123 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cheyenne Plains Gas Pipeline Co., LLC Docket No. RP08-362-000

ORDER ACCEPTING TARIFF FILING, SUBJECT TO CONDITIONS

(Issued May 30, 2008)

1. On May 1, 2008, Cheyenne Plains Gas Pipeline Company, LLC (CPG) filed revised tariff sheets,[1] proposing to alter its fuel tracking mechanism. CPG proposes that the tariff sheets become effective June 1, 2008. The Commission accepts CPG's revised tariff sheets, to be effective June 1, 2008, subject to conditions, as discussed below.

Background

2. CPG's current tariff provides for the reimbursement of fuel gas quantities and lost and unaccounted-for gas quantities (L&U)—collectively referred to as FL&U—through an in-kind volumetric true-up mechanism. CPG calculates and files with the Commission, adjusted FL&U reimbursement percentages at least annually to reflect any over- or under-recoveries from the prior year. In this filing, CPG proposes to modify its existing true-up mechanism by adding provisions that keep it and its customers revenue neutral in the tracking of FL&U and other related gas balance costs. As a result, CPG's proposed methodology for calculating its FL&U reimbursement percentages would monetize the current volumetric tracking methodology, to reflect changes in the value of over- or under-collected gas quantities.

3. In support of its proposed expansion of FL&U adjustments to include gas balancing operations, CPG argues that real-time under-collected (or over-collected) quantities must comprise the overall gas balance of the system. This includes gas

[1] First Revised Sheet No. 308, Third Revised Sheet No. 309, First Revised Sheet No. 310, and First Revised Sheet No. 311 to its FERC Gas Tariff, Original Volume No. 1.

quantities purchased, gas taken from linepack to support shipper imbalances and any imbalances incurred under operational balancing agreements (OBAs). CPG states that the over- or under-collection of fuel and related gas balance activities have both a volume and a dollar impact on CPG and its shippers. CPG also states that the cost of service related to capitalized linepack in its base rates also require adjustment via the FL&U tracker because when these assets vary or are encroached upon, its base rates do not reflect these increased costs.

4. With regard to the mechanics of its proposal, CPG states that it will calculate the components of the sources and distributions of fuel, L&U and related gas balance activity as a dollar value by using actual cash amounts paid/received or by multiplying the over- or under-recovered volume by the appropriate index published price for the month the activity occurred. CPG notes that it will record credit or debit activity that has an actual value (i.e., operational purchases and sales) at the actual value and will show shipper imbalance cash-out activity at the cash-out index price because penalty amounts above cash out are otherwise returned to shippers. Further, CPG will account for OBA cash-out prices according to the applicable OBA contracts. In addition, CPG states that when converting the total annual cost/revenue adjustment amount back to a volumetric basis for inclusion in the retention percentages, it will divide the sum of the monthly dollar-values by the average cash-out index price for the entire data collection period to generate an equivalent volume to the cost or revenue impact of the total gas balance related items. Alternatively, CPG may choose to refund such amounts rather than converting them to a volumetric quantity. CPG explains that because the impact of the cost and revenue true-up activity is an integrated system cost, CPG will collect the true-up on receipt quantities for all transactions. CPG further promises that if it cannot flow through an over-collection in a given year because of its FL&U percentage limit, it will refund such amounts via an invoice credit.

5. CPG's workpapers supporting its planned recovery mechanism will detail all sources and distributions of gas including FL&U over/under recovery and will credit or charge shippers any financial impacts of such measures as a true-up in the L&U component of the reimbursement percentages. CPG further states that its annual filings will differentiate between system balancing purposes and flexibility, if any. For any transportation service that is not assessed a fuel charge CPG will still charge the true-up reimbursement via the adjustment of the L&U retention percentages. CPG notes that the Commission has approved similar fuel tracking mechanisms in the past.[2]

[2] *Colorado Interstate Gas Company,* 122 FERC ¶ 61,191 (2008) (*CIG*) and *El Paso Natural Gas Company,* 114 FERC ¶ 61,305 (2006) (*El Paso*).

Public Notice, Intervention, and Comments

6. Public notice of CPG's filing issued May 6, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Indicated Shippers[3] filed a protest.

7. Indicated Shippers state that although they oppose the economic true-up component of CPG's tracking mechanism, they recognize that the Commission has recently approved such mechanisms and so do not make such arguments here. They do, however, object to CPG's inclusion of tariff language that would permit an out-of-cycle cash-out of over-recovered fuel costs.[4] Indicated Shippers note that this language would allow CPG to elect, at its sole discretion, to cash-out an FL&U adjustment or cost and revenue true-up when the pipeline owes gas to shippers.

8. Indicated Shippers argue that such an out-of-cycle cash-out proposal is one-sided, and permits CPG to cash-out over-recoveries at anytime during the annual period. In contrast, Indicated Shippers point out that under-recoveries remain subject to price fluctuations throughout the year. Indicated Shippers assert this language eliminates the revenue neutrality component of the tracker, because CPG could cash out over-recoveries when gas prices are low, to the detriment of the shippers, while shippers would not have the same option with regard to under-recoveries. Furthermore, Indicated Shippers cite *Wyoming Interstate Company*,[5] in which the Commission denied waiver of the pipeline's tariff to allow it to make a discretionary cash payment of over-recoveries. Although Wyoming Interstate Company's (WIC) request was for a limited tariff waiver, Indicated Shippers argue that the same rationale supports rejecting CPG's proposed tariff provisions allowing it to make discretionary cash-outs.

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[3] The Indicated Shippers are Anadarko Petroleum Corporation, BP America Production Company, and BP Energy Company.

[4] The proposed tariff provision 26.4(a)(vii) states: "Transporter may elect to cash out a FL&U Requirement Adjustment or Cost and Revenue True-up when transporter owes quantities to shippers using the first of the month price reported in *Inside FERC* for the Cheyenne Hub for the appropriate month when the adjustment over-collection occurred." CPG, May 1, 2008 Filing, App. (attaching proposed First Revised Tariff Sheet No. 311).

[5] *Wyoming Interstate Company, Ltd.*, 122 FERC ¶ 61,299 (2008) (*WIC*).

9. Indicated Shippers also contend that the proposed discretionary cash-out provision would bifurcate the FL&U methodology and permit CPG to choose to cash-out either an FL&U adjustment or a cost and revenue true-up. Indicated Shippers explain that this provision could result in the pipeline's "cherry picking" components of the tracker calculation to remove associated values from the annual tracker calculation that it deems to be detrimental. In short, Indicated Shippers argue that this provision would obviate the revenue neutrality of the tracker mechanism and would result in CPG gaining discretionary powers that are unjust and unreasonable.

10. On May 21, 2008, CPG filed an answer to Indicated Shippers' protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CPG's answer because it provides information that assisted us in our decision-making process.

11. In its answer, CPG asserts that it will not benefit under its cash-out proposal and that any benefit will flow to shippers through the cost and revenue true-up. CPG explains that its proposal pertains to over-collections and not under-collections because it seeks only the discretion to manage its liabilities, not those of its shippers. CPG disputes Indicated Shippers' claim that that CPG is bifurcating the FL&U methodology so that it can cherry-pick components to cash out. CPG also states that this provision will allow it to address situations when its overall FL&U rate is negative.

Discussion

12. We accept CPG's proposed tariff revisions, subject to CPG removing proposed section 26.4(a)(vii) from its proposed tariff sheets, as discussed below.

13. With the exception of proposed section 26.4(a)(vii), CPG's proposal is nearly identical to proposals made by its affiliates, Colorado Interstate Gas Company (CIG) and WIC, which the Commission recently accepted.[6] CPG designed its current FL&U tracking and true-up mechanism to keep CPG and its shippers volumetrically neutral through the annual adjustments to CPG's in-kind fuel gas reimbursement percentages. However, the current mechanism may not ensure CPG and its shippers are entirely revenue neutral with regard to the effects of daily activities associated with fuel gas used in CPG's operations. Due to the nature of pipeline operations, there will be daily and monthly volume differences in actual versus collected fuel, even if on average the annual quantity collected is equal to that used. Further, to effectively maintain the overall balance on their transmission systems, pipelines must, on a real-time, daily basis, conduct

[6] *CIG*, 122 FERC ¶ 61,191; *Wyoming Interstate Co.*, 122 FERC ¶ 61,303 (2008).

such activities as purchase or sell gas, take or replace linepack gas and work with interconnecting pipelines to maintain balance via OBAs.

14. The Commission previously recognized that when a pipeline is permitted to "track changes in a particular cost item without regard to changes in other cost items . . . there should be a guarantee that changes in that cost item are tracked accurately."[7] Because CPG's proposed tracking mechanism is similar to those the Commission accepted in *El Paso*,[8] *CIG*[9] and *WIC*,[10] and is consistent with the policy established in *ANR* requiring tracking mechanisms to accurately track costs, we conditionally accept CPG's proposed cost/revenue true-up. Our acceptance is subject to CPG filing annual updates that fully document purchases and sales of fuel gas volumes, and that distinguish purchases and sales for system balancing purposes and, if any, for providing flexibility under its various services.[11] Such descriptions and workpapers must be sufficiently transparent to permit adequate review of activity under this true-up mechanism.

15. Our acceptance of CPG's proposal is conditioned on CPG's removing proposed section 26.4(a)(vii). As noted above, this provision would afford CPG total discretion to cash-out over-collected quantities in its FL&U Requirement Adjustment or its Cost and Revenue True-up, whereas shippers have no discretion to select when to cash-out or repay under-collected quantities. CPG has not shown this provision to be just and reasonable in light of balance intended to be struck in its new cost and revenue true-up methodology, which is to be entirely value and revenue neutral, as were those in *CIG* and *WIC*. Therefore, the Commission rejects this provision.

16. CPG supports this provision by citing to Commission orders granting its affiliates, CIG and WIC, waivers of their respective tariffs allowing them to cash-out over-recovered fuel and/or L&U quantities.[12] However, such waivers in the past were in the context of a volumetric, and not a value-based, monetized tracking mechanism. In-kind volumetric interim adjustments would likely be implemented only when value neutral to

[7] *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 26 (2005) (*ANR*).

[8] *El Paso*, 114 FERC ¶ 61,305 at P 207-08.

[9] *CIG*, 122 FERC ¶ 61,191.

[10] *Wyoming Interstate Co.*, 122 FERC ¶ 61,303.

[11] Purchases and sales for system balancing are to be kept separate and must be recovered through the cash-out provisions and not through the fuel mechanism.

[12] CPG, May 1, 2008 Filing, at 5 n.8 (*citing Wyoming Interstate Co.*, 121 FERC ¶ 61,213 (2007); *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,304 (2008))

both the pipeline and the shipper. CPG suggests the provision will allow it to address situations when the overall FL&U is negative. Such situations are likely to be rare, however, and can be addressed without granting CPG unilateral discretion to time interim cash-outs. With monetization of CPG's tracking mechanism, value and revenue neutrality are core elements that must be maintained. In such a value-based tracking system, giving one party a unilateral option to cash-out at will, outside the normal cycle, would not be just and reasonable.[13] CPG's proposed section 26.4(a)(vii) would permit CPG to cash-out over-collected quantities at its own discretion, without showing good cause and without notice or comment from affected parties. This provides too much discretion to CPG in determining how over-recovered quantities will be valued and returned to shippers.

17. Proposed section 26.4(a)(vii) would result in an uneven playing field. Since shippers would not have similar discretion to elect to cash-out under-recoveries, section 26.4(a)(vii) would in all likelihood lead to a situation in which over-collected volumes would be undervalued, thereby undermining the Commission's policy, as reflected in *ANR*, that tracked costs be tracked accurately,[14] and would undermine the ability of shippers to reasonably project the fuel and L&U costs associated with their shipments. Therefore, although CPG's proposal is generally consistent with the tracking mechanisms accepted in *CIG* and *WIC*, the Commission finds that proposed section 26.4(a)(vii) is unjust and unreasonable and directs CPG to remove it.

<u>The Commission orders</u>:

The tariff sheets referred to in footnote 1 of this order are accepted, effective June 1, 2008, subject to CPG's filing, within thirty days of the date of this order, revised tariff sheets to remove section 26.4(a)(vii), as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[13] *See WIC*, 122 FERC ¶ 61,299, where the Commission recently denied a tariff waiver to allow WIC unilaterally choose to cash-out over-recovered fuel and L&U quantities on a valuation basis over the objection of its customers.

[14] *ANR*, 110 FERC ¶ 61,069 at P 26.