126 FERC ¶ 61,312
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cimarron River Pipeline, LLC — Docket No. RP09-409-000

ORDER ACCEPTING TARIFF SHEET, SUBJECT TO CONDITIONS

(Issued March 31, 2009)

1. On February 27, 2009, Cimarron River Pipeline, LLC (Cimarron River) filed First Revised Sheet No. 17 to FERC Gas Tariff, Original Volume No. 1, pursuant to the fuel reimbursement adjustment provisions in section 12 of its General Terms and Conditions (GT&C). For the reasons discussed below, the Commission accepts and suspends the revised tariff sheet, to become effective April 1, 2009, subject to refund and conditions.

I. Details of Filing

2. Cimarron River states it commenced service on October 9, 2008, after purchasing the Cimarron River facilities from Northern Natural Gas Company (Northern). Cimarron River states that prior to its acquisition, these facilities had not been operated as an independent system, and fuel and unaccounted-for gas (UAF) were not calculated on a stand-alone basis. Thus, Cimarron River states this filing represents its first opportunity to develop a fuel and UAF percentage based on actual measurement data for the discrete facilities now owned by Cimarron River.

3. Section 12 of Cimarron River's GT&C requires it to submit annual filings with the Commission to update its fuel and UAF reimbursement rates for the 12-month period ending December 31 of each year. In its annual filing, Cimarron River calculates separate reimbursement percentages for each of four mileage indicator districts (MIDs) in its field area, its mainline, and its unaccounted-for gas. Because Cimarron River has not yet completed its first year of operations, Cimarron River based the instant filing on actual data obtained during operation of these facilities from October 9, 2008, to December 31, 2008. In addition, Cimarron River adjusts most, but not all, of its calculations to account for Northern's experience from January 1, 2008, to October 8,

2008.[1] A summary of Cimarron River's current and proposed reimbursement percentages is as follows:

	Current Percentage	Proposed Percentage	Difference
Field Percentage (MID 1)	0.57%	0.58%	0.01%
Field Percentage (MID 2)	2.46%	2.19%	(0.27%)
Field Percentage (MID 3)	2.23%	2.15%	(0.08%)
Field Percentage (MID 4)	3.30%	3.88%	0.58%
Mainline Percentage	2.76%	1.60%	(1.16%)
Unaccounted-for Percentage	0.22%	2.31%	2.09%

4. Cimarron River explains that it calculated the field fuel percentages by summing the actual fuel consumed at the field compressor facilities from October 9, 2008, to December 31, 2008 on a MID-by-MID basis. To accurately reflect a 12-month period, Cimarron River added to this amount, the fuel consumed by the field compressors from January 1, 2008, to October 8, 2008, the time period when Northern owned and operated the facilities. Cimarron River then adjusted these figures for known and measurable changes.[2] Cimarron River states it then divided its adjusted total MID fuel consumed by the 12-month throughput (reflecting total throughput before and after Cimarron River's acquisition) to determine the field fuel reimbursement percentage for each MID. Cimarron River further explains it then calculated the true-up component of these reimbursement percentages by comparing the retained fuel with actual fuel consumed from October 9, 2008, to December 31, 2008, on a MID-by-MID basis, dividing this figure by the applicable MID throughput. Cimarron River then added the true-up percentage to each field fuel reimbursement percentage to determine the total field fuel reimbursement percentage for each MID.

[1] As indicated below, while Cimarron River adjusts actual fuel consumed and throughput to account for system experience throughout the 12-month period ending December 31, 2008, it does not adjust its actual UAF in the same manner. Rather, it annualizes that figure based on the October 9, 2008, to December 31, 2008 period in which Cimarron River operated the system.

[2] One such adjustment reflects increased fuel consumption expected in 2009 due to additional compression from two compressor stations—Clark County Nos. 1 and 2.

5. Cimarron River next explains that it calculated the mainline fuel percentage in the same way that it calculated the field percentages. Cimarron River based the mainline fuel percentage on both the actual fuel consumed at mainline compressor facilities, as well as the UAF percentage. Cimarron River explains that while it charges the mainline fuel percentage only to volumes received upstream of or at a mainline fuel facility, all transportation volumes are subject to the UAF percentage.

6. Cimarron River calculates the UAF percentage by summing the actual UAF from October 9, 2008, to December 31, 2008, and then annualizing that amount to reflect a 12-month period.[3] Cimarron River then divided this amount by the total throughput for the year (which included Northern's operating experience before October 9, 2008) to develop the UAF percentage of 1.89 percent. Cimarron River then determined the UAF true-up percentage of 0.42 percent by comparing UAF retained with the UAF gas experienced from October 9, 2008, to December 31, 2008.

7. Cimarron River avers that the increase in the UAF percentage (from 0.22 percent to 2.09 percent) resulted from its initial use of the Northern UAF percentage of 0.22 percent, which Cimarron River explains was due to the lack of discrete data for the portion of the Northern system acquired by Cimarron River. Cimarron River further states that it operates the pipeline system differently than Northern, and that these operational differences have also yielded the one percent reduction in the field fuel and mainline fuel percentages. Cimarron River argues that it is in the same position as WTG Hugoton, LP, which also acquired a Northern wet gas pipeline and faced an increased UAF percentage in its first annual reimbursement filing.[4]

II. <u>Public Notice, Intervention and Protest</u>

8. Public notice of Cimarron River's filing issued on March 3, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), all timely filed motions to intervene and any motion 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 the proceeding or place additional burdens on existing parties. On March 11, 2009, Mewbourne Oil Company (Mewbourne) filed a protest.

9. In its protest, Mewbourne notes that Cimarron River proposes to increase its UAF percentage to an amount ten times the rate presently charged. Mewbourne objects to this

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[3] Cimarron River calculated an annualized UAF amount by multiplying the actual UAF experienced over the 84-day period between October 9, 2008, and December 31, 2008, by a factor of four.

[4] *WTG Hugoton*, *LP*, 125 FERC ¶ 61,288 (2008) (*WTG*).

increased UAF percentage and states that Cimarron River does not attempt to explain why the UAF increased so dramatically. Mewbourne also argues that Cimarron River inappropriately annualized the volume of UAF gas it claims to have experienced by multiplying its actual UAF experienced between October 9, 2008, and December 31, 2008, by a factor of four. Mewbourne believes this adjustment does not comply with section 12.4(c) of Cimarron River's GT&C, which requires Cimarron River to "compare the volume of UAF gas retained for the most recent 12 months ended December 31 with the volume of actual UAF gas for the same period to determine the UAF adjustment amount." Mewbourne contrasts this annualized UAF figure with Cimarron River's use of Northern's actual experience for the days prior to October 9, 2008, in every other calculation. Mewbourne requests the Commission reject Cimarron River's proposed UAF percentage as unjust and unreasonable or convene a technical conference to fully examine Cimarron River's proposed UAF reimbursement percentage.

10. On March 18, 2009, Cimarron River filed an answer to Mewbourne'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 Cimarron River's answer because it provided information that assisted us in our decision-making process.

11. In its answer, Cimarron River asserts it complied with its tariff in calculating UAF by adjusting the UAF experienced between October 9, 2008, and December 31, 2008, to represent the 12-month period from January 1 to December 31, 2009. Cimarron River argues this adjustment accounts for "known and measurable changes" and ensures that Cimarron River accurately recovers the UAF it will incur in 2009. Cimarron River states that relying only on UAF experienced between October 9, 2008, and December 31, 2008, would understate UAF and would be irresponsible in an environment of expected increases in the commodity price of gas.

12. Cimarron River next argues that it reasonably used different methods to calculate fuel and throughput, which it based on 12 months of actual experience, and UAF, which it annualized from its post-October 9, 2008 experience. Cimarron River states that fuel consumed and throughput are measured at specific points and can be assigned clearly to the Cimarron River pipeline system, even prior to October 9, 2008. Cimarron River contends that prior to October 9, 2008, UAF was not separately calculated for the facilities that Cimarron River purchased. Therefore, Cimarron River argues that its annualization of the UAF experienced between October 9, 2008 and December 31, 2008, is the most appropriate way to estimate UAF in the following year and minimize the resultant true-up.

13. Cimarron River reiterates arguments made in its initial filing, asserting that it is in a similar position as WTG Hugoton, LP, insofar as it has a relatively large amount of compression as well as a significant number of receipt and delivery meters compared to its gas volume and pipeline mileage. Cimarron River also urges the Commission to

consider the proposed increase in the UAF rate in conjunction with the proposed decreases in fuel rates. Therefore, concludes Cimarron River, it has fully supported its UAF percentage and a technical conference is not warranted.

III. Discussion

14. In light of the more accurate measure of actual fuel usage in the portion of the 2008 data collection period in which Cimarron River owned and operated its system—between October 9, 2008, and December 31, 2008—Cimarron River's method of annualizing its UAF calculation based on this period appears reasonable. Section 12 of Cimarron River's GT&C provides for the calculation of the UAF reimbursement percentage based on the most recent 12-month period ending December 31 of each year.[5] Cimarron River, however, did not operate its system for a full 12-month period prior to December 31, 2008, and therefore lacked the actual data necessary to calculate its UAF in accordance with the methodology proscribed in its tariff. Lacking actual data for the whole of the reporting period, we find that Cimarron River reasonably based its annual UAF requirement on the actual UAF experienced during the period in which it did operate the system.

15. The alternative to this annualized calculation would have been for Cimarron River to utilize Northern's UAF reimbursement percentage in calculating its pre-October 9, 2008 UAF requirement. Such a method, however, fails to acknowledge that Cimarron River's experience has generally revealed that Northern's UAF figure was likely unrepresentative of UAF on Cimarron River's system. Using such a figure to determine the 2009 UAF would put Cimarron River in a position of potentially under-recovering its UAF by a significant amount in that year. Moreover, such a method would essentially defer Cimarron River's recovery of actual UAF amounts insofar as Cimarron River would eventually recover any under-recovered amounts through its UAF true-up in the following year (2010). Rather than perpetuate the use of a UAF reimbursement percentage that is likely unrepresentative of actual Cimarron River UAF, we find that Cimarron River's annualization of UAF experienced between October 9, 2008, and December 31, 2008, should provide a more accurate estimate of UAF experienced on Cimarron River's stand-alone system. Moreover, Cimarron River will return to shippers any over-recovery that may result from the proposed UAF percentage through the UAF true-up in its 2010 annual fuel and UAF adjustment filing. Therefore, accepting Cimarron River's proposed UAF rate here should not lead to Cimarron River over-

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[5] Cimarron River, FERC Gas Tariff, General Terms and Conditions section 12.2(c) ("The UAF percentage is calculated by dividing the 12 month actual UAF gas for the respective 12 month period ending December 31, as adjusted for known and measurable changes, by the throughput quantity for the same period summed with the applicable UAF adjustment amount, as calculated under section 12.4 (c).").

recovering its UAF. We therefore find the methodology used by Cimarron River to be reasonable under the circumstances and grant Cimarron River waiver of section 12 of its tariff to the extent necessary to develop its UAF reimbursement percentage in the manner set forth in its filing.

16. While we accept Cimarron River's proposed method for calculating the UAF rate, we find that Cimarron River has not fully supported other aspects of its filing. With respect to fuel, section 12 of Cimarron River's GT&C requires Cimarron River to base its fuel percentages on actual fuel consumed on its system, adjusted for known and measurable changes. Cimarron River's filing, however, appears to include numerous losses, ostensibly not burned as fuel,[6] in its proposed fuel percentages. By all appearances, such amounts have not been consumed at Cimarron River's compressor stations, as required for recovery in the fuel percentages. Cimarron River does not explain how recovery of such losses comports with the methodology for calculating fuel reimbursement percentages in section 12 of its GT&C. Therefore, we direct Cimarron River to file additional support and justification sufficient to support recovering such amounts as fuel or a revised tariff sheet removing such amounts from its fuel percentages within 30 days of the date this order issues.

17. Furthermore, Cimarron River failed to provide adequate support for all of the amounts it proposes to recover in its reimbursement percentages. For example, Cimarron River does not support its proposed recovery of certain gas losses in August 2008.[7] Without such support, we cannot find Cimarron River's proposed reimbursement percentages to be just and reasonable. In light of these deficiencies, Cimarron River must also file, within 30 days of the date this order issues, additional support sufficient to justify recovery of losses listed in its workpapers, with particular focus on any abnormally high monthly spikes, such as the August 2008 losses listed in footnote number 7 above.[8]

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

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[6] In its workpapers, Cimarron River classifies many of these amounts as "losses," "blowdowns," and/or "purges."

[7] *See, e.g.*, Cimarron River, February 27, 2009 Filing, Schedule B at Lines 38 and 68 (indicating that Cimarron River experienced greater-than-usual losses from a "Gas Loss" at Ellis County No. 3 and "Blow & Purge" at Spearman CSO).

[8] In doing so, we direct Cimarron to indicate whether any losses for which it proposes recovery were incurred as a result of the transition of ownership from Northern to Cimarron River in October 2008.

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 suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc*., 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances exist here where Williston is filing in accordance with a provision in an accepted tracking mechanism. Therefore, the Commission will exercise its discretion and suspend the proposed tariff sheet for a nominal period to take effect April 1, 2009, subject to refund and conditions.

<u>The Commission orders</u>:

(A) Cimarron River's First Revised Sheet No. 17 to FERC Gas Tariff, Original Volume No. 1 is hereby accepted, subject to refund and the conditions discussed in the body of the instant order, to be effective April 1, 2009.

(B) Within 30 days of the date this order issues, Cimarron River must file a revised tariff sheet and/or further explanation and support, consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.