover, section 3.3 of Cheyenne Plains' Rate Schedule FT states that "[s]hipper *may*, on a non-discriminatory basis, be required to pay to Transporter, if applicable, any Third Party Charges in accordance with Article 27 of the General Terms and Conditions."⁶ Contrary to SET's arguments, the quoted language in these tariff sections does not mandate that off-system FL&U costs be recovered solely from the entity utilizing the off-system capacity. Instead, this language affords Cheyenne Plains some discretion in determining how fuel costs associated with off-system capacity are to be allocated. Accordingly, we find that there is no conflict between Cheyenne Plains' tariff and either its current method of off-system FL&U recovery (i.e., incorporating off-system FL&U costs into its mainline rates) or its future method of off-system FL&U recovery (i.e., directly assigning off-system FL&U costs to shippers utilizing that off-system capacity).

15. Moreover, neither method of off-system FL&U cost recovery conflicts with Commission policy. In the past, the Commission has generally permitted pipelines to acquire off-system capacity, so long as pipelines treated that capacity as though it were part of its own system, subject to the Commission's open-access rules, and remained at-risk for any under-recovery of costs.⁷ The manner in which Cheyenne Plains recovers FL&U costs in its proposed reimbursement percentages, to which SET objects, is consistent with this policy because it recovers the FL&U costs related to off-system capacity in the same way it recovers FL&U costs on its own system. While the Commission has permitted pipelines to recover the costs of off-system capacity acquired

⁵ Cheyenne Plains, General Terms and Conditions § 27.2, First Revised Sheet No. 312 (emphasis added). That section goes on to explain that such charges *may* include fuel charges, among other things.

⁶ Cheyenne Plains, Rate Schedule FT § 3.3, Second Revised Sheet No. 104 (emphasis added).

⁷ *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273, at 61,885-86 (2000).

at the specific request of a shipper from the shipper(s) utilizing that capacity,⁸ it has never mandated that method of cost recovery or how a pipeline should transition from including those fuel costs in its mainline rates to directly assessing those costs. Cheyenne Plains has indicated that commencing February 1, 2010, to coincide with the change on WIC, it made a similar change such that going forward, any shipper using off-system capacity will be directly assessed the off-system fuel and/or L&U charge. The Commission finds that Cheyenne Plains has satisfactorily explained that since the data collection period relevant to the subject filing occurred prior to February 1, 2010, any off-system fuel and L&U costs experienced through January 31, 2010, are reasonably included for purposes of calculating the current adjustment's volumetric true-up. Accordingly, we find that Cheyenne Plains' proposed reimbursement percentages comply with the terms of its tariff,⁹ provide a reasonable transition to directly assessing off-system fuel and L&U costs commencing February 1, 2010, and are not inconsistent with Commission policy.

16. However, we also find that Encana raises reasonable concerns that above-average gas losses in September, November, and December 2009 have not been adequately supported. The Commission has explained that it is not appropriate to recover costs resulting from events outside the scope of normal pipeline operations through FL&U mechanisms.¹⁰ The losses in the above-mentioned months appear to be outside the average for Cheyenne Plains, and Encana raises the reasonable concern that without any information to the contrary, such losses could be the result of occurrences for which recovery in a fuel tracker is inappropriate. We therefore find that Cheyenne Plains has not adequately supported recovery of such losses through its FL&U reimbursement percentages. Accordingly, we accept and suspend Cheyenne Plains' annual reimbursement percentage adjustment, to be effective June 1, 2010, subject to Cheyenne Plains filing additional information in support of the above-mentioned losses within fifteen days of the date this order issues.

17. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that

⁸ See e.g., *Wyoming Interstate Co., Ltd.*, 120 FERC ¶ 61,162, at P 7 (2007).

⁹ See *WTG Hugoton, LP*, 125 FERC ¶ 61,288, at P 31 (2008) ("In evaluating the reasonableness of proposed reimbursement percentages, we determine whether the pipeline followed the methodology approved in its tariff and whether its percentages are properly supported").

¹⁰ *Colorado Interstate Gas Co.*, 121 FERC ¶ 61,161, at P 24 (2007), *reh'g denied*, 123 FERC ¶ 61,183 (2008).

it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances exist here where Cheyenne Plains' filing updates its FL&U reimbursement percentages pursuant to an existing tariff provision. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on June 1, 2010, subject to refund and to the conditions set forth in the body of this order.

The Commission orders:

Tenth Revised Sheet No. 20 is accepted and suspended, to be effective June 1, 2010, subject to Cheyenne Plains' filing additional information within fifteen (15) days of the date this order issues, as described above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.