124 FERC ¶ 61,191
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.

Colorado Interstate Gas Company — Docket Nos. RP08-484-000, RP08-484-001

ORDER ACCEPTING AND SUSPENDING TARIFF SHEET, SUBJECT TO REFUND, AND ESTABLISHING TECHNICAL CONFERENCE

(Issued August 28, 2008)

1. On August 1, 2008, Colorado Interstate Gas Company (CIG) filed a revised tariff sheet[1] modifying its penalty crediting mechanism to credit retained penalty amounts, net of CIG's carrying costs, on an annual basis, with interest, as opposed to crediting such amounts on a 90-day basis. On August 8, 2008, CIG filed a substitute tariff sheet,[2] amending its August 1 filing. CIG seeks an effective date of September 1, 2008. For the reasons discussed below, the Commission accepts and suspends the tariff sheet, to be effective February 1, 2009, subject to refund and to the outcome of a technical conference to address the issues raised in this proceeding.

I. Details of Filing

2. CIG's tariff provides for the crediting of cash-out and scheduling imbalance penalty (SIP) amounts to shippers. Currently, these amounts are credited net of costs, via a pro rata allocation based on transported quantities, to shippers every 90 days as a credit on shippers' invoices. In this filing, CIG proposes to change the timing of its penalty crediting mechanism to credit retained amounts annually rather than every 90 days. Additionally, CIG proposes to provide interest on retained amounts at rates accrued pursuant to 18 C.F.R. 154.501(d) (2008).

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[1] Sixth Revised Sheet No. 320 to its FERC Gas Tariff, First Revised Volume No. 1.

[2] Substitute Sixth Revised Sheet No. 320 to its FERC Gas Tariff, First Revised Volume No. 1. CIG states that this substitute tariff sheet removes a change to the refund calculation for penalty credits that CIG had not intended to propose at this time.

3. CIG notes that it recently updated its tracking mechanism to account for the price differences between fuel and lost and unaccounted-for (LUF) gas imbalances and related sources and dispositions of gas (Fuel Tracker Filing).[3] CIG reiterates its reasoning in support of the Fuel Tracker Filing insofar as CIG does not believe that a single purchase or sale of gas can be directly tied to simultaneously occurring fuel over-recovery, imbalance cash out, or use of storage assets. CIG states that because its fuel and LUF tracking mechanism, filed with the Commission on an annual basis, now considers the quantity of fuel and LUF as well as the value of such amounts, including cash outs, it is no longer reasonable to treat the cash-out and SIP credits on a separate timeframe from the fuel and LUF tracking mechanism. CIG explains that similar calculations are involved in the fuel and LUF tracking mechanism and the penalty crediting mechanism and argues that it is inappropriate to calculate penalty credits every 90 days while calculating the fuel and LUF percentages annually. Moreover, CIG contends that the 90-day period for crediting penalty revenues does not provide adequate time for CIG to perform a comprehensive analysis of its cash-out costs because the "comprehensive time value effects" of an imbalance may not be obvious within 90 days.

4. In addition to its proposed change to an annual penalty crediting mechanism, CIG proposes to provide for an annual penalty crediting report outlining the applicable cash-out and SIP penalties and resulting crediting to shippers for each year. In the report, CIG states that it will show all penalty amounts retained by category and period, interest on those amounts accrued during the year, and the pro rata refund distribution based on transported quantities. CIG states that it will provide an accounting for costs, if any, it is subtracting from the penalty revenue to recover costs associated with the system imbalance. Additionally, CIG proposes to revise language describing the type of costs that it will offset against penalty revenues to include "carrying costs." CIG does not, however, discuss why it is proposing this change in its filing.

5. On August 8, 2008, CIG filed a substitute tariff sheet to correct an error contained on its initially filed tariff sheet. CIG states that it mistakenly submitted Sheet No. 320 with a change to the refund calculation for penalty credits. CIG further states that it does not intend, at this time, to propose a change to the methodology for determining penalty credits. Instead, CIG explains that its proposed change is directed to the timing and reporting of penalty credits. CIG states that it will continue to allocate cash outs and SIPs, net of costs, based on transported quantities.

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[3] CIG, August 1, 2008 Filing at 1 (citing *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,191 (2008)).

II. Public Notice, Interventions and Comments

6. Notices of CIG's filings in Docket Nos. RP08-484-000 and RP08-484-001 were issued on August 6 and August 13, 2008, respectively. 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 (2008), 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. Nexen Marketing USA, Inc. (Nexen) filed a protest.

7. Nexen objects to CIG's proposal to eliminate its current 90-day obligation to return penalty and excess cash-out revenues to customers in favor of an annual mechanism. Nexen states that CIG's reasoning in support of its proposal is opaque, if not wholly incomprehensible, and therefore urges the Commission to reject it.

8. Nexen contends that the mere fact that CIG's fuel calculations are performed annually does not require that penalty credits be calculated annually as well. Nexen argues that CIG has not shown why it can no longer administer an annual fuel mechanism and a 90-day penalty crediting mechanism, nor does CIG explain why a "separate timing analysis" for the two mechanisms is no longer reasonable. Nexen also questions what problem CIG's proposal is meant to cure. Nexen argues that legitimate reasons exist to calculate and disperse penalty revenues more frequently, such as the fact that in light of customer turnover, a more expeditious return of penalty revenues increases the likelihood that the revenues will be returned to those customers from whom they were originally taken.

9. Nexen contends that CIG's unstated motive is to diminish the likelihood that CIG will actually refund cash-out and penalty revenues to its customers, and will instead use those amounts to offset other, unrelated operational costs (including fuel costs) incurred throughout the year. Nexen states that CIG chafes at its obligation to credit such revenues and may be seeking reasons to avoid doing so. By synchronizing the fuel tracking and penalty crediting mechanisms, Nexen argues that CIG will likely be able to avoid crediting penalty and cash-out revenues, thereby transforming its penalty crediting mechanism into a sort of pricing hedge for its operational activities, at the expense of CIG's customers. Therefore, Nexen requests that the Commission reject CIG's proposal to refund penalty credits annually.

10. Nexen also objects to CIG's proposal to offset customers' penalty credits with "carrying costs," noting that CIG fails to explain its rationale for the proposed change, especially in light of the fact that CIG's tariff currently allows it to offset penalty revenues with gas costs. Nexen states that although this revision may simply be benign surplusage, it may also reflect an attempt to dilute customers' penalty revenue credits with new "phantom" offsets. Accordingly, Nexen requests that the Commission either

reject this proposed change or accept it on the condition that CIG fully explains the change, provides concrete examples of "carrying costs," and quantifies the impact of the change using past 90-day refund payment amounts.

11. On August 19, 2008, CIG filed an answer to Nexen's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CIG's answer because it has provided information that assisted us in our decision-making process.

12. CIG argues that it has met its burden under section 4 of the Natural Gas Act to show that its proposal is just and reasonable and that Nexen, despite its objections, has not shown CIG's proposal to be otherwise. CIG states that sound fundamental reasons exist to credit retained penalty amounts on an annual basis, arguing that the Commission's approval of its Fuel Tracker Filing[4] precipitated the instant filing. CIG contends that because the annual calculations for its fuel and LUF percentages include calculations of various cash-outs of sources and dispositions of gas, an additional 90-day penalty crediting mechanism is unnecessarily duplicative and administratively burdensome to all parties.

13. Additionally, CIG states that because the allocation of the costs of gas purchases and sales to imbalances[5] will help to define costs associated with cash-out penalties, it is not reasonable to time credits on a different basis than the allocation of costs and revenues. CIG further states that a 90-day period is not enough time to base the allocation of such costs to imbalances (i.e., penalty receipts). Instead, CIG argues that these allocations to shipper imbalances should be made when all the sources and dispositions, including fuel imbalances, are examined in the annual fuel gas and LUF tracker filing, the operational purchases and sales report, and the penalty crediting report. CIG notes that the penalty crediting report will show all penalty amounts retained by category and period as well as interest on those accounts accrued throughout the year. CIG further notes that it will also provide an accounting for costs associated with system imbalances it is using to offset penalty revenue.

14. Finally, CIG addresses Nexen's concern regarding CIG's proposal to include "carrying costs" as part of those costs it will use to offset penalty revenues. CIG defines "carrying cost" as an accounting term used to reflect the financial costs associated with

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[4] *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,191.

[5] CIG notes that such assignment of gas costs was required by the Commission in its approval of the Fuel Tracker Filing. *Id.* P 35. Although CIG states that it does not believe such assignment is possible, it will allocate these costs to the extent practicable.

timing differences—in this case, between the time a party creates an imbalance and the time when the entity remedies the imbalance. CIG cites the Commission's approval of the Fuel Tracker Filing in support of its contention that it may offset its "carrying" or financial costs that result from the timing difference and the resulting temporary under-recovery of CIG's operational purchases or sales of gas.

III. **Discussion**

15. The Commission has reviewed CIG's filings as well as the protest filed by Nexen in this proceeding and finds that CIG's proposed modifications to its penalty crediting mechanism raise significant issues as to the manner in which the penalty mechanism will function in relation to CIG's fuel and LUF tracking mechanism, which are best addressed at a technical conference.

16. It is not possible to determine, at this juncture, whether CIG's proposed penalty crediting mechanism is just and reasonable. A technical conference will afford the Commission Staff and the parties to the proceeding an opportunity to discuss all of the issues raised by CIG's proposal, including but not limited to CIG's proposal to extend the penalty crediting period from 90 days to one year and its proposal to include "carrying costs" as costs that can be used to offset penalty revenues. At the technical conference, CIG should be prepared to fully explain its current methodology for determining the penalty revenue credits and how that methodology will change under its proposal to offset such credits with carrying costs. Additionally, CIG should be prepared to explain, in detail, its understanding of the relationship between the penalty crediting mechanism and its fuel and LUF tracking mechanism, and why the Commission's approval of the latter supports its proposed modifications here. Any party proposing alternatives to CIG's proposals should also be prepared to similarly support its position. Finally, based upon its analysis of the information provided in this proceeding, the Commission Staff may issue data requests prior to the technical conference, or a notice of the technical conference may contain questions that need to be addressed by CIG or other parties at the conference.

17. Based upon a review of the filings, the Commission finds that the proposed tariff sheet has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept such tariff sheet for filing and suspend its effectiveness for the full statutory period, subject to the conditions set forth in this order.

18. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the

maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). No such circumstances exist here. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on February 1, 2009, subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) The proposed substitute tariff sheet listed in footnote no. 2 is conditionally accepted and suspended, effective February 1, 2009, (or some earlier date if directed in a subsequent order), subject to refund and to the outcome of the technical conference established by this order.

(B) The proposed tariff sheet listed in footnote no. 1 is rejected as moot.

(C) The Commission's staff is directed to convene a technical conference to address the issues raised by CIG's filings and report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.