124 FERC ¶ 61,190
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. RP08-233-000, RP08-394-000

ORDER ON PERIODIC FUEL ADJUSTMENT FILINGS

(Issued August 28, 2008)

1. On February 29, 2008[1] and on May 29, 2008, in Docket Nos. RP08-233-000 and RP08-394-000 respectively, Colorado Interstate Gas Company (CIG) filed workpapers intended to fulfill its quarterly filing obligation for lost, unaccounted-for and other fuel gas (which together are comprised in its LUF reimbursement adjustment), and to validate and continue the existing zero reimbursement percentage for LUF under its tariff. In addition, CIG requests waiver of its tariff, if necessary, to make a cash payment to its customers for LUF quantities over-collected from July 1, 2007 through December 31, 2007. In this order, the Commission finds the continuation of CIG's existing LUF reimbursement percentage to be reasonable, grants CIG's requests to make cash payments to customers, and directs CIG to file a revised tariff sheet within ten days of the issuance of this order, as discussed below.

**Background**

2. CIG's tariff allows CIG to collect or reimburse lost and unaccounted-for and other fuel from or to its customers through an in-kind (i.e., volumetric) LUF reimbursement percentage, which CIG updates through quarterly tariff filings to the Commission. In addition, prior to March 1, 2008, to ensure that the reimbursement percentage did not lead to over- or under-recoveries CIG's tariff provided for volumetric true-ups, which adjusted the reimbursement percentage to reflect CIG's actual over/under-collected LUF. In an August 31, 2007 filing in Docket No. RP07-666-000, CIG proposed to "monetize"

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[1] On March 18, 2008, CIG submitted a revised workpaper to correct an error in the data shown for receipt and delivery quantities on page 3 of section B of its February 29, 2008 filing. CIG states that the error in the original workpaper did not affect any other schedule or workpaper, or the calculation of the LUF reimbursement percentage.

its true-up mechanism for compressor fuel and LUF to track the changes in financial value (i.e., an "economic true-up") in addition to the volumetric tracking of gas quantities used and retained. In its August 31, 2007 filing, CIG stated that under-collected (or over-collected) quantities affect the overall gas balance of its system and must come from purchases, or be taken from linepack, operational balancing agreements or storage. CIG also stated that each of these activities are conducted in the normal course of business to the benefit of all shippers and that the over- or under-collection of compressor fuel, LUF, and related gas balance items have both a volume and dollar impact on all shippers. Thus CIG proposed to include the net cost or revenue related to gas balancing activities in addition to compressor fuel and LUF in its monetized cost/revenue true-up mechanism. Additionally, CIG stated that when converting the total annual cost or revenue adjustment amount to a volumetric quantity to be included in the LUF reimbursement percentage 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 a volume that is equivalent to the cost or revenue impact of the total gas balance related items.

3. On February 29, 2008, the Commission issued an order which accepted CIG's proposed cost/revenue true-up mechanism subject to, among other things, CIG separately tracking certain costs and filing annual updates that fully document purchases and sales of compressor fuel and LUF gas volumes.[2] CIG's cost/revenue true-up mechanism became effective on March 1, 2008.

**Docket No. RP08-233-000**

**Details of the Filing**

4. CIG states that pursuant to section 42.7 of the General Terms and Conditions (GT&C) of its tariff, the filed LUF reimbursement percentage may not be less than zero. CIG proposes to retain the existing zero LUF reimbursement percentage in accordance with its tariff. In addition, CIG states that while the LUF reimbursement percentage will remain unchanged, its workpapers show that, except for the limitation that the retention rate cannot fall below zero, the rate would have decreased to negative 0.09 percent. According to CIG, the indicated LUF reimbursement percentage is negative due to (1) a decrease in LUF quantities for the quarter ending December 2007 versus the quarter ending December 2006, and (2) an improvement in liquids processing economics that was largely driven by an increase in liquids prices relative to the slight decrease in the quarterly natural gas spot prices for the quarter ending December 2007 versus the quarter ending December 2006. In addition, CIG states that pursuant to section 42.2(d)(ii)(1) of

[2] *See Colorado Interstate Gas Co.*, 122 FERC ¶ 61,191, at P 35 (2008), *reh'g pending*.

the GT&C of its tariff,[3] the excess quantities reflected in the instant filing are greater than 250,000 Dth and must be converted to cash equivalents and credited to CIG's shippers.

5. Additionally, CIG states that pursuant to section 42.5 of the GT&C of its tariff, CIG's annual volumetric true-up period begins July 1 of each year and concludes on June 30 of the next year. CIG states that it returned to shippers LUF quantities and related amounts for the July 2006 through June 2007 period with its annual filing in Docket No. RP07-668-000.[4] CIG adds that a review of its current LUF true-up position indicates that it has a balance of approximately 1 TBtu owed to shippers for the July 2007 through December 2007 period. CIG requests, if necessary, waiver of its tariff to permit early cash payment of the entire LUF true-up quantity for the July 2007 through December 2007 period. CIG states that the cash payment will be based on the Cash Out Index Price[5] as posted on CIG's EBB for each month that the LUF gas imbalance occurred and will have a total value of $4,226,320. This amount will be apportioned to each shipper on a prorated basis based on the total amounts of LUF receipt quantity from each shipper for the July 2007 through December 2007 period and will be paid to customers via invoice credits within 31 days of a Commission order authorizing the proposal.

6. CIG states that it is requesting this waiver in part due to unique Rocky Mountain gas pricing characteristics in the months since CIG's last LUF volumetric true-up filing. CIG states that prices in the Rocky Mountain region have recently increased and are expected to remain at high levels for the near future. CIG argues that given these unique price conditions, it would be unjust and unreasonable if CIG were required to return these quantities in kind to shippers in the future because gas prices today are substantially

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[3] Section 42.2(d)(ii) provides, in pertinent part, "Transporter will remit by invoice credit the value of the Excess L&U Quantity when any of the following occur: (1) The Excess L&U Quantity exceeds 250,000 Dth . . . ." CIG also points out in its RP08-233-000 Answer at n.7 that this tariff section also allows CIG to remit by invoice credit the value of excess L&U quantities "(4) at any time that CIG, in its reasonable judgment, determines that Excess L&U quantities should be immediately returned." This broadly discretionary provision will be addressed later in this order in discussing the RP08-394-000 filing, where the excess L&U quantity does not exceed 250,000 Dth.

[4] The Commission conditionally accepted CIG's filing in a letter order issued in Docket No RP07-668-000 on September 27, 2007. *See Colorado Interstate Gas Co.*, 120 FERC ¶ 61,286 (2007).

[5] The Cash Out Index Price is defined under section 1.11 of the GT&C of CIG's tariff as the average of daily midpoint index prices for Oklahoma-NGPL and the Rockies-CIG (i.e., the total of Oklahoma midpoint plus Rockies midpoint divided by two) as published in Platt's Gas Daily Price Guide for each day of the production month.

higher and are expected to remain higher than when the obligation to return the gas was created. CIG also argues that its cash-out payment should be valued at existing monthly prices at the time the over-collections occurred because, at that time, CIG had to dispose of excess quantities left on its system at the existing market price. Therefore, CIG argues, it would be unjust and unreasonable for CIG to have to acquire a source of gas at approximately $7.00 to replace volumes that the shippers could have only sold for about $4.25 if CIG's fuel retention percentage had matched actual fuel consumption. CIG concludes that the cash payment proposal returns shippers to the position they would have been in had there been no over-recovery.

**Public Notice, Intervention and Comments**

7. Notice of CIG's filing issued on March 2, 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 (2008), all timely-filed motions to intervene and any motions to intervene out-of-time 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. On March 14, 2008, Indicated Shippers[6] filed an out-of-time protest and request for technical conference. On March 28, 2008, CIG filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 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.

8. Indicated Shippers state that they do not oppose an acceleration of the return of excess quantities to shippers, but object to CIG's method of determining the volumetric quantity and valuing the quantity.[7] Indicated Shippers question two aspects of CIG's workpapers showing how the volumetric quantity is determined. First, they note that for the October 2007 through December 2007 period "makeup purchases" equaled 2,215,272 Dth, which Indicated Shippers point out is almost double CIG's calculation of excess quantities. Indicated Shippers also argue that CIG only shows data for a three-month period so Indicated Shippers do not know the level of makeup purchases for other months. They ask that the Commission require CIG to explain what this entry means.

9. Additionally, Indicated Shippers note that CIG's workpapers show an enormous spike-up in the number for deliveries in November 2007 for rate schedule CS-1 volumes. Indicated Shippers note that the amount for November 2007 is 45,161,489 Dth compared to 1,913,962 and 3,123,606 for October 2007 and December 2007, respectively.

[6] The Indicated Shippers are BP America Production Company, BP Energy Company and Marathon Oil Company.

[7] Indicated Shippers Protest at 1.

Indicated Shippers also note that because CIG's tariff specifies a separate LUF for CS-1 the absence of an entry for a separate CS-1 LUF raises concerns as to whether CIG's deliveries are correctly stated in its workpapers.

10. With regard to how CIG proposes to value the cash payment, Indicated Shippers argue that the proposed use of past period cash-out prices would substantially understate the amounts due shippers. Indicated Shippers state that while CIG's Cash Out Index Price for February 2008 is $7.685/Dth, CIG proposes to value LUF under-collections at prices ranging from $3.1580/Dth to $5.1665/Dth. They contend that in addition to the price disparity caused by using past cash-out index prices, the pricing disparity is even greater for shippers because CIG's Cash Out Index Price is an average of two widely different index prices. Indicated Shippers state that the time has come to replace the use of the Cash Out Index Price as the basis for truing-up LUF over- or under-collections and request that the Commission convene a technical conference to explore a more balanced approach to LUF calculations and true-ups.

11. In response, CIG first reiterates that pursuant to section 42.2(d)(ii)(1) certain over-collections determined on a quarterly basis, such as those greater than 250,000 Dth, must be converted to cash equivalents and credited to CIG's shippers. CIG also points out that section 42.2(d)(ii)(4) also allows CIG to remit by invoice credit the value of Excess L&U Quantities "at any time that CIG, in its reasonable judgment, determines that Excess L&U quantities should be immediately returned."[8]

12. Additionally, CIG explains that makeup purchases are those volumes associated with shipper and fuel imbalances related to CIG's liquids business.[9] CIG asserts that, contrary to Indicated Shippers' suggestion, makeup purchases of 2,215,272 Dth are not unusual as it has incurred makeup purchases of approximately 2 million Dth for the last four calendar quarters prior to the instant filing. In addition, CIG states that it has included makeup purchases in its quarterly filings over the past fourteen years. With regard to Indicated Shippers' observation that CIG only provided three months of data, CIG asserts that section B of its filing properly accounts for October 2007 through December 2007 as appropriate for the quarterly LUF filing for the fourth quarter of 2007.

13. Addressing Indicated Shippers' concerns with the reported CS-1 volumes, CIG states that the spike-up Indicated Shippers noticed was the result of an error that affected receipt and delivery quantities shown on page 3 of the workpapers in section B of its filing. CIG notes that on March 18, 2008 it filed a substitute page 3 correcting the error. CIG states that the November 2007 figure for CS-1 volumes should have been 4,561,489 Dth (not 45,161,489 Dth) and that the error did not affect the calculation of the LUF

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[8] CIG Answer at 2 n.7.

[9] *Id.* at 4.

reimbursement percentage or the computation of the excess quantities. Concerning whether CIG's deliveries are understated because there does not appear to be a specification of a separate LUF for CS-1, CIG states that a review of its workpapers should assuage Indicated Shippers' concerns. Specifically, CIG states that section B, page 3 reflects the net of receipts less deliveries for CIG's entire system. This figure is then adjusted, as shown in section B, pages 1 and 4, for fuel quantities collected through the fuel reimbursement percentage instead of through the LUF reimbursement percentage. CIG states that pursuant to section 42.2 of the GT&C of its tariff, CIG does not include CS-1 LUF in computing the system-wide LUF reimbursement percentage; therefore, CS-1 LUF quantities are deducted from the system quantities as shown on page 1 of section A.[10]

14. With regard to Indicated Shippers' assertion the Cash Out Index Price is inappropriate for valuing the cash payment, CIG states that the monthly index price is an accurate reflection of the value shippers could have realized for the gas had the over-collections not occurred during the relevant months. CIG argues that this is the same pricing mechanism used to cash out imbalances arising from a shipper's transportation agreement.[11] CIG further argues that whether an imbalance is the result of LUF or transportation related receipt/delivery point activity, the cash-out price is deemed to be the most accurate representation of market value at that point in time. CIG states that it is therefore valuing the net over-collections based on the month that the LUF retention imbalance actually occurred in order to fairly reflect market conditions during that time.

15. Responding to Indicated Shippers' request for a technical conference, CIG states that the Commission recently reviewed its existing Cash Out Index Price in Docket No. RP07-667-000 and determined it to be appropriate.[12] Additionally, CIG states that the Commission also recently reviewed and approved CIG's revised LUF tracking and true-up mechanism in Docket No. RP07-666-000 and that it would be a waste of Commission resources to institute another review of CIG's Cash Out Index Price methodology and its LUF tracking and true-up mechanism.

**Commission Determination**

16. We find that CIG's workpapers provide adequate support to allow CIG's existing LUF reimbursement percentage of zero to remain in effect for the quarter at issue in

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[10] *Id.* at 5.

[11] *Id.* (*citing* section 7.11 of the GT&C of its tariff).

[12] *Id.* at 8 (citing *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,191 (2008), *reh'g pending*).

accordance with CIG's tariff.[13] In addition, we will allow CIG to make the cash payment to return to its customers approximately $4.2 million resulting from the over-collection of 1 TBtu of fuel for the period from July 1, 2007 through December 31, 2007.

17. With regard to the protest, we find that CIG's answer addresses Indicated Shippers' concerns. First, Indicated Shippers question the level of "makeup purchases" shown on CIG's workpapers and question exactly what such amounts represent. As Indicated Shippers request, CIG explains that "makeup purchases" volumes are volumes associated with shipper and fuel imbalances related to CIG's liquids business. CIG also clarifies that it has historically included makeup purchases in its quarterly filings and that it has averaged approximately 2 million Dth in makeup purchases over the last four calendar quarters.

18. Second, Indicated Shippers question the amount shown for deliveries in November 2007 for rate schedule CS-1 volumes and question the absence of an entry for a separate CS-1 LUF. In response, CIG clarifies that due to an error on a workpaper, the figure provided for CS-1 volumes was misstated. CIG states that on March 18, 2008, it filed a revised workpaper to correct this error. CIG also explains how CS-1 LUF volumes are treated under its tariff and how it reflected that treatment in its workpapers.[14]

19. Next, Indicated Shippers argue that CIG's proposed use of past period cash-out prices is inappropriate and that the Commission should convene a technical conference to explore a more balanced approach to LUF calculations and true-ups. We disagree. Section 42.2 of the GT&C of CIG's tariff provides as follows: "Excess L&U Quantities will be valued at the Cash Out Index Price, as posted on Transporter's EBB, for the month the Excess L&U Quantities are calculated and deferred."[15] Thus, under CIG's tariff, the Cash Out Index Price is used to cash out Excess L&U Quantities when such cash out is authorized.[16] The amounts CIG proposes to cash out are "Excess L&U

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[13] Section 42.7 of the GT&C of CIG's tariff provides as follows: "Neither the Fuel Gas reimbursement percentage nor the Lost, Unaccounted For and Other Fuel Gas retention percentage may be less than zero." CIG Gas Tariff, First Revised Volume No. 1, Original Sheet No. 380L.01.

[14] *See* CIG Answer at 5.

[15] CIG Gas Tariff, First Revised Volume No. 1, Original Sheet No. 380H.

[16] *Id.* As more fully discussed below, there are four provisions under section 42.2(d)(ii) of CIG's tariff under which CIG is required to or may cash out excess quantities. Even if "L&U" as used in this section is narrowly understood as excluding the other component of LUF, "other fuel gas," section 42.2(d)(ii)(4) gives CIG the discretion to cash out excess quantities, should the lost and unaccounted for (L&U) component not exceed 250,000 Dth absent the "other fuel gas" component of the LUF adjustment.

Quantities" and are therefore appropriately valued at the monthly Cash Out Index Price for each of the months the Excess L&U Quantities were calculated and deferred. Accordingly, we find it reasonable to use the cash out price methodology as specified in section 42.2 of the GT&Cs of CIG's tariff.[17] Additionally, we find Indicated Shippers' general request to replace the use of the Cash Out Index Price as the basis for truing-up over- or under-collections to be beyond the scope of this proceeding. Accordingly, Indicated Shippers' request for a technical conference is denied.

20. We now turn to whether waiver is necessary for CIG to make the proposed cash out payment. Based on our review of CIG's tariff, we find waiver to be unnecessary. Section 42.2(d)(ii)(1) provides that CIG will remit by invoice credit the value of an excess L&U quantity when such quantity exceeds 250,000 Dth.[18] CIG states that, based on its review of its LUF true-up position, it currently has more than 1 TBtu of over-collected L&U quantities. Of this over-collection, a total of 588, 811 Dth is attributable to the period from July 1, 2007 through September 30, 2007, and a total of 412,330 Dth is attributable to the period from October 1, 2007 through December 31, 2007.[19] Thus, the over-collection for each of the two quarters is greater than the 250,000 Dth threshold provided for under section 42.2(d)(ii)(1). Accordingly, the Commission finds that CIG is required to remit to its customers the value of approximately 1 TBtu of excess L&U quantities in accordance with section 42.2(d)(ii)(1), as proposed.

21. Accordingly, for the reasons discussed above, we will allow the existing LUF reimbursement percentage of zero to remain in effect. In addition, CIG is directed to make a cash payment to return to its customers approximately $4.2 million resulting from the over-collection of about 1 TBtu of fuel for the period from July 1, 2007 through December 31, 2007.

## **Docket No. RP08-394-000**

### **Details of the Filing**

22. CIG proposes to retain the existing zero LUF reimbursement percentage and states that while the LUF reimbursement percentage will remain unchanged, its workpapers show that, except for the limitation that the retention rate cannot fall below zero, the rate would have decreased to negative 0.01 percent. CIG also states that the indicated LUF

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[17] *See Colorado Interstate Gas Co.*, 122 FERC ¶ 61,304 (2008) (accepting the use of the monthly Cash Out Index Price to value a cash out payment for transportation fuel over-collected from July 1, 2007 through December 31, 2007).

[18] *See* CIG Gas Tariff, First Revised Volume No. 1, Original Sheet No. 380H.

[19] *See* CIG February 29, 2008 Filing Section A, Workpaper 2 of 2.

reimbursement percentage is negative due to (1) a decrease in net system fuel and LUF for the quarter ending March 2008 versus the quarter ending March 2007, and (2) an improvement in liquids processing economics driven by an increase in liquids revenues relative to the increase in the natural gas spot prices for the quarter ending March 2008 versus the quarter ending March 2007. In addition, CIG states that under section 42.2(d) it may return to shippers the value of excess LUF quantities when CIG, in its reasonable judgment, determines that such quantities should be returned immediately. CIG also states that it is required to remit to shippers the value of excess LUF quantities when such quantities occur in three consecutive calendar quarters. CIG states that three related fuel filings[20] are pending Commission action and that the quarter ending March 31, 2008 is the third consecutive quarter that excess LUF quantities have occurred. CIG states that its proposal is appropriate given the continued increase in forecasted national gas prices and the need to ensure that the excess LUF quantities are returned to those same shippers that transported on CIG's system during the relevant period. CIG requests permission to remit by invoice credit, within 45 days of the Commission's acceptance of its filing, the value of current excess LUF quantities and all quantities for the first quarter of 2008. CIG states that the invoice credits will be remitted using an allocation based on the ratio of a shipper's LUF receipt quantity to the total LUF receipt quantity during the period. CIG also states that the value of 156,954 Dth in current excess quantities is more than $1.2 million.

**Public Notice, Intervention and Comments**

23. Notice of CIG's filing issued on June 3, 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 (2008), all timely-filed motions to intervene and any motions to intervene out-of-time 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. On June 12, 2008, BP America Production Company and BP Energy Company (collectively, BP) filed a protest and on June 24, 2008 CIG filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 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.

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[20] CIG refers to filings made in Docket Nos. RP07-320-002, RP08-104-000, and RP08-233-000. CIG's filing in Docket No. RP07-320-002 has been accepted for filing. *See Colorado Interstate Gas Co.*, Docket No. RP07-320-002 (June 25, 2008) (unpublished letter order). An order in Docket No. RP08-104-000 was issued on August 22, 2008. *See Colorado Interstate Gas Co.*, 124 FERC ¶ 61,177. The filing in Docket No. RP08-233-000 has been addressed in the instant order.

24. BP argues that although CIG asserts that its proposal is justified under its tariff when CIG, in its reasonable judgment, determines that excess quantities should be returned immediately, cash out in the current situation is not reasonable. BP argues that the Commission recently rejected a similar attempt to cash out excess quantities.[21] BP states Cheyenne Plains Gas Pipeline Company (CPG), like CIG, had an in-kind fuel tracking mechanism with an annual true-up, that CPG sought Commission authorization to monetize its true-up of LUF and other system balancing activities, and that CPG's monetization proposal was essentially identical to the monetization proposal filed by CIG and approved by the Commission. BP states that as part of its proposal, CPG sought the discretionary authority to cash out excess quantities whenever CPG deemed cash out to be appropriate. According to BP, the Commission recognized that giving CPG the discretionary authority to cash out excess quantities would result in an "uneven playing field" because shippers would not have similar discretion to elect to cash-out under-recoveries.[22] BP asserts that the same uneven playing field would result if CIG is allowed to cash out its excess quantities.

25. BP also argues that the Commission's decision in *Wyoming Interstate Gas Company*[23] supports its arguments. According to BP, in rejecting the cash out proposal in *WIC*, the Commission explained that "both WIC and its shippers had reasonable expectations that only in-kind adjustments would be utilized under its existing tariff."[24] Further, BP argues, the Commission observed that "market fluctuations are inevitable, and good cause for waiver of existing tariff mechanisms cannot be demonstrated if the waiver unreasonably upsets the balance of expectations of the parties subject to those provisions."[25] BP asserts that the same reasoning applies here where CIG and its shippers had reasonable expectations that only in-kind adjustments would be utilized under its existing tariff and where a departure from the tariff mechanism unreasonably upsets the balance of expectations.

26. In addition, regarding CIG's argument that its tariff authorizes cash out if there has been an excess LUF quantity in three consecutive calendar quarters, BP argues that the Commission is reviewing CIG's prior two quarterly filings; consequently cash out in this

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[21] BP Protest at 2 (citing *Cheyenne Plains Gas Pipeline Co.*, 123 FERC ¶ 61,227 (2008), *clarified* 124 FERC ¶ 61,105 (2008) (*CPG*)).

[22] *Id.* at 3 (citing *CPG*, 123 FERC ¶ 61,227 at P 17).

[23] 122 FERC ¶ 61,299 (2008) (*WIC*).

[24] BP Protest at 4 (citing *WIC*, 122 FERC ¶ 61,299 at P 17).

[25] *Id.*

proceeding can only address the excess quantities during the first quarter of 2008. BP requests that the Commission reject CIG's proposed cash out of excess quantities.

27. In response, CIG argues that its proposal is fully consistent with its tariff and should be approved notwithstanding BP's protest. CIG also states that its tariff requires that CIG remit by invoice credit the value of Excess L&U Quantities when any of the following events occur:

> (1) The Excess L&U Quantity exceeds 250,000 Dth; or
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> (2) There has been an Excess L&U Quantity in three consecutive calendar quarters; or
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> (3) Any Excess L&U Quantities that remain outstanding at the time of Transporter's annual Fuel true-up calculations pursuant to Section 42.5 below; or
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> (4) Transporter, in its reasonable judgment, determines that Excess L&U Quantities should be returned immediately.[26]

28. CIG argues that three of the four events have occurred. Specifically, CIG states that this is the third consecutive quarter in which CIG has had Excess L&U Quantities (i.e., section 42.2(d)(ii)(2)) and that those excess quantities exceed 1Bcf (i.e., section 42.2(d)(ii)(1)). CIG also states that it is using its reasonable judgment at this time to cash out Excess L&U Quantities and requests that the Commission give weight to section 42.2(d)(ii)(4). Additionally, CIG states that the continued increase in forecasted gas prices was a factor in its decision to cash out the Excess L&U Quantities. Therefore, according to CIG, it exercised its reasonable business judgment as provided under its tariff. CIG argues that under the circumstance where excess L&U have been accumulating for nine months during which gas prices have been generally rising, it is unfair to require CIG to defer indefinitely the return of the value of that gas. CIG also reiterates that its proposal is supported by the desire to timely return the values of Excess L&U Quantities to shippers who actually shipped during the relevant period.

29. Additionally, CIG argues that the reasonableness of its judgment may be best confirmed by the silence of other shippers in response to CIG's proposal. CIG states that other shippers have not opposed the cash-out proposal because it ensures that they get the return of the value of their proportionate contribution to the Excess L&U Quantities at a point in time that is more nearly contemporaneous with the time period when the excess contribution was made by the shippers. CIG notes that its shippers have previously recognized that a deferral of the Excess L&U Quantities would increase the likelihood

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[26] CIG Answer at 2-3 (citing section 42.2(d)(ii) of the GT&C of its tariff).

that shippers that were not shipping gas on CIG's system when the excess accrued would receive the benefit when the Excess L&U Quantities are ultimately reflected in rates and creates the risk that a shipper during the period that the Excess L&U Quantities accrued would no longer be on CIG's system when the quantities are ultimately reflected in the fuel rate.[27]

30. In addition, CIG argues that the reasonableness of its judgment is evident by reference to section 42.2(d)(ii)(3). CIG states that it will cash out any remaining excess L&U quantities, at the prices proposed in the instant proceeding, when it submits its annual filing on or about August 31. CIG argues that its proposal to return these monies to shippers at an earlier date is appropriate and beneficial to shippers given the time value of money. CIG adds that certain shippers have recognized in previous LUF filings that a proposed deferral would have an adverse financial impact on shippers and have urged the Commission to order that the amounts CIG proposes to defer be immediately credited to shippers.[28]

31. With regard to BP's argument that the Commission's decisions in *CPG* and *WIC* support rejection of CIG's proposal, CIG argues that those decisions were based on the specific facts and language in those companies' tariffs. CIG asserts that its actions are grounded solely on the tariff provisions approved by the Commission which guide CIG's cash out actions here. Thus, CIG concludes, the Commission should dismiss BP's protest and approve CIG's cash out filing.

**Commission Determination**

32. We find that CIG's workpapers provide adequate support to allow CIG's existing LUF reimbursement percentage of zero to remain in effect for the quarter at issue in accordance with CIG's tariff.[29] In addition, although we grant CIG's proposal to make a cash payment as consistent with its existing tariff, we find it is no longer just and reasonable as discussed below, and direct CIG either to revise section 42.2(d) of the GT&C of its tariff to remove the provision allowing CIG to cash out excess L&U quantities at its sole discretion as discussed below, or show why it should not be required to, inasmuch as its affiliated pipeline (CPG) with similar monetized fuel provisions has been directed to do so.

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[27] *Id.* at 4-5 (citing Protest of Indicated Shippers filed on December 4, 2006 in Docket No. RP07-76-000).

[28] *Id.* at 5 (citing Motion to Intervene and Comments of Williams Power Company, Inc. filed September 12, 2006 in Docket No. RP06-572-000).

[29] *See supra* note 13.

33. CIG argues that three of the four circumstances provided under its tariff for the cash out of Excess L&U Quantities exist. CIG states that this is the third consecutive quarter in which it has had Excess L&U Quantities and that those quantities exceed 1 Bcf. However, because we have already addressed the prior two quarterly filings (i.e., third quarter 2007 in RP08-104-000 and fourth quarter 2007 in RP08-233-000) we find section 42.2(d)(ii)(2) to be inapplicable. Further, section 42.2(d)(ii)(1) is inapplicable in light of our determination in Docket No. RP08-233-000 directing CIG to cash out the Excess L&U Quantities balance of approximately 1 Tbtu, which means that the remaining 156,954 Dth of Excess L&U Quantities (for the first quarter of 2008) are less than the 250,000 Dth threshold under section 42.2(d)(ii)(2). Accordingly, we must determine if section 42.2(d)(ii)(4) authorizes CIG to cash out the 156,954 Dth of Excess L&U Quantities for the first quarter of 2008.

34. As noted above, CIG's tariff in effect prior to March 1, 2008 was based on a purely in-kind (i.e., volumetric) reimbursement percentage; however, CIG has now monetized its fuel tracking mechanism to include a cost/revenue true-up, in addition to the volumetric LUF true-up, to track the financial value of gas quantities used and retained.[30] While it may have been reasonable in the context of a purely volumetric LUF reimbursement percentage for CIG to return Excess L&U Quantities when "in its reasonable judgment" it determined that such quantities should be returned, the Commission has found such broad discretion is unreasonable where a pipeline has adopted a monetized, economic true-up mechanism that is intended to be value and revenue neutral.[31]

35. In *CPG*, the pipeline, like CIG, proposed a value-based, monetized fuel tracking mechanism. In addition, CPG proposed to include a provision in its tariff allowing it to elect to cash out LUF quantities at its sole discretion. The Commission found that in the context of a monetized fuel tracking mechanism, such a provision would have afforded the pipeline total discretion to cash out over-collected quantities when market fluctuations were in its favor, while shippers would have no discretion to select when to cash out or repay under-collected quantities when market prices were in their favor.[32] The Commission found that such a provision would not be just and reasonable in light of

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[30] *See Colorado Interstate Gas Co.*, 122 FERC ¶ 61,191, at P 35 (2008), *reh'g pending*.

[31] *See CPG*, 123 FERC ¶ 61,227 at P 15.

[32] *Id.* On rehearing, the Commission clarified that its order did not foreclose CPG from requesting a waiver of its tariff to cash out over-collections when good cause exists for such a waiver and where particular circumstances provide a just and reasonable basis for such a waiver, or from CPG filing a tariff provision that would allow for cash outs of over-collections in defined circumstances. *See CPG*, 124 FERC ¶ 61,105 at P 7.

the balance intended to be struck in a monetized fuel and L&U cost and revenue true-up methodology, which must be value and revenue neutral for the pipeline and its shippers.[33] In reaching this determination, the Commission considered the argument that the Commission had previously granted waivers to allow other pipelines to cash out over-collections of fuel and/or L&U quantities, finding that "such waivers in the past were in the context of a volumetric, and not a value-based, monetized tracking mechanism" and that "[i]n-kind volumetric interim adjustments would likely be implemented only when value neutral to both the pipeline and the shipper."[34]

36. Here, section 42.2(d)(ii)(4) was originally filed and accepted in the context of a volumetric, not a monetized fuel tracking mechanism. Nevertheless, it is an effective tariff provision, and CIG appears to have properly applied it here. However, going forward, it no longer is just and reasonable, now that CIG has "monetized" its fuel tracking mechanism. The Commission has held such one-sided timing discretion to be unjust and unreasonable in monetized fuel tracking mechanisms. Accordingly, we find section 42.2(d)(ii)(4) of the GT&C of CIG's tariff is unjust and unreasonable in the context of CIG's recently approved economic fuel reimbursement mechanism because such one-sided discretion to cash-out excess L&U quantities under a monetize fuel tracking mechanism impairs the revenue and value neutrality that is a core requirement of such mechanisms. We therefore direct CIG to remove section 42.2(d)(ii)(4) from the GT&C of its tariff within 15 days of issuance of this order or show cause why it should not be so required in light of the Commission's disposition of a similar provision in another pipeline's monetized fuel reimbursement tariff.

<u>The Commission orders</u>:

(A) CIG's requests to retain its existing zero LUF reimbursement percentage filed in Docket No. RP08-233-000, as revised, and in Docket No. RP08-394-000 are granted, as discussed in the body of this order.

(B) CIG is directed to make a cash payment to return the value of excess L&U quantities to its customers within 31 days of the issuance of this order, as discussed in the body of this order.

(C) CIG is directed to file, within 15 days of the date of issuance of this order, a revised tariff sheet, effective on the date of issuance of this order, eliminating

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[33] *Id.* The Commission stated that "[w]ith monetization of CPG's tracking mechanism, value and revenue neutrality are core elements that must be maintained." *Id.* at 16.

[34] *Id.*

section 42.2(d)(ii)(4) from its tariff, or explain why it should not be required to do so, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.