

123 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Colorado Interstate Gas Company

Docket No. RP07-320-003

ORDER ON REHEARING

(Issued May 16, 2008)

1. On December 13, 2007, Colorado Interstate Gas Company (CIG) filed a request for rehearing of the Commission's November 13, 2007 order in this proceeding.¹ In that order, the Commission required CIG to remove certain costs associated with gas lost at CIG's Fort Morgan storage field from its lost and unaccounted-for (L&U) and other fuel gas reimbursement percentage. For the reasons stated below, the Commission denies CIG's request for rehearing.

I. Background

2. On February 28, 2007, CIG filed revised tariff sheets to its L&U and other fuel gas reimbursement percentage pursuant to Article 42 of the General Terms and Conditions (GT&C) of its tariff. In that filing, CIG stated that the proposed increase in the L&U and other fuel gas reimbursement percentage was a result of, among other things, a loss of 451,000 Dth of gas due to a down-hole failure of casing equipment on its Fort Morgan storage injection/withdrawal well number 26. In an April 30, 2007 supplemental filing, CIG stated that an independent consultant's evaluation of the Fort Morgan gas loss supports CIG's initial estimate of the loss of 430 MMcf (451,000 Dth) while noting that an additional 290 MMcf may also have been lost. CIG stated that a final determination of the total amount of gas lost cannot be made until further analysis is completed.

¹ *Colorado Interstate Gas Co.*, 121 FERC ¶ 61,161 (2007) (November 13, 2007 Order).

3. On March 12, 2007, Indicated Shippers² protested CIG's filing and on March 30, 2007, the Commission issued an order³ accepting and suspending the tariff sheets, to become effective April 1, 2007, subject to a technical conference established to address the issues raised by the filing. The technical conference was held on May 8, 2007 with initial comments and reply comments due on June 11, 2007 and June 29, 2007, respectively.⁴

4. Based on further review of the filing and comments on the technical conference, in the November 13, 2007 Order the Commission found that the Fort Morgan loss was not properly recoverable as part of CIG's L&U and other fuel gas reimbursement percentage and required CIG to remove the Fort Morgan loss from its L&U and other fuel gas reimbursement percentage.

II. Rehearing Request

5. On rehearing, CIG argues that the Commission erred in concluding that a leak from a storage well casing is not recoverable as part of CIG's L&U and other fuel gas reimbursement percentage. CIG states that the Commission misunderstood CIG's statement in its previously filed comments that the L&U and other fuel gas reimbursement percentage incorporates a simple "in and out" mechanism. CIG argues that it is not suggesting that its tracker simply measures gas in and out without regard to the circumstances of the loss and acknowledges that losses due to a pipeline's negligence would not be recoverable under Commission policy. CIG argues that its tariff contains no exceptions for losses based on their cause or size. Thus, CIG contends, the Commission's conclusion that the Fort Morgan loss is not recoverable because it was due to a known or unusual cause, or was large or catastrophic, is inconsistent with CIG's tariff.

6. In addition, CIG argues that the Commission erred by applying a standard focusing on the extent of the loss caused by equipment failure rather than on whether the equipment failure was the result of the pipeline's imprudence or negligence. CIG argues that the Commission relied on *Williams*⁵ to find that a well casing leak is more in the

² The Indicated Shippers are BP Energy Company, BP America Production Company, Chevron Natural Gas, a division of Chevron U.S.A. Inc., and Marathon Oil Corporation.

³ *Colorado Interstate Gas Co.*, 118 FERC ¶ 61,265 (2007).

⁴ CIG, Indicated Shippers, and Public Service Company of Colorado filed initial and reply comments.

⁵ *Williams Natural Gas Co.*, 73 FERC ¶ 61,394 (1995), *order on reh'g*, 74 FERC ¶ 61,215 (1996) (*Williams*).

nature of a malfunction of underground storage mechanics rather than routine maintenance or other normal activity. CIG submits that this conclusion was based on a misreading of *Williams*, in which the Commission denied recovery of gas that migrated beyond the company's storage field and was being produced from an adjoining field by a third-party.⁶ CIG argues that the pipeline was denied recovery of the loss in *Williams* not because it was the result of a storage field malfunction, but because the pipeline had imprudently operated the field in a manner that allowed a third-party to siphon the gas. Furthermore, CIG states that other cases confirm that the standard for determining whether a loss is recoverable is whether the loss was a foreseeable consequence of pipeline operations or the result of operator imprudence.⁷ CIG states that in contrast there has been no allegation and no finding that CIG acted imprudently or otherwise negligently with respect to the Fort Morgan gas loss. Without such a finding, CIG maintains, it should be allowed to recover the loss in its fuel reimbursement percentage mechanism.

7. Additionally, CIG argues that the Commission's characterization of the Fort Morgan loss as an unusual or non-recurring loss, not part of normal pipeline operations, is unsupported by the evidence and inconsistent with other cases. CIG argues that the well casing leak at issue here is no different from pipeline ruptures or other types of leaks that occur from time to time on virtually all pipeline systems. CIG also argues that the Fort Morgan loss is no more unusual than a loss caused by a leak in a ball valve or a pipeline pig getting stuck in a delivery meter—losses that were allowed recovery in *HIOS*.⁸ CIG also notes that the well casing failure occurred 847 feet below ground in a harsh environment of high pressures and corrosive soils and that failures of storage well casings can occur despite the best efforts of operators to prevent them. Thus, CIG contends that the well casing failure resulted from foreseeable wear or malfunctioning that typically happens in the normal course of pipeline operations.

8. CIG next contends that the Commission's finding that a well casing leak is not recoverable because it is not unaccounted for is contrary to CIG's tariff and inconsistent with Commission precedent. CIG states that the Commission found that the gas could not be classified as "lost and unaccounted-for" because although lost, the cause of the loss is known and accounted-for.⁹ CIG argues that section 42.2 of the GT&Cs of its

⁶ CIG Rehearing Request at 9 (*citing Williams*, 73 FERC ¶ 61,394 (1995), *order on reh'g*, 74 FERC ¶ 61,215 (1996)).

⁷ CIG Rehearing Request at 10 (*citing Mississippi River Transmission Corp.*, 91 FERC ¶ 61,199, at 61,701 (2000) (*MRT*)).

⁸ *High Island Offshore System, LLC*, 118 FERC ¶ 61,256, at P 10, 17 (2007) (*HIOS*).

⁹ CIG Rehearing Request at 6 (*citing* November 13, 2007 Order at P 24).

tariff pertains to “Lost, Unaccounted For and Other Fuel Gas,” stated in the disjunctive. According to CIG, this means that both lost and unaccounted-for gas are separately recoverable under its tariff, and that gas need not be lost for unknown reasons to be recoverable. Additionally, CIG contends that Commission policy allows for recovery of gas lost for known reasons, such as gas lost due to pipeline maintenance activities or leaks.¹⁰ CIG notes that a policy that only allows recovery of gas lost for unknown reasons would create a perverse incentive for pipelines to forego investigating the causes of lost gas.

9. CIG also argues that a standard of recoverability based on whether the loss is “unusual” or “catastrophic” is vague and subjective, and should not be adopted. CIG states that to the extent the Fort Morgan loss was denied recovery based on its size, the Commission’s decision would be both factually incorrect and inappropriate as a matter of policy. First, CIG states the Commission has previously allowed recovery of fuel losses larger than the loss at Fort Morgan,¹¹ and that the size of the Fort Morgan loss is not large when compared to the amount of gas stored in the Fort Morgan storage field.¹² Second, CIG asserts that there is no rational basis to make recoverability dependent on the size of a loss, stating that the reason the Commission allows L&U and other fuel gas to be recovered in a fuel tracker, outside of a rate case, is that such costs are subject to significant change from year to year and are difficult to predict. Thus, CIG submits that the standard for recovery has been, and should remain, whether the loss was due to a normal consequence of pipeline operations or resulted from the imprudence of the pipeline operator.

III. Discussion

10. In the November 13, 2007 Order, the Commission rejected CIG’s reading of its tariff as allowing CIG to simply subtract all gas deliveries from gas receipts without

¹⁰ CIG Rehearing Request at 6-7 (citing *HIOS*, 118 FERC ¶ 61,256; *Northern Natural Gas Co.*, 104 FERC ¶ 61,316 at P 20-21; *Mississippi River Transmission Corp.*, 103 FERC ¶ 61,126, at P 24 (2003); *Transwestern Pipeline Co.*, 51 FERC 61,343, at n.3 (1990)).

¹¹ CIG Rehearing Request at 11 (citing *Colorado Interstate Gas Co.*, 104 FERC ¶ 61,334 (2003)).

¹² CIG states that the loss of 451,000 Dth due to the casing failure is 3 percent of the total amount of 14.86 Bcf gas stored at the Ft. Morgan facility, 3 percent of the 14.34 Bcf of actual fuel consumed on the CIG system for the 12 months ending September 30, 2007, and approximately .06 percent of the 775 MMDth of total throughput on CIG’s system during the same 12 month period.

exception, and without regard to the circumstances or the relevant tariff language.¹³ On rehearing CIG attempts to clarify its position by suggesting that an exception to this simple “in and out” mechanism would be made in the case of pipeline negligence. However, CIG then goes on to reiterate its position that its tariff contains no exceptions for losses based on their cause or size. CIG appears to argue that, no matter the cause or size, all gas losses whether known or unaccounted-for may be recovered in its L&U tracker, and the only kind of gas loss that would not be recoverable as L&U and other fuel gas, is a loss resulting from pipeline negligence.

11. CIG has interpreted the L&U tracker too broadly, and misreads the Commission’s determination in *Williams* and *MRT* as establishing a standard that focuses on pipeline negligence. In *Williams*, the Commission based its decision on the fact that the gas loss at issue was not a result of normal operations.¹⁴

In the Commission’s view, tracking mechanisms are appropriate for normal operating costs. However, in the instant filing *Williams* is proposing to recover costs associated with storage gas losses which are not related to the normal operation of its system. Rather, these costs are associated with gas that has migrated beyond the boundaries of one of *Williams*’ storage fields and is presumed lost. Under normal operations gas should not move beyond the established field boundaries, and *therefore the loss is more closely related to a malfunction of underground storage mechanics than to normal operating consequences*. Accordingly, the Commission finds that *Williams* cannot use its fuel and loss reimbursement mechanism to recover these costs.¹⁵

Thus, in *Williams*, the Commission put forth a standard for recovering losses in tracking mechanisms that described two categories of losses: losses resulting from normal pipeline operations, which are recoverable; and losses resulting from the malfunction of underground storage mechanics, which are not recoverable in an L&U tracking mechanism. Despite CIG’s arguments that the Fort Morgan loss was a “normal” loss, it resulted from a failure of underground storage mechanics (i.e., well casing failure) and therefore more reasonably falls into the category of losses that are not recoverable in an L&U tracking mechanism.

¹³ November 13, 2007 Order at P 20.

¹⁴ *Williams*, 73 FERC ¶ 61,394 at 61,215.

¹⁵ *Id.* (emphasis added).

12. In *MRT*, the Commission addressed the issue of whether MRT could make a prior period adjustment to recover a quantity of gas that had migrated from one part of MRT's system to another, resulting in an understatement of lost and unaccounted-for gas over a three-year period.¹⁶ As the Commission noted in the November 13, 2007 Order, the issue addressed in *MRT* is not analogous to the one addressed here because in *MRT* the Commission addressed an under-recovery resulting from a measurement error, which is different from an actual known loss to the atmosphere.¹⁷ Additionally, the language discussing prudence in *MRT*, cited by CIG,¹⁸ is further misplaced here because it pertained to a determination as to whether to allow recovery of a prior period adjustment, rather than to a determination of whether to allow recovery of an in-period gas loss to the atmosphere in an L&U reimbursement percentage. Therefore, we disagree with CIG's characterization of the standard for recovery of a loss in a tracking mechanism as based on negligence. Rather, our standard for recovery of actual losses of gas in a tracking mechanism is based on whether or not the loss resulted from normal pipeline operations.¹⁹ Accordingly, we reject 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 pipeline, the loss at issue here would automatically be recovered in its L&U tracker.

13. Furthermore, the Fort Morgan gas loss resulted from a non-routine storage failure, not associated with routine maintenance or other normal operations activity. It cannot reasonably be classified as a normal L&U operating expense, and it would not be reasonable for CIG to recover such costs from shippers through its L&U and other fuel gas mechanism. To classify all losses as L&U would create a perverse incentive for the pipeline to avoid insuring against losses of gas in its possession and control. Furthermore, although "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.²⁰ The Fort Morgan loss is simply not the type of

¹⁶ *MRT*, 91 FERC ¶ 61,199 at 61,698 (2000).

¹⁷ November 13, 2007 Order at P 22.

¹⁸ CIG cites *MRT* for the proposition that the Commission believed it would be unfair to flow through the loss "without a proper examination of the circumstances surrounding the gas loss, such as whether MRT prudently operated its pipeline or adequately maintained its equipment." CIG Rehearing Request at 10 (*citing MRT*, 91 FERC ¶ 61,199 at 61,701 (2000)).

¹⁹ This is not to say that losses caused by a pipeline's negligence would be recoverable. Such losses, almost by definition, would be the result of something other than normal pipeline operations.

²⁰ For example, section 17.1 of the GT&C of CIG's tariff provides:

loss that is appropriate for automatic recovery in an L&U mechanism, although there may be other avenues of recovery for such a loss.

14. On rehearing, CIG argues that the well casing leak at issue here is no different from pipeline ruptures or other types of leaks that occur from time to time on virtually all pipeline systems and that the Fort Morgan loss is no more unusual than a leak in a ball valve or a pipeline pig getting stuck in a delivery meter as occurred in *HIOS*.²¹ However, as we found in November 13, 2007 Order, the circumstances in the instant proceeding are less analogous to the circumstances in *HIOS* as they are to the circumstances in *Williams*.

15. In *HIOS*, protestors questioned whether the pipeline had provided sufficient information to explain the increase in its unaccounted-for gas retention percentage. In its letter order accepting *HIOS*' filing, the Commission found that the level of *HIOS*' unaccounted-for gas was not an anomaly, *HIOS* had fully addressed all the issues raised by the protesting parties, and that *HIOS*' unaccounted-for experience in that filing was consistent with its average experience of the last several years.²² Thus, the Commission did not make any specific findings on the types of costs eligible for recovery under the fuel tracking mechanism. On the other hand, in *Williams*, the pipeline sought to recover, among other things, 1.0 Bcf of storage gas that migrated outside of its storage field

Shipper shall be in exclusive control and possession of the Gas until such has been received by Transporter at the Point(s) of Receipt and after such Gas has been received by Shipper, or for Shipper's account, at the Point(s) of Delivery. Transporter shall be in exclusive control and possession of such Gas while it is in Transporter's possession. The Party which is or is deemed to be in exclusive control and possession of such Gas shall be responsible for all injury, damage, loss, or liability caused thereby.

Additionally, section 15.1 provides:

Each Party assumes full responsibility and liability arising from the installation, ownership, and operation of its pipelines and facilities and will hold the other Party harmless from any claim, loss, expense or liability (except as otherwise provided in this Agreement) that such Party incurs on account of such installation, ownership, and operation.

²¹ CIG Rehearing Request at 7-8 (*citing HIOS*, 118 FERC ¶ 61,256).

²² *HIOS*, 118 FERC ¶ 61,256 at P 17.

boundaries to adjacent production wells over a period of time.²³ Like CIG, Williams argued that its tariff permitted it to recover all storage losses; however, the Commission found that the loss could not be recovered under Williams' fuel tracker, stating, "[u]nder normal operations gas should not move beyond the established field boundaries, and therefore the loss is more closely related to a malfunction of underground storage mechanics than to normal operating consequences."²⁴

16. Here, the gas was lost due to non-routine malfunction of underground storage mechanics (i.e., a well casing failure), not associated with routine maintenance or other normal operations. This is precisely the type of loss that the Commission found to be unrecoverable as lost and unaccounted-for in *Williams*. Furthermore, we clarify that to the extent that *HIOS* can be interpreted to mean that losses due to causes other than routine maintenance or normal operations are recoverable via a pipeline's L&U reimbursement percentages, such a reading does not conform to Commission policy, as discussed above. Such a policy would essentially convert CIG's L&U trackers into a free insurance policy that places the full risk of all lost gas on shippers. Although CIG states it is "not suggesting that its tracker simply measures gas in and out without exception or without regard to the circumstances surrounding the loss,"²⁵ that is the essence of its position, putting issues of negligence aside. This would not only provide a disincentive for CIG to properly maintain and insure its facilities, it would also saddle shippers with a risk against which they are in no position to insulate themselves.

17. Finally, CIG argues (apparently relying on the placement of a comma after the word "lost" in the phrase "lost, and unaccounted") that lost gas and unaccounted-for gas are separately recoverable under its tariff, and that gas need not be lost for unknown reasons to be recoverable. The placing of a comma in the phrase "lost, and unaccounted for, and other fuel gas" however, does not change the trade usage and tariff understanding of L&U as a single term.²⁶ While the gas consumed in pipeline maintenance activities (i.e., blow downs) has been allowed to be recovered as lost and unaccounted-for and other fuel gas,²⁷ the Commission has not adopted a general policy allowing the recovery

²³ *Williams*, 73 FERC ¶ 61,394, at 61,212-13.

²⁴ *Id.* at 61,215.

²⁵ CIG Rehearing Request at 5.

²⁶ Indeed, consistent with industry usage, section 42.2 of CIG's tariff abbreviates "lost, unaccounted for, and other fuel gas" as "L&U and other fuel," indicating that CIG's tracking mechanism recovers both "L&U" and "other fuel gas."

²⁷ *Northern Natural Gas Co.*, 104 FERC ¶ 61,316 (addressing blowdowns and purges); *Mississippi River Transmission Corp.*, 103 FERC ¶ 61,126 (blowdowns).

of lost gas as L&U when the gas was not both lost and unaccounted-for, beyond instances involving losses due to routine maintenance activities. Indeed, such known losses will continue to be reviewed on a case-by-case basis to determine whether they were the result of normal pipeline operations or resulted from some other cause. Nor did the Commission base its decision here on the extent or size of the loss, as CIG suggests. Rather, the decision in the November 13, 2007 Order was based on precedents permitting recovery of losses resulting from normal operations and routine maintenance, while not allowing losses resulting from unexpected non-routine malfunctions, and on the policy bases supporting this construction of CIG's L&U tracker, as stated above.

The Commission orders:

CIG's request for rehearing is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.