155 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Paiute Pipeline Company   Docket Nos. CP14-509-003
RP16-212-001

ORDER GRANTING REHEARING

(Issued June 16, 2016)

1. On December 14, 2015, the Commission issued an order that rejected Paiute Pipeline Company's (Paiute) proposal to charge a zero fuel retention charge and a stand-alone retention charge for actual lost and unaccounted for gas for transportation service that only uses Paiute's Adobe Lateral (December 14 Order).[1] Southwest Gas Corporation (Southwest Gas) filed a timely request for rehearing. As discussed below, we grant rehearing. Because we are granting rehearing on this issue, we also re-address Paiute's proposal in Docket No. RP16-212-000 to revise the imbalance trading mechanism in its tariff to impose a charge for imbalance trades between gas transported solely through the Adobe Lateral and gas transported on other portions of Paiute's system.

I. Background

2. On May 14, 2015, the Commission issued an order authorizing Paiute, pursuant to section 7(c) of the Natural Gas Act,[2] to construct and operate its Elko Area Expansion Project (May 14 Order).[3] The expansion project consists of 35.2 miles of 8-inch-diameter pipeline extending from a new interconnection with Ruby Pipeline, LLC's existing Wieland Flat Compressor Station (Jade Flats receipt point) to Paiute's Elko City Gate (Adobe Lateral) and modifications to the Elko City Gate. The Elko Area Expansion Project is designed to enable Paiute to provide 21,994 dekatherms (Dth) per day of

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[1] *Paiute Pipeline Co.*, 153 FERC ¶ 61,292 (2015) (December 14 Order).

[2] 15 U.S.C. § 717f(c) (2012).

[3] *Paiute Pipeline Co.*, 151 FERC ¶ 61,132 (2015) (May 14 Order).

incremental firm transportation service to two shippers, Southwest Gas-Northern Nevada (Southwest-NN)[4] and Newmont Mining Corporation.

3. As relevant here, the May 14 Order approved Paiute's request for an incremental reservation rate for the project. However, the Commission required Paiute to file a new interruptible transportation (IT) rate based on a 100 percent load factor of the incremental reservation rate for service on the Adobe Lateral.[5] The Commission also accepted Paiute's proposed zero fuel retention charge and stand-alone lost and unaccounted for gas retention charge for transportation using only the Adobe Lateral.[6]

4. In addition, the May 14 Order rejected Paiute's proposal to prohibit shippers from trading imbalances between its existing system and the Adobe Lateral. While acknowledging that Paiute had a legitimate concern as to cross-subsidization, the Commission found that prohibiting imbalance trading was not an appropriate remedy. Rather, the Commission explained that Paiute should consider an appropriate rate to apply to imbalances that occur between its existing system and the Adobe Lateral and stated "such a rate proposal would have to be made pursuant to an NGA section 4 tariff filing."[7]

5. Paiute filed a request for rehearing of the May 14 Order arguing, among other things, it should be permitted to use its existing system IT for service on the Adobe Lateral rate because its expansion facilities are integrated with its existing pipeline system, for which it uses a postage stamp rate design. Paiute also filed a NGA section 4 tariff filing in Docket No. RP16-12-000 proposing to revise the imbalance trading mechanism in its tariff to impose a charge for imbalance trades between gas transported solely on the Adobe Lateral and gas transported on other portions of Paiute's system.

6. In the December 14 Order, the Commission granted Paiute's request for rehearing and found the Elko Area Expansion Project to be operationally integrated with Paiute's existing pipeline system. Accordingly, the Commission directed Paiute to charge its

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[4] Paiute is a wholly-owned subsidiary of Southwest Gas. Southwest-NN is a local distribution company and a division of Southwest Gas.

[5] May 14 Order at P 42.

[6] *Id.* P 41.

[7] *Id.* PP 47-48.

current system IT rate for any new interruptible service on the Adobe Lateral, consistent with Commission policy.[8]

7. Based on this finding, the Commission re-examined Paiute's proposed initial rates and rejected Paiute's proposed zero fuel retention charge and stand-alone lost and unaccounted for gas retention charge for transportation using only the Adobe Lateral.[9] The Commission found that the proposed retention charges would be incompatible with an integrated pipeline system using a postage stamp rate design. Therefore, the Commission required Paiute to use its system fuel and lost and unaccounted for gas retention charge for transportation utilizing the Adobe Lateral.

8. The December 14 Order also addressed Paiute's imbalance trading proposal in Docket No. RP16-212-000. It found that Paiute's imbalance trading proposal was moot because the initial rate for fuel and lost and unaccounted for gas will be the system rate, and there would be no opportunity for shippers to game imbalance trading to Paiute's disadvantage.[10]

II. Discussion

A. Fuel and Lost and Unaccounted for Gas

9. Southwest Gas asserts that the Commission's rejection in the December 14 Order of Paiute's proposed zero fuel retention charge and stand-alone lost and unaccounted for gas retention charge for transportation using only the Adobe Lateral is inconsistent with Commission policy. Southwest asserts that the Commission has a policy of exempting certain shippers from the fuel use portion of their retainage charges when those shippers can demonstrate that no fuel was used to provide service, and contends that such an exemption would be appropriate for service that would use only Paiute's Adobe Lateral.[11] Southwest Gas argues that, in deciding whether to grant a fuel charge exemption, the Commission does not look to whether a pipeline system is integrated or uses a postage stamp rate design, but rather it looks at whether fuel will actually be consumed.

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[8] December 14 Order at P 10.

[9] *Id.* PP 15-18.

[10] *Id.* P 25.

[11] Southwest Gas's Request for Rehearing at 4-7 (citing *Transcontinental Gas Pipe Line Co., LLC*, 130 FERC ¶ 61,019 (2010); *ANR Storage Co.*, 119 FERC ¶ 61,220 (2007); *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 (2002); *Columbia Gas Transmission Corp.*, 101 FERC ¶ 61,378 (2002)).

10. Southwest Gas contends that, because there are no compression facilities from the Jade Flats receipt point to the interconnection with Paiute's Elko City Gate, shippers using only those facilities should be permitted to pay a zero fuel retention charge. Southwest Gas also argues that a stand-alone rate for lost and unaccounted for gas for shippers using only the Adobe Lateral would be appropriate, as Paiute has installed measuring equipment at the Jade Flats receipt point and at the interconnection with Paiute's Elko City Gate, which allow Paiute to separately measure lost and unaccounted for gas on the Adobe Lateral.

11. The Commission prohibits pipelines from discounting fuel charges because fuel is a variable cost, and the Commission's regulations do not permit discounts below the variable cost.[12] The Commission has permitted pipelines to exempt certain transactions or portions of their pipeline systems from fuel charges if no fuel is used in those transactions. However, the Commission only permits such exemptions if the pipeline has first made a filing with the Commission that identifies the specific transactions the pipeline proposes to exempt and demonstrates that those transactions do not require the use of fuel.[13] The exempted transactions must also be listed in the pipeline's tariff. These requirements assure that there will be non-discriminatory selection of exempted transactions and avoid unwarranted cost shifts to other customers.[14] Thus, all transportation service should be assesses a fuel charge unless the pipeline can demonstrate that a specific transaction does not consume fuel. Typically, exemptions have been granted to long-haul pipelines for backhauls or at locations where compression is provided by connecting pipelines.[15]

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[12] In Order No. 436, the Commission determined that it was impermissible for a pipeline to provide service at a rate that would not allow it to recover the variable cost of the service. This policy is now codified in section 284.10(c)(4) of the Commission's regulations, which states that a pipeline's minimum rate "must be based on the average variable costs which are properly allocated to the service to which the rate applies." 18 C.F.R. § 284.10(c)(4) (2015).

[13] *See, e.g., El Paso Natural Gas Co.*, 129 FERC ¶ 61,280, at P 26 (2009); *Ozark Gas Transmission, L.L.C.*, 124 FERC ¶ 61,290, at P 15 (2008) (*Ozark*); *Gulf South Pipeline Co., LP*, 111 FERC ¶ 61,463, at P 14 (2005) (*Gulf South*).

[14] *Ozark*, 124 FERC ¶ 61,290 at P 15 (citing *Colorado Interstate Gas Co.*, 112 FERC ¶ 61,199, at P 19 (2005)).

[15] *Gulf South*, 111 FERC ¶ 61,463 at P 14.

12. We have re-evaluated Paiute's proposal on fuel and conclude that service on the Adobe Lateral will not use fuel, as there will be no compression on the Adobe Lateral. Moreover, in its proposed tariff, Paiute provided that the exemption applies only to deliveries on the Adobe Lateral to the Elko City Gate, as that is the only delivery point on the Adobe Lateral at this time. For all other transactions, Paiute must charge its system-wide fuel and lost and unaccounted for gas retention charge. Under these circumstances, we are satisfied that the fuel charge exemption is justified, and we grant rehearing on the issue.

13. Even when no fuel component is charged for a certain transaction or portion of a pipeline system, the Commission has required pipelines to charge a lost and unaccounted for gas charge.[16] Here, Paiute has installed measuring equipment at the Jade Flats receipt point and at the interconnection with the Elko City Gate, which will allow it to separately measure lost and unaccounted for gas that occurs on the Adobe Lateral. Therefore, we find Paiute's proposal to charge a stand-alone lost and unaccounted for gas charge for service using only the Adobe Lateral is appropriate. Again, for all other transactions, Paiute must charge its system-wide fuel and lost and unaccounted for gas retention charge.

14. Paiute should file tariff records to implement its original fuel and lost and unaccounted for proposal within 15 days of the date of this order.

B. Imbalance Trading Proposal in Docket No. RP16-212-000

15. As noted above, since we are accepting Paiute's proposal for a zero fuel retention charge and a stand-alone lost and unaccounted for gas retention charge for service using only the Adobe Lateral, it is necessary to re-address Paiute's proposal on imbalance trading.

16. On November 20, 2015, Paiute, in Docket No. RP16-212-000, proposed to include in Section 5.3 of its General Terms and Conditions (GT&C), the following provision:

> For purposes of trading imbalances between the system and the Adobe Lateral at Delivery Location 8 – Adobe, the trade shall be adjusted for the difference between the system-wide Gas Used by Paiute percentage and the lost and unaccounted for gas percentage on the Adobe Lateral at Delivery Location 8 – Adobe for the month preceding the month in which the imbalance trade occurs.

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[16] *See, e.g.*, *Columbia Gas Transmission Corp.*, 101 FERC ¶ 61,378 (2002).

17. In its November 20, 2015 filing, Paiute stated that its imbalance trading proposal would allow Paiute to recover the same fuel and lost and unaccounted for gas from its shippers as it would if the trade did not occur and shippers reduced their imbalances through the scheduling process. Paiute submitted an example of how an imbalance trade involving the Adobe Lateral at Delivery Location 8 (the end of the Adobe Lateral at the Elko City Gate) and other system deliveries may result in lost fuel and lost and unaccounted for gas revenues and how its proposal would make Paiute whole.

18. Sierra Pacific Power Company (Sierra Pacific) protested Paiute's filing noting that the Commission has stated that "charging for imbalances traded across rate zones may be appropriate to ensure shippers do not game the system to save on transportation costs."[17] Sierra Pacific pointed out, however, that Paiute acknowledged that it does not have zoned rates but has postage stamp rates. Sierra Pacific also argued that Paiute did not provide supporting cost and revenue information to show the impact of its proposed imbalance charges. Therefore, Sierra Pacific asked that the Commission establish an evidentiary hearing to determine the justness and reasonableness of the proposed changes.

19. The December 14 Order rejected Paiute's proposal as moot. Upon further consideration of Paiute's imbalance trading proposal, we find that Paiute has justified adjusting for the difference between the system-wide gas used by Paiute percentage and the lost and unaccounted for gas percentage on the Adobe Lateral at Delivery Location 8. The Commission therefore denies Sierra Pacific's request to establish an evidentiary hearing to determine the justness and reasonableness of the proposed changes.

20. The Commission's requirement that pipelines offer imbalance management services was promulgated in Order No. 637.[18] Order No. 637 provides that pipelines must provide shippers, to the extent operationally feasible, imbalance management services, such as park and loan service, swing on storage service, or imbalance netting and trading. The requirement that pipelines offer imbalance management services makes it easier for shippers to stay in balance and avoids causing operational problems.

[17] Sierra Pacific Power Company's Motion to Intervene, at 4 (filed Dec. 2, 2015).

[18] *See Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091 (2000) (Order No. 637).

21. The Commission established the requirement to offer netting and trading of imbalances in Order No. 587-G.[19] The Commission stated that imbalance trading regulations were necessary to reduce the business and financial risks of imbalances and the associated penalties.[20] Permitting shippers to trade imbalances in the same operational area enables shippers to avoid imbalance charges without jeopardizing system reliability. The NAESB WGQ business practice standards, as incorporated into the Commission's regulations, require among other things, that pipelines: (1) define the largest possible areas on their systems in which imbalances have similar operational effect; (2) explain why imbalances crossing those lines are not sufficiently similar in operational effect; (3) notify shippers of their imbalances and post imbalances automatically without charging a fee; and (4) process, without charging a separate fee, imbalance trades submitted by shippers or third parties acting to facilitate imbalance trading.[21] The requirement to offer netting and trading of imbalances applies regardless of whether a pipeline's tariff includes imbalance penalties.[22]

22. Paiute has demonstrated that transportation on the Adobe Lateral will not use fuel while shippers using other portions of its system will use fuel. Consequently, for fuel purposes, Paiute's system is essentially a zonal system. Paiute has demonstrated that for purposes of trading imbalances between the rest of its system and the Adobe Lateral at Delivery Location 8, the trade should be adjusted for the difference in fuel usage. Moreover, Paiute's proposal is narrowly tailored to keep the pipeline neutral as to its recovery of fuel and lost and unaccounted for gas from its shippers as it would be if the trade did not occur and shippers reduced their imbalances through the scheduling process. In these circumstances, we find that Paiute has justified its request to restrict imbalance trading between the Adobe Lateral and the rest of its system.

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[19] *See Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs. ¶ 31,062 (1998) (Order No. 587-G).

[20] *See id.* at 30,644.

[21] *Id.* at 30,678-79.

[22] The Commission clarified that it would address on an individual basis pipelines on which shippers cannot incur imbalances and are not subject to imbalance penalties. *See Standards for Business Practices for Interstate Natural Gas Pipelines*, Order Granting Clarification of Order No. 587-L, 92 FERC ¶ 61,266 (2000). But in that order, the Commission indicated that the absence of imbalances was necessary, not simply the absence of imbalance penalties. For example, some pipelines may require shippers to make up imbalances on a physical basis (without penalty) and imbalance netting and trading would provide an efficient method of making up those imbalances.

23. At a hearing held on June 16, 2016, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments and upon consideration of the record,

The Commission orders:

(A) The request for rehearing filed by Southwest Gas Corporation is granted.

(B) Paiute is directed to file, within 15 days of the date of issuance of this order, revised tariff sheets consistent with the discussion in the body of this order.

(C) Sierra Pacific's motion for an evidentiary hearing is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.