UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cheyenne Plains Gas Pipeline Company, L.L.C. Docket No. CP03-302-003

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued July 13, 2004)

1. On April 23, 2004, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) filed a request for rehearing or, in the alternative, clarification of certain revenue crediting issues in the Commission's March 24, 2004 Order (March 24 Order) in this proceeding. The March 24 Order issued a certificate of public convenience and necessity to Cheyenne Plains authorizing the construction and operation of a new 380-mile pipeline designed to provide pipeline capacity from the Cheyenne Hub area to existing Mid-continent interstate and intrastate pipelines.[1]

2. As discussed below, the Commission denies rehearing, grants clarification and rescinds the March 24 deferred accounting requirements. This order benefits the public because it provides parity in the application of Cheyenne Plains' interruptible and penalty revenue crediting provisions under the tariff and service agreements for all existing and potential shippers on its system.

I. Background

3. In its May 20, 2003 application in this proceeding, Cheyenne Plains stated that, since it anticipated very little interruptible transportation (IT) on its system and it would have only negotiated rate shippers, it did not propose to allocate costs to interruptible service nor did it propose an interruptible service crediting mechanism. Subsequently, Cheyenne Plains informed the Commission that it had reached an agreement with its

[1] Colorado Interstate Gas Co. and Cheyenne Plains Gas Pipeline Co., L.L.C., 106 FERC ¶ 61,275 (2004).

shippers to share any IT revenues with both recourse and negotiated rate shippers, 75 percent of the revenues to the pipeline and 25 percent to the shippers.[2] Although Cheyenne Plains recognized that crediting to negotiated rate shippers is not consistent with Commission policy, it contended that it is reasonable in this case since the only shippers with contracts for service on its system are negotiated rate shippers.

4. In the October 22, 2003 preliminary determination in this proceeding,[3] the Commission explained its policy with regard to the effect of IT service costs on cost-based rates for recourse service. Commission policy provides that pipelines must either allocate costs to IT service or credit customers paying firm service rates with IT service revenues, net of costs. The Commission explained that crediting IT revenues keeps pipeline revenue within the expected cost-of-service and reduces what customers pay for firm service, effectively lowering their rates to the level that would result if costs were allocated between firm and interruptible services. The order noted that, since Cheyenne Plains has no recourse rate customers, the Commission's policy with respect to either allocating costs to IT services or crediting IT revenues to recourse rate customers may not apply. The order directed Cheyenne Plains to file a fully supported proposal regarding any IT revenue sharing mechanism and to explain how Commission policy concerning revenue crediting applies to a pipeline that expects to have only negotiated rate customers. The order also required Cheyenne Plains to revise its tariff to credit penalty revenues to both firm and interruptible shippers rather than firm shippers only.

5. In its November 5, 2003 compliance filing, Cheyenne Plains proposed to credit 50 percent of all IT revenues to firm recourse and negotiated rate shippers and to credit overrun charges and penalty revenues to both firm and interruptible shippers. The March 24 Order rejected the proposals stating that negotiated rate shippers are not entitled to revenue credits unless their service agreements provide for such crediting mechanisms. The Commission stated that because there are currently no recourse rate shippers on the pipeline, 100 percent of net revenues from interruptible service must be accrued and credited to the cost of service when Cheyenne Plains files to establish new rates. The Commission also held that revenues from short-term firm transportation should be treated in the same manner as revenues from interruptible transportation.

---

[2] The Kansas Corporation Commission supported the proposal to share interruptible revenues with all firm shippers but recommended the revenues be shared on a 50/50 basis.

[3] Colorado Interstate Gas Co. and Cheyenne Plains Gas Pipeline Co., L.L.C., 105 FERC ¶ 61,095 (2003).

II. Request for Rehearing

6. Cheyenne Plains argues that the Commission should accept its proposed sharing of interruptible and short-term firm transportation revenues and unauthorized overrun penalty revenue with its negotiated rate shippers. Alternatively, Cheyenne Plains seeks clarification that it may make current or future amendments to the negotiated rate transportation service agreements to reflect a 50/50 revenue sharing between the shippers and the pipeline and to provide for crediting of overrun charges and penalties.[4] Cheyenne Plains also seeks confirmation that any portion of the interruptible and short term firm transportation revenues provided to the existing firm shippers pursuant to such contractual provisions will not be subject to the deferred accounting requirement described in the March 24 Order.

7. Cheyenne Plains argues that, because of the unique nature of its greenfield pipeline, requiring it to credit interruptible and short-term firm transportation revenues to its cost of service in a future rate case is not needed to meet the Commission's policy goal of preventing an over-recovery of Cheyenne Plains' cost of service. Cheyenne Plains explains that its decision to build a 36-inch rather than a 30-inch pipeline in anticipation of a future capacity expansion[5] coupled with its decision to accept fixed negotiated rate agreements will result in an underrecovery of its cost of service in the project's initial stages and that its revenues will be substantially below the cost of service until it increases its initial capacity in a future expansion.[6]

---

[4] Twelve of the 14 shippers on Cheyenne Plains' system have expressed support of Cheyenne Plains' request for clarification and/or rehearing. Six of these specifically state that they prefer modification of the negotiated contracts to reflect 50/50 revenue sharing rather than implementing the revenue sharing as part of Cheyenne Plains' tariff.

[5] Cheyenne Plains amended its proposal to increase the proposed pipeline diameter from 30 to 36 inches and to decrease the total amount of proposed compression after it received a commitment for 170,000 Dth/d of expansion capacity in an August 2003 open season. The March 24 Order approved the amended proposal since the increased diameter would provide for a relatively inexpensive future expansion while allowing Cheyenne Plains to construct the pipeline as soon as possible for its 14 original shippers.

[6] On May 24, 2004 Cheyenne Plains filed an application in Docket No. CP04-345-000 to add compression to increase its capacity by 170,000 Dth/d. Cheyenne Plains requests an in-service date of December 31, 2005.

8. Cheyenne Plains states that since the existing negotiated rate shippers have contracted for the full pipeline capacity for ten-year terms, the proposed accrual of the revenues and the application of such revenues as credits in the next rate determination will not benefit the shippers until additional capacity is constructed and sold under recourse rates. Cheyenne Plains asserts that only crediting all firm shippers, recourse rate and negotiated rate, essentially reduces the pipeline's revenues and/or the cost of service to firm shippers.

9. Cheyenne Plains also maintains that requiring all interruptible and short-term firm revenues to be credited against future rate levels does not comply with the Commission's generally applied policy of providing the pipeline with an incentive to sell interruptible services.[7] Cheyenne Plains further asserts that, contrary to the Commission's policy of matching costs with revenues in current periods, the deferred revenues will be balanced against future costs so that future shippers may benefit from deferred revenues produced in earlier periods.

10. For these reasons, Cheyenne Plains requests that the Commission grant its request for rehearing or clarify that it may amend its negotiated rate contracts to provide for the crediting mechanisms for IT and short-term firm transportation revenues and for overrun charges and penalties.

III. <u>Discussion</u>

11. We will deny Cheyenne Plains' request for rehearing and grant its request for clarification. The Commission generally prefers pipelines to allocate costs to services, including interruptible services, rather than credit the revenues to their shippers. Cheyenne Plains claims that its pipeline is fully subscribed by firm negotiated rate shippers and that little (if any) unused firm capacity is expected to be available on an interruptible basis. As a result, Cheyenne Plains projects insignificant interruptible throughput on its system. The Commission's concern is not the expected *de minimis* nature of IT volumes and revenue, but Cheyenne Plains' exclusive revenue crediting mechanism applicable to its anchor shippers (*i.e.*, negotiated rate shippers), and its potential to bar future shippers contracting for unused firm transportation from receiving

---

[7] *Citing* Transwestern Pipeline Co., 64 FERC ¶ 61,156 at 62,260 (1993) (allowing Transwestern to keep 10 percent of interruptible revenues to give it an incentive to market its interruptible service).

a proportional share of the revenues. For this reason, we deny Cheyenne Plains' request for rehearing to permit the "direct sharing of revenues to the existing shippers."[8]

12. As an alternative to granting its rehearing request Cheyenne Plains asks the Commission to clarify that it may amend its negotiated rate transportation agreements to reflect a 50/50 revenue sharing between itself and the shippers. The Commission recognizes that the shippers negotiated their rates under the Precedent Agreements based on pre-filing representations during open season, and the receipt of revenue credits may have been intrinsic when the anchor shippers negotiated their contract rates. In addition, our March 24 Order states that absent a provision in a negotiated rate shipper's transportation service agreement to share revenue generated by IT service a negotiated rate shipper is not entitled to any credits for IT revenue. The converse of this statement is also true and, under the circumstances, we see no reason to foreclose Cheyenne Plains and its negotiated rate shippers from agreeing to such a measure.

13. However, to accommodate both the interests of Cheyenne Plains' anchor shippers and future shippers requesting firm recourse, negotiated, or interruptible service, Cheyenne Plains' tariff and negotiated service agreements require further revision to ensure parity among shippers on the system. Cheyenne Plains and its negotiated rate customers may agree to amend their negotiated rate contracts to allow a 50/50 percent sharing of a proportionate amount of the IT revenue (including authorized overrun charges) collected by Cheyenne Plains. In addition, Cheyenne Plains must craft a tariff revision to accommodate the negotiated rate customer and recourse customers so that when and to the extent recourse shippers take service on Cheyenne Plains, the recourse shippers receive a proportionate share of 100 percent of IT revenue collected (less Cheyenne Plains' administrative costs to provide the IT service). Interruptible service customers must also be eligible for IT revenue credits.[9] As we mentioned in earlier orders in this proceeding, short-term firm revenue must be treated like IT revenue for purposes of the crediting process. Granting Cheyenne Plain's request for clarification makes our earlier requirement to accrue IT revenue for future crediting moot. The Commission will review the IT revenues collected and disbursed in Cheyenne Plains'

---

[8] Request for Rehearing at 7.

[9] *See* Transcontinental Gas Pipe Line Corp., 79 FERC ¶ 61,325 at 62,424 (1997) (finding that an underestimated allocation of costs to IT service causes both firm and interruptible maximum rates to be overstated where the interruptible rate is derived from the firm rate and that both firm and interruptible shippers should receive a proportional share of the IT revenue).

three-year rate review, and will make a determination at that time whether Cheyenne Plains should allocate costs to its IT service.

14. Cheyenne Plains, in the same manner as discussed for IT revenue crediting above, requests rehearing that penalty revenue credits (including unauthorized overrun revenue) may be granted to the anchor shippers. We deny rehearing based on our findings above with respect to the treatment of IT revenue. The Commission permits all shippers including long-term firm, short-term firm, interruptible and negotiated rate shippers to receive their proportionate share of any net penalty revenues since they are subject to the penalties that generate the revenue.[10] For this reason, we will require Cheyenne Plains to proportionally distribute penalty revenues to all non-offending negotiated rate shippers, with the caveat that Cheyenne Plains provide proportional sharing of those revenues to all future non-offending firm and interruptible shippers, as well. In light of this clarification, Cheyenne Plains may, but is not required to, revise its negotiated rate agreements accordingly.

15. We direct Cheyenne Plains to incorporate into its tariff the findings above and in the March 24 Order when it files its actual tariff at least sixty (60) days prior to the in-service date of its pipeline.

The Commission orders:

(A) Cheyenne Plains' request for rehearing is denied and request for clarification granted.

(B) The requirement in the March 24 Order deferring the accounting treatment of IT and penalty revenues is moot.

---

10 Section 284.12(c)(2)(v) of the regulations provides that pipelines must credit penalty revenue to shippers and is not limited to firm shippers. *See* TransColorado Gas Transmission Co., 103 FERC ¶ 61,317 at 62,231 (2003) and Questar Pipeline Co., 98 FERC ¶ 61,159 at 61,584 (2002).

(C) Cheyenne Plains is required to incorporate into its tariff the findings above and in the March 24 Order when it files its actual tariff at least sixty (60) days prior to the in-service date of its pipeline.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.