

132 FERC ¶ 61,206
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cheyenne Plains Gas Pipeline Company, L.L.C.

Docket No. RP08-340-002

ORDER ON REHEARING

(Issued September 3, 2010)

1. On June 30, 2008, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) filed a request for clarification and rehearing of the Commission's May 29, 2008 letter order in this proceeding.¹ In that order, the Commission required Cheyenne Plains to remove certain costs associated with a fire at its Cheyenne Plains Compressor Station and amine processing plant (CP Station) from the calculation of its fuel and lost and unaccounted-for gas (L&U) reimbursement percentages. For the reasons stated below, the Commission grants Cheyenne Plains' request for clarification and denies rehearing.

I. Background

2. On April 30, 2008, Cheyenne Plains filed a revised tariff sheet to reflect the annual update to its fuel and L&U reimbursement percentages. As pertinent here, Cheyenne Plains stated that it included in the calculation of its fuel and L&U reimbursement percentage fuel costs associated with 7,158 Dths of fuel consumed when a fire broke out at the CP Station on September 16, 2007. Cheyenne Plains explained that the fire erupted from a release of gas due to a failure in a flange connection associated with a relief valve on the suction side of the compressor station.

3. On May 12, 2008, Indicated Shippers² protested Cheyenne Plains' filing and on May 21, 2008, Cheyenne Plains filed an answer. In the May 29, 2008 Order, the

¹ *Cheyenne Plains Gas Pipeline Co. L.L.C.*, 123 FERC ¶ 61,220 (2008) (May 29, 2008 Order).

² The Indicated Shippers are Anadarko Petroleum Corporation, BP America Production Company, and BP Energy Company.

Commission found that the gas lost as a result of the fire at the CP Station was not recoverable through Cheyenne Plains' fuel and L&U reimbursement percentages and directed Cheyenne Plains to remove the 7,158 Dths of lost gas from its fuel and L&U reimbursement percentages.

II. Rehearing Request

4. On rehearing, Cheyenne Plains argues that the Commission erred by failing to find that Cheyenne Plains' tariff provides for recovery of the gas lost as a result of the fire at the CP Station. According to Cheyenne Plains, section 26.1 of the General Terms and Conditions (GT&C) of its tariff³ allows for recovery of the lost gas and contains no exception for gas lost due to unexpected, unusual, or non-recurring events. Cheyenne Plains states that because the first part of section 26.3 of the GT&C of its tariff⁴ addresses the timing and effectiveness of Cheyenne Plains' fuel and L&U adjustment filings, the Commission found in the May 29, 2008 Order that this provision addresses the process related to the annual filings but not the kinds of losses that are properly includable in the tracker. Cheyenne Plains argues that the fact that the first part of section 26.3 addresses the timing and effectiveness of Cheyenne Plains' fuel and L&U adjustment filings is irrelevant to whether line losses due to unusual or unexpected events are recoverable pursuant to its fuel and L&U tracker. Cheyenne Plains also argues that the Commission's interpretation of section 26.3 would render that provision superfluous because, if that provision is not meant to identify that such losses are recoverable under the tracker, no purpose would be served in requiring Cheyenne Plains to provide information on losses due to explosions, fires, or other calamities and any related insurance claims.⁵ Cheyenne Plains asserts that section 26.1 allows for recovery of lost gas regardless of the character or nature of the loss and section 26.3 corroborates that losses due to calamities such as fires and explosions are recoverable. Therefore, Cheyenne Plains argues, when sections 26.1 and 26.3 are read together there can be no conclusion other than that losses due to fires are recoverable through its tracker.

³ Section 26.1 provides, in pertinent part: "[Fuel and L&U] consists of compressor station fuel and fuel for other utility purposes, including but not limited to line losses and other unaccounted-for gas in the operation of Transporter's pipeline system." Cheyenne Plains Gas Tariff Original Volume No. 1, First Revised Sheet No. 308.

⁴ Section 26.3 provides, in pertinent part: Transporter will provide details of any known and identifiable line loss due to explosion, fire, or other calamity and any related insurance claims in its [Fuel and L&U] adjustment filings." Cheyenne Plains Gas Tariff Original Volume No. 1, First Revised Sheet No. 308.

⁵ See Cheyenne Plains Request for Rehearing at 5-6.

5. Cheyenne Plains also argues that the gas lost as a result of the fire at the CP Station is recoverable under the plain language of the Cheyenne Plains tariff; thus any application of the Commission's policy stated in *Colorado Interstate Gas Company*,⁶ must be implemented prospectively pursuant to section 5 of the Natural Gas Act (NGA).

6. In addition, Cheyenne Plains argues that the Commission erred by applying a standard based on whether the loss was a result of an unexpected or non-recurring event, rather than on whether the pipeline was imprudent in causing the loss. Cheyenne Plains argues that prior to *CIG* the Commission allowed recovery of fuel losses through a fuel tracker unless the losses were the result of imprudent operations.⁷ Cheyenne Plains contends the Commission should not adopt a standard of recoverability based on whether a loss is non-recurring, unexpected, or unusual because that standard would be vague and subjective. Pointing to *High Island Offshore System, L.L.C.*,⁸ Cheyenne Plains argues that "[a] determination that a flange connection failure is unusual, but that it is not unusual for a ball valve to leak or a pipeline pig to get stuck in a delivery meter, is irrational."⁹ Cheyenne Plains states that parts and equipment failure may occur due to normal pipeline operations, such failure is not unusual, and there is not evidence in the case that the cause of the gas loss did not occur in the course of normal pipeline operations.

7. Cheyenne Plains also argues that based on the Commission's determinations in *CIG*, the Commission intends to preclude pipelines from recovering through a tracker prudently incurred fuel losses that do not result from normal pipeline operations, while allowing pipelines to seek recovery of such costs in a section 4 rate proceeding.¹⁰ Cheyenne Plains argues that if no party alleges in a section 4 rate case that fuel losses were imprudently caused, those costs are presumed recoverable. Cheyenne Plains states there is no basis for applying a different standard for recovery based on whether the pipeline seeks to recover that cost in a section 4 rate case or through a fuel tracker.

⁶ 121 FERC ¶ 61,161 (2007), *reh'g denied*, 123 FERC ¶ 61,183 (2008), *appeal filed*, Case No. 08-1243 (D.C. Cir. July 14, 2008) (*CIG*)).

⁷ Cheyenne Plains Request for Rehearing at 7-8.

⁸ 118 FERC ¶ 61,256 (2007) (*HIOS*).

⁹ Cheyenne Plains Request for Rehearing at 8-9.

¹⁰ *Id.* at 9 (citing *CIG*, 123 FERC ¶ 61,183 at P 13).

8. Referencing the Commission's November 30, 2007, Notice of Inquiry on pipelines' fuel and unaccounted-for gas recovery practices,¹¹ Cheyenne Plains argues that, if the Commission decides it is inappropriate to allow pipelines to recover fuel losses that do not result from normal pipeline operations, then likewise, ratepayers should not benefit from the passing through in fuel trackers any fuel gains resulting from pipelines' discretionary capital improvement investments.

9. With regard to its request for clarification, Cheyenne Plains states that while it indicated in the April 30, 2008 filing that it would include in its next annual fuel and L&U filing any insurance proceeds related to the cost of the gas lost due to the fire, such inclusion assumed that Cheyenne Plains would be entitled to recover the cost of the gas in the fuel and L&U reimbursement percentages submitted in the April 30, 2008 filing. Cheyenne Plains states that because the Commission directed it to remove the gas lost due to the fire from its tracker, it would make no sense for Cheyenne Plains to return any insurance proceeds related to this loss. Cheyenne Plains requests the Commission clarify this determination.

III. Discussion

10. Cheyenne Plains essentially argues that it is entitled to recover the gas lost as a result of the fire at the CP Station through its fuel and L&U tracker because its tariff allows recovery of any gas loss via the fuel and L&U tracker regardless of the character or nature of the loss, absent a showing of imprudence or negligence. Cheyenne Plains also argues that any application to Cheyenne Plains of the Commission's policy with regard to the recovery of lost gas, as articulated in *CIG*, must be made pursuant to section 5 of the NGA on a prospective basis.

11. The Commission finds that Cheyenne Plains' position is inconsistent with Commission precedent and policy, and misconstrues the role of fuel tracking mechanism such as the fuel and L&U provisions in Cheyenne Plains' tariff. First, the Commission once again declines to redefine the concept of "lost and unaccounted-for gas" to include all gas losses except those attributable to imprudence or negligence.¹²

¹¹ *Fuel Retention Practices of Natural Gas Companies*, FERC Stats. & Regs. ¶ 35,556 (2007) (Notice of Inquiry).

¹² See *ANR Pipeline Co.*, 128 FERC ¶ 61,128, at P 16 (2009); *CIG*, 123 FERC ¶ 61,183 at P 12. In *CIG*, the Commission rejected "CIG's attempt to create a standard for the recovery of lost gas in an L&U fuel tracker, such that absent negligence by the pipe-line, the loss at issue here would automatically be recovered in its L&U tracker." See *CIG*, 123 FERC ¶ 61,183 at P 12.

12. Second, under Cheyenne Plains' interpretation of sections 26.1 and 26.3 of its tariff Cheyenne Plains could recover the costs of any gas loss, including losses due to explosions, fire, and other calamities through its fuel and L&U reimbursement percentages. Cheyenne Plains' reading of its tariff is overly broad. As we have previously stated, fuel tracking mechanisms are not appropriate for the recovery of gas losses that are outside the scope of normal pipeline operations.¹³

13. Furthermore, in the May 29, 2008 Order, the Commission found the gas lost as a result of the fire at the CP Station, was not due to normal operations but caused by an unexpected, non-routine system failure. In taking issue with this finding, Cheyenne Plains compares the flange connection failure, which initiated the circumstances that caused the fire and loss of gas in the instant proceeding, to the circumstances in *HIOS* involving a leaking ball valve and a pipeline pig getting stuck in a delivery meter. However, *HIOS* is distinguishable as that order did not turn on delineating the types of known costs that might be eligible for recovery under a fuel tracking mechanism.¹⁴ Rather, the central issue before the Commission in that case was whether the level of that pipeline's unaccounted-for gas had been shown to be so atypical or anomalous that it should be considered erroneous.¹⁵

14. We also disagree that our reading of Cheyenne Plains' tariff renders section 26.3 superfluous. Providing details on losses due to fire, explosions, or other calamities and on insurance claims in a fuel and L&U adjustment filing provides customers, the Commission, and other stakeholders valuable information regarding the operations of the pipeline. Because the fuel and L&U provisions of Cheyenne Plains' tariff necessarily incorporate Commission precedent addressing fuel and L&U, the Commission is not contradicting the language of the tariff and there is no NGA section 5 issue.

15. With regard to recovery of lost gas costs in a rate case proceeding, in the May 29, 2008 Order, the Commission did not address whether Cheyenne Plains may recover the gas lost due to the fire at the CP Station through a section 4 rate case. Nonetheless, as Cheyenne Plains appears to misapprehend the Commission's determination in *CIG*, we clarify that a showing of prudence in a section 4 rate proceeding does not automatically mean that a pipeline can recover its costs for gas lost under circumstances similar to those in *CIG* or in the instant proceeding. In *CIG*, we stated:

¹³ See *CIG*, 123 FERC ¶ 61,183 at P 12; *Williams Natural Gas Co.*, 73 FERC ¶ 61,394, at 62,215 (1995).

¹⁴ See *CIG*, 123 FERC ¶ 61,183 at P 15.

¹⁵ See *HIOS*, 118 FERC ¶ 61,256 at P 17.

[A]lthough “L&U” is not so infinitely expansible as CIG might wish, recovery of some or all of the costs of this loss may be pursued in a rate proceeding, where prudence of field management can be fully examined and the interplay of other relevant tariff provisions considered. The Fort Morgan loss is simply not the type of loss that is appropriate for automatic recovery in an L&U mechanism, although there may be other avenues of recovery for such a loss.¹⁶

16. The Commission did not hold that if no party alleges in a section 4 rate case that fuel losses were imprudently caused, the pipeline would automatically recover those costs. As in any rate case, the Commission would consider numerous factors based on appropriate cost data and other available information to show that the pipeline’s proposal is just and reasonable as required under section 4.

17. Further, we find unpersuasive Cheyenne Plains’ argument that by a parity of reasoning fuel gains resulting from pipelines’ discretionary capital improvement investments should not be passed on to ratepayers through fuel trackers so long as pipelines cannot automatically recover without limit, any and all costs of gas lost in a fuel tracker. Not only is this “blank check” approach an illogical analog to the policy goal of reducing fuel use via capital improvements, it is in any event beyond the scope of this proceeding addressing the applicability of Cheyenne Plains’ fuel tracker to a specific loss. Cheyenne Plains’ argument based on the Commission’s Notice of Inquiry¹⁷ is thus not relevant here.

18. In conclusion, because Cheyenne Plains may not recover the costs of the gas lost due to the fire at the CP Station, we do clarify that Cheyenne Plains is not required to flow through in its fuel and L&U reimbursement percentages any insurance proceeds received related to the fire at the CP Station.

¹⁶ *CIG*, 123 FERC ¶61,183 at P 13 (footnote omitted).

¹⁷ The Notice of Inquiry sought comments on whether the Commission should provide pipelines a greater incentive to reduce their fuel use and L&U gas, to minimize pipeline over-recoveries of these costs, and to share these savings with customers. The Commission ultimately terminated the Notice of Inquiry and stated that it would develop such policies on a case-by-case basis. See *Fuel Retention Practices of Natural Gas Companies*, FERC Stats. & Regs. ¶ 35,560 (2008).

The Commission orders:

(A) Cheyenne Plains' request for clarification is granted, as discussed in the body of this order.

(B) Cheyenne Plains' request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.