

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Gas Research Institute

Docket No. RP97-391-000

ORDER ON TRUE UP AND ACCOUNTING REPORT AND DENYING  
REQUESTED RELIEF FROM REFUND REQUIREMENT

(Issued August 23, 2005)

1. On July 1, 2005, Gas Research Institute (GRI) filed the True Up and Accounting Report to comply with the settlement approved in *Gas Research Institute*, 83 FERC ¶ 61,093, *on reh'g*, 83 FERC ¶ 61,331 (1998) (1998 Settlement). As a part of its True Up and Accounting Report, GRI requests relief from its requirement to refund overcollections of approximately \$47,000 because of the minimal amount involved compared to its total collections of \$723 million, and that the Commission allow it to retain the slight over-collection reported here for use in wrapping up its Commission-approved activities. For the reasons appearing below, the Commission accepts GRI's True Up and Accounting Report and denies GRI's request for relief from its refund obligation.

**Description of Filing**

2. GRI states the 1998 Settlement's Article II, section 1.1 *True Up and Accounting* requires the instant report, among other requirements. GRI continues that only the following requirements need Commission action. They are: (1) a comparison of GRI collections under the 1998 Settlement with approved budgets; and, (2) a review of the need for any refunds and GRI's efforts to minimize over-collections.

3. GRI states that Article II, section 1.1 of the 1998 Settlement requires it to compare approved budgets and any remaining budget caps with collections in each annual application proceeding since 1998. GRI contends that it complied with this requirement. GRI also states the above provision obligates it to: (1) notify ratepayers when it reaches its overall collection target and cease to collect funds; (2) indicate that it will refund any "excess collections" to member pipelines; and (3) report that member pipelines will, in turn, refund any such excess collections to their customers.

4. GRI submits that, as reported on June 4, 2004, in “Gas Research Institute’s Report on Progress as Operations Under the 1998 Settlement Approach an End,” GRI provided pipeline members the required notice effective August 1, 2004, and ceased collections.<sup>1</sup> GRI submits that limiting the almost \$47,000 of over-collections to a very small fraction of one percent of its approved budgets constitutes strong proof of its success in meeting its obligations.

5. GRI notes that because of the very close match between collections and approved budgets that it achieved, it did not detect any “excess collections” when it stopped collections in August 2004. GRI claims it did not learn of the slight over-collection addressed here until it performed an internal audit earlier this year. GRI submits that only then did it determine that it over-collected the \$723 million overall collection target by approximately \$47,000, which represents about six thousandths of one percent of the approved budget.

6. GRI posits that “[c]onsidering the very small amount involved, requiring its refund would achieve a truly *de minimus* result [sic.] in terms of rates and charges to end users, if any at all, at substantial administrative cost, especially at the pipeline and pipeline customer levels.” Moreover, continues GRI, it would make a great deal of practical sense, and do no real harm to the 1998 Settlement, for the Commission to determine that the slight over-collection involved here is simply too small to constitute an “excessive collection” subject to refund. GRI requests instead that the Commission allow GRI to retain this slight over-collection for use in wrapping up its Commission-approved activities.

### **Notice, Interventions and Protest**

7. The Commission noticed GRI’s filing on July 15, 2005, permitting interventions, comments, and protests to be filed by July 22, 2005. Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc., filed a joint motion to intervene. Process Gas Consumers Group and the Georgia Industrial Group (Industrials) filed a protest.

8. The Industrials state that despite GRI’s extensive quoting from the 1998 Settlement in its July 1 Report, the fact remains that GRI must refund any and all collections that exceed its Commission-approved budget. The Industrials assert that according to the 1998 Settlement, GRI’s obligations are clear:

---

<sup>1</sup> See Exhibit 3 GRI’s Report. GRI revised downward, in Docket No. RP03-514-00, the overall 1998 Settlement collection target from the approved \$726.3 million to \$723.0 million. See Exhibit 4 GRI’s Report.

At any time that Actual Collections exceed approved GRI FERC Budgets...GRI will give notice to all...pipelines, all parties to these proceedings, and the Commission and collections...will cease effective as of the date of the notice. *GRI will refund any such excess collections to the pipelines...within ninety (90) days of the notice. Such pipelines will refund the amounts received from GRI within sixty (60) days of receipt from GRI in proportion to GRI surcharges paid by customers...Independent of whether collections cease on December 31, 2004, or earlier, a final true up will occur by July 1, 2005, again, based on approved budgets, with refunds as described above.*<sup>2</sup>

9. The Industrials assert that GRI proposes to cherry pick those elements of the 1998 Settlement that it will honor. The Industrials argue that this is unacceptable and urge the Commission to reject GRI's proposal and force GRI to refund the excess funds, as required by the terms of the 1998 Settlement.

10. The Industrials state that GRI requests the Commission determine that the amount of over-collection is small enough that it does not count as an "excess collection". The Industrials submit that as an adjective, "excess" is defined as "[b]eing more than is usual, required, or permitted."<sup>3</sup> The Industrials assert that GRI appears to read the 1998 Settlement as saying that it is required to refund over-collections only if they exceed some undefined specific dollar amount over and above the approved budget. The Industrials argue that rather, the 1998 Settlement clearly requires that GRI refund *any* amount that is "more than" what is "permitted" by the approved budget. The Industrials maintain that while the nearly \$47,000 in over-collections may be a small amount compared to GRI's overall budget, it nonetheless remains an "excess collection" and is therefore subject to refund.

11. Furthermore, the Industrials state that GRI argues that the approximately \$47,000 represents a *de minimis* over-collection and therefore any refund is unnecessary. The Industrials emphasize that the clear language of Article II, section 1.1 of the 1998 Settlement contains no *de minimis* exception with regard to refund obligations. The Industrials assert that neither GRI nor the Commission should write one into the Settlement more than seven years after the Commission approved the Settlement. Any other outcome would result in an unjust enrichment of GRI at the expense of the end use shippers that paid the surcharge assessed by the interstate

---

<sup>2</sup> 1998 Settlement, Art. II, § 1.1 (emphasis added).

<sup>3</sup> *The American Heritage Dictionary of the English Language*, at p. 619 (4<sup>th</sup> ed. 2000).

pipelines. The Industrials maintain the Commission must require GRI to abide by the terms of the 1998 Settlement and that GRI provides no justification for its release from its contractual obligations.

12. The Industrials argue that GRI's proposal, if approved, could establish questionable Commission precedent and encourage pipelines to determine that they need not refund amounts over-collected through an existing tracker mechanism because they are only a "slight over-collection."

### **Decision**

13. The Commission finds that GRI complied with the terms of the 1998 Settlement requiring the filing of its true up and accounting report. No party has questioned the validity of the report, and we accept it as valid.

14. The Commission agrees with the Industrials on the question of whether the Commission should require GRI to refund any amount of over-collection. We note that no proposed pipeline recipient of the amount of refunds has come forward in support of GRI's request. Moreover, the Industrials as end-users who would likely be among the recipients of amounts flowed through by the pipelines and who were parties to the 1998 Settlement<sup>4</sup> object to GRI's proposed retention of the over-collection. Article II, section 1.1 of the 1998 Settlement requires GRI to refund any and all collections that exceed its Commission-approved budget. There are no exceptions in the 1998 Settlement which would allow GRI to retain any amount of over-collection, and GRI fails to point to any Commission precedent which would permit such a result. Article VI of the 1998 Settlement also provides that "none of the parties will propose or support any modification of the Offer of Settlement..." Thus, the Commission requires GRI to refund the \$47,000 over-collection. The Commission directs GRI to refund the reported \$46,909.98 over-collection within 90 days of its filing of July 1, 2005, as required by the 1998 Settlement. The Commission also directs GRI to file, at the time it makes refunds to the pipeline recipients, a Report of Refunds summarizing the refunds totaling \$46,909.98, as reflected in Exhibit 1 of GRI's filing, and disbursement to the 42 pipeline members.

### **The Commission orders:**

(A) GRI's True Up and Accounting Report is accepted as filed.

(B) GRI must refund the stated amount of its over-collection, as reflected in Exhibit 1 of its filing, within 90 days of its filing of July 1, 2005, as required by the 1998 Settlement, and shall file, at the time it makes refunds to the pipeline recipients,

---

<sup>4</sup> See *Gas Research Institute*, 83 FERC ¶ 61,093 at 61,457, fn.31 (1998).

a Report of Refunds summarizing the refunds and disbursement to the 42 pipeline companies listed in Exhibit 1 for further distribution to their customers, in accordance with the terms of the 1998 Settlement.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.