

4. In Docket No. PR08-17-000, in anticipation of the approval of its tracker/true-up mechanism, Bay Gas made its first annual filing to adjust its LAUF recovery percentage based on actual data from the previous year. The Commission orders Staff to institute a proceeding pursuant to section 284.123(b)(2)(ii) of the Commission's regulations to determine whether the updated LAUF recovery percentages reflected in Bay Gas's petition are fair and equitable.

I. Docket Nos. PR07-9-000 and PR07-9-001

5. Bay Gas's original facilities include its 22-mile Mainline pipeline which runs due south from Bay Gas's underground storage facilities at McIntosh, Alabama, to its Salco Station, located north of Mobile, at Axis, Alabama. Approximately midway along the Mainline is an interconnection with Florida Gas Transmission Company (Florida Gas). At Salco Station, the Mainline interconnects with Gulf South Pipeline Company, LP (Gulf South) and Mobile Gas Service Corporation (Mobile Gas), which is a local distribution company affiliate of Bay Gas. In 2002, Bay Gas constructed its Whistler Spur facilities. Whistler Spur runs generally southwest from Salco Station 17.5 miles to Whistler Junction, where there is another interconnection with Gulf South and Mobile Gas. Bay Gas is authorized to provide NGPA section 311 firm and interruptible transportation service at cost-based rates. In addition, Bay Gas is authorized to charge market-based rates for its NGPA section 311 firm and interruptible storage services, interruptible hub service, and interruptible wheeling transportation service.²

A. Initial Filing

6. On March 9, 2007, Bay Gas filed in Docket No. PR07-9-000³ a petition (2007 Petition) for approval of increased cost-based rates for NGPA section 311 firm and interruptible transportation on its Mainline and on Whistler Spur.⁴ It proposed to increase its reservation rate for Mainline firm transportation service to \$3.0442 per MMBtu and to increase its rate for interruptible transportation service to \$0.1001 per MMBtu per day. On the Whistler Spur, it sought rates of \$1.2957 per MMBtu for firm

² See *Bay Gas Storage Co., Ltd.*, Docket Nos. PR08-7-000 and PR08-7-001, Letter Order at 1 (April 18, 2008).

³ Bay Gas filed its 2007 Petition on March 8, 2007. However, the 150 day statutory clock began on March 9, 2007 when the application fee was received pursuant to section 381.403 of the Commission's regulations.

⁴ 15 U.S.C. § 3371 (2006). The Commission approved the existing rates in *Bay Gas Storage Company, Ltd.*, 111 FERC ¶ 61,345, *order on reh'g*, 113 FERC ¶ 61,140 (2005), *reh'g denied*, 115 FERC ¶ 61,049, 116 FERC ¶ 61,216 (2006).

transportation service and \$0.0426 per MMBtu per day for interruptible transportation service.

7. Bay Gas also proposed to modify the General Terms and Conditions, incorporated into its Statement of Operating Conditions, in order to add a new mechanism for tracking the costs of Company Use compressor fuel and LAUF on the Mainline and Whistler Spur. Under this mechanism, Bay Gas would recover these costs on an in-kind basis, through a “Company Use charges reimbursement percentage (Company Use Percentage).” Proposed Section II (B) of Bay Gas’s General Terms & Conditions (Section II (B)) defined Company Use reimbursement quantities as “volumes of gas delivered to Bay Gas for any transportation-only service ... that are retained by Bay Gas as compensation for costs of Company Use compressor fuel or [LAUF] gas” for a given rate year.⁵ Proposed Section II (E) of Bay Gas’s General Terms & Conditions (Section II (E)) provided for Bay Gas to file annually to revise its Company Use Percentage effective on March 1. That percentage would include two components, a “revised percentage component” and a “true-up component.” The purpose of the “revised percentage component” was to recover Bay Gas’s projected company use compressor fuel (when compression is installed) and LAUF quantities for the next year. The “true-up component” would carry forward the prior year’s under- or over-recovery of LAUF quantities. Proposed Section II (E) also provided that in no event would the Company Use percentage be less than zero. The 2007 Petition proposed an initial Company Use Percentage of 0.18 percent, based on Bay Gas’s purported measurements of its actual LAUF volumes on average for the previous three years. In its previous rate filings, Bay Gas had estimated the dollar cost of its LAUF volumes and included that estimation as part of the cost-of-service used to calculate its base transportation rates, rather than separately recovering LAUF gas in-kind.

8. Finally, Bay Gas proposed to modify the gas quality provisions set forth in Section IX of its General Terms and Conditions to conform to the Commission’s Policy Statement on Natural Gas Quality.⁶

B. Notice and Comment

9. Public notice of Bay Gas’s filing was issued on March 16, 2007, with interventions due on March 27, 2007. On March 27, 2007, Southern Company Services

⁵ Although Bay Gas collectively refers to its recovery mechanism as “Company Use,” Bay Gas has no compression on its system at this time. Thus, until compression is installed on Bay Gas’s system, it will only incur LAUF costs.

⁶ *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability*, 115 FERC ¶ 61,325 (2006).

(SCS) filed a Motion to Intervene, Protest, and a Request for Clarification on behalf of its affiliate Alabama Power Company (Alabama Power). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ SCS's intervention is granted as timely and unopposed. No other parties intervened in Docket No. PR07-9-000.

10. SCS's primary argument was that Alabama Power's contract with Bay Gas is a fixed-rate discounted contract, and that Bay Gas therefore may not unilaterally raise base rates charged to Alabama Power for service, nor may it impose new charges on Alabama Power by adding the Company Use tracker mechanism to its Statement of Operating Conditions.

11. Article X of Bay Gas's Statement of Operating Conditions provides:

This Statement of Operating Conditions, and the incorporated General Terms and Conditions [] take precedence over conflicting language in any of Bay Gas' Service Agreements or amendments thereto, unless such language specifically states that it is an exception to this Statement, and then only to the extent of such stated exception.

SCS argued, however, that Alabama Power's contract has a clause overriding this provision. Section 17.1 of Alabama Power's contract states:

In the event of any conflict or inconsistency between the terms hereof and the terms of the General Terms and Conditions or the Statement of Conditions, such conflict or inconsistency shall be resolved in favor of the terms hereof (it being the intent of this Agreement that the foregoing language is an exception to the provisions of Article X of the Statement of Conditions).

SCS therefore asked the Commission to declare that the Alabama Power contract contains a discounted, fixed rate that may not be increased unilaterally by Bay Gas, and that the Alabama Power contract precludes Bay Gas from imposing the Company Use tracker on Alabama Power.

12. SCS additionally requested that the Commission investigate Bay Gas's proposed rates and other changes to its General Terms & Conditions or Statement of Operating Conditions. In particular, SCS sought review of whether Bay Gas followed the Commission's policy that fuel trackers must include a mechanism for truing up over- and

⁷ 18 C.F.R. § 385.214 (2008).

under-recoveries of LAUF costs. SCS argued that because Section II (E) of Bay Gas's proposal specified that the Company Use percentage could never be less than zero, it violated the Commission's policy that trackers that recover costs outside a rate case must include a true-up provision.⁸

13. On April 11, 2007, Bay Gas answered SCS's protest. Bay Gas explained its presumed authority for imposing a Company Use tracking mechanism, clarified how it would work, and explained its reasons for proposing to recover its LAUF fuel through a separate tracker, rather than through its base rates. Further, Bay Gas clarified that its true-up mechanism would operate in accordance with standard Commission practice. Bay Gas denied that Alabama Power's contract would be exempt from the tracker, stating that the tracker "seeks reimbursement for ongoing variable costs, not back door contract rate increases,"⁹ and interpreting its proposed tracker as therefore not being in conflict with Alabama Power's contract.

14. On April 23, 2007, the Commission issued a letter order pursuant to section 375.307 of the Commission's regulations, requiring Bay Gas to provide additional information in order to resolve issues in Docket No. PR07-9-000. Bay Gas complied on May 7, 2007.

C. Settlement

15. In order to encourage the parties to settle the issues in dispute, the Commission on August 2, 2007, extended the time for action and instituted a Staff Panel proceeding pursuant to section 284.123(b)(2)(ii) of the regulations.¹⁰ In addition, the Commission issued a further data request, with which Bay Gas complied on August 27, 2007. Bay Gas further responded to questions raised during the Staff Panel on October 12, 2007. The October 12, 2007 filing also made minor amendments to the Company Use Reimbursement Percentage recovery mechanism in Section II (E) of the General Terms & Conditions.

16. At the Staff Panel hearing on September 25, 2007, Bay Gas defended both its proposed rates and its Company Use Reimbursement Percentage recovery mechanism. Bay Gas argued that its rates were based on an appropriate rate of return derived from a properly conducted proxy group analysis. Bay Gas justified its LAUF recovery mechanism as in line with mechanisms that the Commission has previously approved.

⁸ *See, e.g., ANR Pipeline Company*, 110 FERC ¶ 61,069 (2005) (*ANR*).

⁹ Bay Gas April 11, 2007, Answer at 7.

¹⁰ *Bay Gas Storage Co., Ltd.*, 120 FERC ¶ 61,130 (2007).

SCS reiterated its argument that Alabama Power has “a discounted, firm, capped rate that would never increase during the life of the contract” that would protect it against Bay Gas taking the LAUF “cost of service item out of the reservation charge put[ting] it in a tracker as a variable cost.”¹¹ Bay Gas responded to SCS, arguing that a LAUF mechanism would not contradict the Alabama Power contract, and also addressed Staff’s several questions on the mechanics of Bay Gas’s proposal. Staff closed the panel by establishing a briefing schedule in order to further explore the issues raised at the panel.

17. After the Staff Panel, the parties made three filings on October 19, 2007 signaling progress in their negotiations. First, SCS withdrew its protest. Second, Bay Gas filed a brief amending its original filing by proposing a lower fuel retention percentage and lower rates on all services. Specifically, Bay Gas proposed a 0.10 percent LAUF percentage, Mainline transportation rates of \$2.8680 per MMBtu for firm and \$0.0943 per MMBtu per day for interruptible service, and Whistler Spur transportation rates of \$1.2873 per MMBtu for firm and \$0.0423 per MMBtu per day for interruptible service. Third, SCS and Bay Gas jointly filed a statement supporting resolution of the LAUF issue. The joint statement endorsed the amended 0.10 percent LAUF fuel retention percentage, and also the principle that the “true-up component will carry over, to the following year, any prior year’s under- or over-recovery of LAUF quantities.”¹²

18. On April 21, 2008, in Docket No. PR07-9-001, Bay Gas filed an unopposed Stipulation and Agreement (Settlement) pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure.¹³ The major provisions of the Settlement include:

- a. The Settlement settles all issues in Docket No. PR07-9-000.
- b. Effective March 9, 2007, the maximum fair and equitable base rates that Bay Gas is authorized to charge for NGPA section 311 service shall be: \$2.4247 per MMBtu for firm transportation and \$0.0797 per MMBtu per day for interruptible transportation service on its Mainline, and \$1.2186 per MMBtu for firm transportation and \$0.0401 per MMBtu per day for interruptible transportation for service on Whistler Spur.
- c. The Company Use fuel retention percentage for the period March 9, 2007 – February 29, 2008 will decrease from the as-filed level of 0.18 percent to 0.10 percent.

¹¹ Staff Panel September 25, 2007 Tr. 12:4-5, 24-25.

¹² SCS and Bay Gas October 19, 2007 Joint Filing at 2.

¹³ 18 C.F.R. § 385.602 (2008).

- d. The Company Use recovery will be limited to recovery of LAUF volumes, including LAUF volumes from Mainline and Whistler Spur shippers, unless and until compression is installed on Bay Gas's Mainline and the Commission approves recovery of compressor fuel volumes.
- e. The true-up component will carry over, to the following year, any prior year's under- or over-recovery of LAUF quantities.
- f. Bay Gas's modifications to its General Terms and Conditions with respect to Gas Quality and Interchangeability filed in its March 9, 2007 petition conform to the Commission's Policy Statement on Natural Gas Quality.
- g. On or before March 9, 2010, Bay Gas agrees to file a petition for rate approval, pursuant to section 284.123(b)(2) of the Commission's regulations to justify its current rates or to establish new rates.
- h. Bay Gas agrees to refund to its customers, with interest as determined in accordance with section 154.501(d) of the Commission's regulations, amounts, if any, it has collected in excess of the settlement rates specified above. All such refunds shall be completed by Bay Gas within 60 days from the date of the issuance of a Commission order approving without modification all of the terms of this Settlement. Bay Gas will file a refund report with the Commission within 30 days of making any refunds.
- i. The provisions of the Settlement shall not become effective unless and until the Commission issues an order accepting and approving all terms and conditions of the Settlement without modification or condition, and such order becomes final and no longer subject to further proceeding before the Commission.

19. The Settlement was noticed on April 22, 2008. On April 28, 2008 SCS filed comments declaring that it did not oppose the Settlement. SCS sought one clarification, regarding how the LAUF true-up mechanism would operate with regard to the decrease in the initial fuel retention percentage to be in effect through February 29, 2008, from the as-filed amount of 0.18 percent to 0.10 percent. SCS specifically "ask[ed] the Commission to clarify that the Settlement does not provide for a true-up applicable to the settlement LAUF percentage."¹⁴ Bay Gas replied on April 30, 2008 that the true-up for the following year would be based on the difference between its actual LAUF quantities during the year March 1, 2007 through February 29, 2008 and the amount of fuel recovered pursuant to the 0.18 percent fuel retention percentage in effect during that year.

¹⁴ SCS April 28, 2008 Comments at 2.

Bay Gas further stated that it would not recover from the true-up (or any other mechanism) the difference between the originally proposed 0.18 percent retention percentage for that year and the settled 0.10 percent retention percentage.

D. Discussion

20. The Settlement resolves all issues with regard to the rate petition filed by Bay Gas on March 9, 2007 pursuant to section 284.123(b)(2) of the Commission's regulations.¹⁵ As described above, the Settlement lowers both Bay Gas's proposed base rates and its initial Company Use Percentage. In addition, the Settlement clarifies that Bay Gas's proposed Company Use tracking mechanism will be limited to the recovery of LAUF volumes unless and until Bay Gas installs compression on its Mainline and the Commission approves the recovery of compressor fuel volumes. The Settlement also clarifies that, consistent with Commission policy,¹⁶ the true-up component will carry over to following year any under- or over-recovery of LAUF volumes. Finally, given SCS's withdrawal of its protest and support of the Settlement,¹⁷ SCS has agreed that Alabama Power's contract is to be subject to the LAUF tracking mechanism.

21. Accordingly, the Commission finds that the uncontested settlement is fair and reasonable and in the public interest,¹⁸ and therefore, the Settlement is approved. This order does not relieve Bay Gas of its obligations to file the required reports under Part 284 of the Commission's regulations.

22. While the Commission is approving the settlement, the Commission will also require Bay Gas to modify its Statement of Operating Conditions on a prospective basis to eliminate the provision in Article X authorizing it to negotiate with individual shippers contractual provisions which deviate from the Statement of Operating Conditions. Article X of its Statement of Operating Conditions currently states:

This Statement of Operating Conditions, and the incorporated General Terms and Conditions [] take precedence over conflicting language in any of Bay Gas' Service Agreements or amendments thereto, unless such language specifically

¹⁵ 18 C.F.R. § 284.123(b)(2) (2008).

¹⁶ *See ANR*, 110 FERC ¶ 61,069.

¹⁷ SCS April 28, 2008 Comments at 2.

¹⁸ *See* § 385.602(g)(3) of the Commission's settlement rules, governing the approval of uncontested settlements.

states that it is an exception to this Statement, and then only to the extent of such stated exception.

23. NGPA section 311(c) provides that any authorization by the Commission for intrastate pipelines to perform interstate transportation service under NGPA section 311 “shall be under such terms and conditions as the Commission may prescribe.” As permitted by section 311(c), the Commission requires in section 284.123(e) of its regulations that intrastate pipelines performing section 311 service must “file with the Commission a statement that describes how the pipeline will engage in these transportation arrangements, including operating conditions.” The filing of such Statements of Operating Conditions enables the Commission to review the terms and conditions under which an intrastate pipeline will perform section 311 service to ensure that they are fair and equitable and do not allow undue discrimination among shippers.¹⁹ As the Commission held in *Tejas Gas Pipeline Co.*,²⁰ allowing a pipeline to include in its Statement of Operating Conditions a blanket authorization to negotiate contracts which deviate from this Statement of Operating Conditions would be contrary to the Commission’s purpose in requiring that the pipelines file the Statement of Operating Conditions. It would enable the intrastate pipeline to provide service to some customers under terms and conditions which the Commission has never reviewed.²¹

24. We therefore require Bay Gas to submit, within 30 days of the date of this order, a revised Statement of Operating Conditions modifying Article X to remove the provision authorizing Bay Gas to include language in contracts expressly overriding other provisions in the Statement of Operating Conditions. Prospectively, Bay Gas cannot offer NGPA-jurisdictional service contracts that deviate from or override the Statement of Operating Conditions, except by filing any such contracts with the Commission and obtaining Commission approval of the non-conforming contractual provisions.

25. In addition, Section IV of Bay Gas’s General Terms & Conditions states “rates charged for services shall be negotiated between Bay Gas and Shipper.” Commission policy prohibits NGPA section 311 pipelines from negotiating rates with its customers.²² We therefore require Bay Gas to remove, within 30 days of the date of this order, any references to negotiated rates in its Statement of Operating Conditions.

¹⁹ Sections 284.7(b)(1) and 284.9(b) require intrastate pipelines performing section 311 service to do so without undue discrimination or preference.

²⁰ 81 FERC ¶ 61,053, at 61,266 (1997).

²¹ See *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,001-4 (2001).

²² See *Northern Illinois Gas Company*, 95 FERC ¶ 61,452 (2001).

II. Docket No. PR07-9-002

26. On June 12, 2008, Bay Gas filed with the Commission its LAUF Report on Refunds which were disbursed by Bay Gas to its customers on May 29, 2008.²³ Bay Gas provided work papers in support of its refund amount of \$214,187 (\$206,163 principal and \$8,024 interest). The refund amount is the monetized value of the difference between Bay Gas's retained LAUF volumes calculated at the as-filed rate of 0.18 percent and the settled LAUF retention rate of 0.10 percent, for the period March 9, 2007 through February 29, 2008.

27. Notice of the filing was issued on June 24, 2008 with comments due on or before July 2, 2008. No adverse comments were filed in this docket.

28. The Commission accepts Bay Gas's refund report as being in compliance with the terms of its Settlement.

III. Docket No. PR08-17-000**A. Initial Filing**

29. On February 29, 2008, Bay Gas submitted its first filing pursuant to its proposed mechanism in Section II (E) of its General Terms & Conditions for recovering LAUF costs on an in-kind basis. Bay Gas proposed to increase its Company Use Percentage to 0.96 percent, to be effective March 1, 2008. Bay Gas projected that its LAUF volumes for the coming year would be 0.574 percent of total gas transported, including storage related transportation. Bay Gas also asserted that its actual LAUF volumes for the past year were 212,784 MMBtu, compared to 52,069 MMBtu actually retained (using, as Bay Gas later clarified, the 0.18 percent figure in its 2007 Petition), which resulted in a 2008 true-up component of 0.381 percent. The proposed overall Company Use Percentage of 0.96 percent, therefore, consists of a 0.574 percentage for the purpose of recovering projected LAUF volumes plus a 0.381 true-up percentage, or 0.955 percent, rounded up to the nearest 0.01 percent.

B. Notice and Comments

30. The Commission noticed this submission on March 10, 2008, with comments due on March 24, 2008. SCS moved to intervene on April 10, 2008 and later filed comments,

²³ Pursuant to Article VI (2) of its Settlement, Bay Gas agreed to make refunds for LAUF Gas Costs within 90 days of making its annual filing to revise its Company Use Percentage, effective March 1, 2008. In addition, Article VI (3) required Bay Gas to file a refund report with the Commission within 30 days of distributing the refund.

Coral Energy Resources, L.P. (Coral) moved to intervene and protest on April 18, and Florida Gas moved to intervene on June 10, 2008 and later filed a protest. No other parties have moved to intervene.

31. Bay Gas responded to all three intervenors. Bay Gas does not oppose Coral's intervention²⁴ or SCS's intervention.²⁵ Bay Gas does, however, oppose Florida Gas's intervention as having "a substantial likelihood of disrupting the proceedings"²⁶ because Florida Gas was in part protesting issues in Docket No. PR07-9-000, which Bay Gas characterizes as already settled.

32. Pursuant to Rule 214(d) of the Commission's rules of practice and procedure,²⁷ the Commission will grant the late interventions by SCS, Coral, and Florida Gas. Despite Bay Gas's objection to Florida Gas's intervention, the Commission finds that none of the three late interventions were disruptive to the proceedings or prejudiced Bay Gas. In response to Bay Gas's opposition to its intervention, Florida Gas has clarified that the scope of its intervention is limited to the increase in Bay Gas's Company Use Percentage proposed in this docket, that it does not seek to litigate the issues in Docket No. PR07-9-000 concerning the implementation of the LAUF provision, and it does not oppose the Settlement filed in that proceeding. Further, each intervention introduced perspectives and arguments not adequately represented by other parties. Except as otherwise ordered, a late intervener must accept the record of the proceeding as the record developed prior to the late intervention.

33. Coral protests that Bay Gas has failed to provide sufficient evidence to justify its change in rates.²⁸ In particular, Coral states that Bay Gas is a relatively new and relatively short pipeline that lacks compressors, and that these features should result in less actual losses than Bay Gas's 0.96 percent figure implies.

34. SCS, in a subsequent filing on April 29, 2008, stated its support for Coral's protest. SCS emphasizes that it is not attacking Bay Gas's tracker mechanism, but rather the figures that Bay Gas is using to make its calculations. SCS states that LAUF

²⁴ Bay Gas May 5, 2008 Answer to Coral at 1 n.1.

²⁵ Bay Gas May 14, 2008 Answer to SCS at 1 n.1.

²⁶ Bay Gas June 25, 2008 Answer to Florida Gas at 8.

²⁷ 18 C.F.R. § 385.214(d) (2008).

²⁸ *See* 18 C.F.R. §284.201(b)(2)(i)(2008) (applicant must present "information showing the proposed rates and charges are fair and equitable.")

collections impose an extraordinary additional cost on shippers. According to SCS, at current natural gas prices, a 0.96 percent reimbursement percentage by itself would cost shippers somewhat more than Bay Gas's proposed firm transmission rates by themselves.

35. Florida Gas' protests, similar to Coral's and SCS's protests in this docket, that Bay Gas has failed to present information sufficient to justify its proposed rates. Florida Gas argues that the projected 0.574 percent loss level is too high compared to other loss levels that the Commission has approved. Florida Gas gives the example of *High Island Offshore System, L.L.C.*,²⁹ where the Commission approved a 0.44 percent loss level for "a much older pipeline system with over five times the length with five times the number of meter stations and which is subject to all the difficulties of maintaining offshore pipeline operations."³⁰ Florida Gas proposes that Bay Gas's observed losses should be attributed to its storage system, and therefore not paid for by shippers who transport without storing gas on the Bay Gas system.

36. Florida Gas also submitted a data request to Bay Gas on July 16, 2008, and a motion to compel on September 10, 2008.

37. In its answers, Bay Gas clarifies the nature of its true-up mechanism, arguing that it is consistent with Commission policy.³¹ Bay Gas states that Commission policy requires any tracking mechanism for LAUF costs to include a truing-up of over- and under-recoveries.³² Bay Gas states that the true-up mechanism is designed, in the long term, to result in no gain or loss on Bay Gas Storage's part, compensating it for neither more nor less than the actual amounts lost.

38. Bay Gas also states that the LAUF volumes used in the Docket No. PR08-17-000 petition were derived in the same manner as in Bay Gas Storage's 2007 Petition in Docket No. PR07-9-000. Bay Gas states that it allocated the LAUF volumes between storage-related transportation and transportation-only volumes based on actual book flows for the year 2007. Bay Gas argues that this method is reasonable and consistent with Commission policy.

²⁹ *High Island Offshore System, L.L.C.*, 118 FERC ¶ 61,256 (2007).

³⁰ Florida Gas June 26, 2008 Protest at 7.

³¹ Bay Gas May 5, 2008 Answer to Coral at 2 (citing *ANR*, 110 FERC ¶ 61,069 at P 13, 28; *Sabine Pipe Line, LLC*, 116 FERC ¶ 61,309, at P 16 (2006); 117 FERC ¶ 61,277, at P 9 (2006)).

³² *Id.* at p. 3 (citing *ANR*, 110 FERC ¶ 61,069 at P 13, 28.)

39. Bay Gas also notes that a substantial portion of the 2008 LAUF percentage results from under-recovery, that is, the true-up component (0.381 percent) of the proposed 2008 LAUF figures is nearly as large as the tracking component (0.574 percent). Bay Gas states that its metering, calculating, and measurement equipment and techniques are consistent with the best practices of the industry, and show no metering or calculating practices errors, defective measurement factors, or bias. Nevertheless, Bay Gas states, it will ask the independent company Coastal Flow Management Companies to conduct an independent audit, and Bay Gas will file the results in Docket No. PR08-17-000.

40. In addition to its contentions that Bay Gas has not adequately supported its proposed increase in its Company Use Percentage, Florida Gas also stated in its protest that “the Bay Gas LAUF provision is inapplicable to the FGT contract because the FGT contract contains a fixed rate.”³³ Subsequently, in its answer to Bay Gas’s opposition to its intervention, Florida Gas stated that the question whether the Company Use percentage can be applied to its fixed rate contract “is not in issue in this proceeding,” and it has only set forth its position on that issue “for protective purposes in order to preserve its rights” to argue the issue “in the appropriate forum.”³⁴ Bay Gas asserts that Florida Gas’s service contract is subject to its Commission-authorized Statement of Operating Conditions, which controls any inconsistent NGPA service contract terms.³⁵ Bay Gas further states that Section 12.2 of its Florida Gas contract states that the contract is subject to all present and future NGPA legal jurisdiction,³⁶ and interprets this to mean that its LAUF provision, if approved by the Commission, would apply to the Florida Gas contract.

³³ Florida Gas June 26, 2008 Protest at 3.

³⁴ Florida Gas July 9 Answer t at 5.

³⁵ Bay Gas June 25, 2008 Answer to Florida Gas at 5 (citing *PanEnergy Louisiana Intrastate Co.*, 84 FERC ¶ 61,272 (1998); *Tejas Gas Pipeline Co.*, 81 FERC ¶ 61,053, 61,266 (1997)).

³⁶ Section 12.2 of the Florida Gas contract provides in part:

Present and Future Law. This contract is subject to all present and future valid laws now or hereafter having jurisdiction of either or both the parties.... To the extent during the term of this contract any governmental authority takes any action affecting a party ... that in the sole judgment of the party affected are unduly burdensome to that party, or make performance commercially impracticable, the affected party shall be excused from such performance....

C. Discussion

41. Coral, SCS, and Florida Gas all requested that the Commission find that Bay Gas failed to provide sufficient factual basis to justify its 2008 LAUF percentage, as pipelines filing revised rates are required to do under section 284.123(b) of the Commission's regulations. Based on the filings submitted by Bay Gas, the Commission has not been able to make a determination that Bay Gas's rates are fair and equitable. While Bay Gas asserts that it has sufficiently justified its 2008 LAUF percentage, it has yet to file sufficient evidence that may support this assertion, such as the results of the independent audit with Coastal Flow Management Companies, with the Commission.

42. Because the Commission has not been able to make a determination that Bay Gas's rates are fair and equitable, the Commission will institute a proceeding pursuant to section 284.123(b)(2)(ii) of the regulations. A Staff Panel shall be convened for that purpose as soon as practicable. Staff Panel hearings are advisory, non-evidentiary proceedings to permit the parties an opportunity to present oral views, data and arguments in accordance with section 502(b) of the NGPA.³⁷ Within 120 days of the date of the issuance of this order, the Staff Panel shall certify the record of the proceeding and any recommendation to the Commission.

The Commission orders:

(A) The Commission finds that the uncontested Settlement filed in Docket Nos. PR07-9-000 and 001 is fair and reasonable and is approved effective March 9, 2007, as discussed above. As a condition of approval in Docket Nos. PR07-9-000 and -001, Bay Gas is to remove, within 30 days of the date of this order, Article X and any references to negotiated rates from its Statement of Operating Conditions.

(B) Bay Gas's LAUF refund report in Docket No. PR07-9-002 is accepted.

(C) This order terminates Docket No. PR07-9-000 and all sub-dockets.

(D) Pursuant to the Commission's authority under section 311 of the NGPA and section 284.123(b)(2)(ii) of the Commission's regulations, a proceeding shall be instituted in Docket No. PR08-17-000 to determine whether the rates reflected in Bay Gas's rate petition are fair and equitable. A Staff Panel shall convene and shall certify

³⁷ 15 U.S.C. § 3412(b) (2000).

the record of the proceeding and any recommendation within 120 days of the issuance of this order.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.