

128 FERC ¶ 61,128
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company

Docket No. RP09-428-002

ORDER DENYING REHEARING

(Issued August 3, 2009)

1. This order denies ANR Pipeline Company's (ANR) request for rehearing of the finding in the Commission's March 31, 2009 order¹ that gas lost as a result of Hurricane Ike is not recoverable under the lost and unaccounted-for component of ANR's fuel tracker.

Background

2. On February 27, 2009, ANR filed revised tariff sheets to comply with the annual fuel and electric power cost re-determination provisions of sections 1.68 and 37 of the General Terms and Conditions (GT&C) of its tariff. As pertinent here, the proposed lost and unaccounted-for component of the Transporter's Use percentages included an adjustment for ANR's gas loss incurred as a result of Hurricane Ike which hit the Gulf of Mexico on September 11 and 12, 2008 and caused significant damage to ANR's offshore facilities. ANR stated that the Hurricane Ike gas loss reflected in its filing totaled 187,540 Mcf. ANR asserted that the fuel tracker was the quickest and most efficient method for recovery of such losses resulting from Hurricane Ike. ANR stated that inclusion of this hurricane-related gas loss represented less than 1 percent of the systemwide Transporter Use percentage for gas used in ANR's 2008 operations.

3. On March 31, 2009, the Commission issued an order on ANR's fuel tracker filing. Among other things, the Commission directed ANR to remove from the lost and unaccounted-for component of its Transporter's Use percentage the 187,540 Mcf of gas lost as a result of Hurricane Ike. The order recognized that the Commission has held that fuel tracking mechanisms should appropriately track only those costs related to normal

¹ *ANR Pipeline Company*, 126 FERC ¶ 61,313 (2009) (March 31 Order).

pipeline operations. The order stated that the Commission has found that it was not reasonable for a pipeline to recover through its fuel tracking mechanism gas lost due to an unusual, non-recurring event. The Commission stated that such extraordinary losses are more appropriately recovered through a pipeline's insurance or the normal ratemaking process.² The Commission found that the Hurricane Ike-related gas losses that ANR proposed to recover were precisely the type of extraordinary costs that the Commission has determined are not appropriate for inclusion in a fuel tracker filing.³ The Commission's holding was without prejudice to ANR making a separate, limited section 4 filing to recover these extraordinary costs.

4. On April 30, 2009, ANR filed a request for rehearing of the Commission's decision disallowing the recovery of the Hurricane Ike losses in ANR's fuel tracker.

Request for Rehearing

5. ANR submits that the gas it lost due to Hurricane Ike is recoverable under Section 37 of its tariff, which provides for the recovery of fuel and lost and unaccounted-for gas through a tracking mechanism specified in that section of the tariff. ANR contends that the loss in question falls within the plain meaning of "lost and unaccounted-for gas," because, according to ANR, the Commission has stated that the term commonly refers to "gas lost from the system *or* otherwise unaccounted for,"⁴ so long as the loss was not the result of imprudent operations.

6. ANR states that the Commission's rejection of ANR's gas loss was based on several recent cases in which the Commission has held that gas losses resulting from unusual, non-recurring events are not recoverable through fuel tracking mechanisms.⁵ ANR asserts that notwithstanding the Commission's policy as recently stated, the gas ANR lost due to Hurricane Ike – which it contends was not the result of any imprudence on ANR's part – is recoverable under the plain language of its tariff. ANR contends that

² See, e.g., *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,388 (2008).

³ See, e.g., *Columbia Gulf Transmission Co.*, 125 FERC ¶ 61,255 (2008).

⁴ Citing, *Florida Gas Transmission Co.*, 109 FERC ¶ 61,003, at P 2 (2004) (emphasis added).

⁵ Citing, *Colorado Interstate Gas Co.*, 121 FERC ¶ 61,161 (2007), *reh'g denied*, 123 FERC ¶ 61,183 (2008), *appeal filed*, Case No. 08-1243 (D.C. Cir. filed July 14, 2008) ("*CIG*"); *Columbia Gulf Transmission Co.*, 125 FERC ¶ 61,255 (2008); *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,388 (2008).

any application of this policy to ANR must be implemented prospectively under Section 5 of the Natural Gas Act.

7. ANR contends that the Commission has not articulated any reason in any of its prior orders why it would be inappropriate to allow recovery of unusual gas losses through a tracker. ANR submits that there is no aspect of fuel tracking mechanisms that would suggest it is inappropriate to allow the recovery of gas losses through such tracking mechanisms because the event causing the loss was unexpected or unusual. ANR argues that the unexpected nature of a particular gas loss, or the variation from the norm that such loss may cause are both reasons to allow recoverability of such a loss through a tracker, not to deny recoverability. ANR asserts that the fact that the Commission in the March 31 Order has permitted ANR to make another limited Section 4 filing to recover this cost substantiates the fact that limited Section 4 proceedings are appropriate procedural vehicles to determine the recoverability of such gas losses.

8. ANR asserts that the fact that a loss, such as a loss resulting from a hurricane, may be nonrecurring provides more, not less, reason to allow recovery through a tracker, as opposed to a general rate proceeding. ANR contends that the proposition that the cost of lost gas should be disallowed because it is non-recurring has no application to a tracker mechanism. ANR submits that while Commission policy is to normalize non-recurring costs in setting rates in a Section 4 rate proceeding, the purpose of such normalization is to prevent the pipeline from recovering a one-time non-recurring cost over a period of several years. ANR contends that in a rate case it is sometimes difficult to determine the period over which to normalize non-recurring costs because the time period between rates cases is unknown. ANR argues that this problem does not arise in the context of ANR's annual tracker mechanism, which is intended to true-up fuel and L&U used and retained on an ongoing basis. ANR submits that a refusal to allow recovery of prudently incurred fuel and L&U costs through an existing tracker due to the non-recurring nature of the loss is not rational.

9. ANR also submits that a standard of recoverability based on whether a loss is nonrecurring, unexpected or unusual, is vague and highly subjective. ANR contends that parts wear out, pipelines rupture or otherwise fail, and hurricanes are a fact of life in the offshore Gulf of Mexico. ANR asserts that these events happen in the pipeline industry and should not be considered unusual, unexpected or abnormal. ANR argues that there is simply no reason to preclude recovery of gas losses resulting from these events through a tracker.

10. ANR states that in support of its refusal to allow ANR to recover the loss due to Hurricane Ike in its fuel tracker, the Commission relied on its prior statement that such extraordinary losses "are more appropriately recovered through a pipeline's insurance or the normal ratemaking process." ANR contends that with respect to the notion that such losses should be recovered by pipelines through insurance, this rationale suggests that pipelines should obtain sufficient insurance to cover the extent of all insurable losses,

regardless of the cost of premiums to obtain such insurance. ANR asserts that this rationale would encourage pipelines to over-insure and increase the rates paid by ratepayers.

11. ANR states that one rationale expressed for denying recovery of this gas loss through ANR's fuel tracker is that the loss should be recoverable through the "normal ratemaking process." ANR submits that if this rationale is intended to suggest pipelines must recover these losses through a general Section 4 rate case, such a holding would be irrational. ANR contends that such a rationale cannot be squared with the Commission's March 31 Order which permitted ANR to make another limited Section 4 filing to recover this cost and substantiates the fact that limited Section 4 proceedings are appropriate procedural vehicles to determine the recoverability of such gas losses.

12. ANR argues that imposing a requirement for ANR to make an *additional* limited Section 4 filing to recover this gas loss when ANR's tariff already includes a mechanism to recover such losses through a limited Section 4 filing is arbitrary and capricious. ANR asserts that the Commission has failed to provide any rationale or justification for such a requirement. ANR contends that other than finding that ANR's fuel tracker is not the appropriate forum to recover these costs based on recent precedent, the Commission did not suggest that ANR is not entitled to recover this loss. ANR submits that there would be no purpose to require that another proceeding be initiated. ANR argues that there is no justification for all the parties and the Commission to spend these costs and resources in light of the absence of any finding that ANR is not entitled to recover this loss.

13. ANR states that the gas lost due to Hurricane Ike for which it seeks recovery through its fuel tracker is 187,540 Mcf. ANR states that inclusion of this loss in the fuel tracker would result in an increase from 1.44% to 1.45%, or an additional 0.01%, to ANR's current average system-wide Transporter's Use percentage. ANR contends that it is not reasoned decision-making to require ANR to prepare and make a separate filing to propose recovery of such a loss when the loss could be recovered in the instant proceeding.

Discussion

14. The essence of ANR's argument is that it is entitled to recover gas lost due to Hurricane Ike because the plain language of its tariff permits recovery of all gas losses, absent a showing of imprudence or negligence. ANR further argues that any change to its tariff must be made pursuant to section 5 on a prospective basis.

15. The Commission finds that ANR's argument is inconsistent with Commission policy, precedent and the common industry meaning of "lost and unaccounted-for" gas. The Commission has stated that the "standard for recovery of a loss in a [loss and

unaccounted-for] tracking mechanism is based on whether or not the lost resulted from normal pipeline operations.”⁶ In 1935, the Supreme Court recognized that “lost and unaccounted-for” gas is that which is inevitably lost through routine pipeline operations. It stated that “‘unaccounted-for gas’ . . . is gas lost as a result of leakage, condensation, expansion or contraction. There is no dispute that a certain loss through these causes is unavoidable, no matter how carefully the business is conducted.”⁷ The meaning of the term “lost and unaccounted-for gas” has remained constant. More recently the courts have stated that “[a]s natural gas is transported through a pipeline, a fraction is lost due to system leakage. This is known as lost and unaccounted-for fuel.”⁸ Certainly gas lost as a result of a hurricane is not part of a pipeline’s normal operations.

16. The Commission also declines, as it has done previously, to redefine the concept of “lost and unaccounted-for” gas to include all gas losses except those attributable to imprudence or negligence. In *CIG*, the Commission rejected “CIG’s attempt to create a standard for the recovery of lost gas in an L&U fuel tracker, such that absent negligence by the pipeline, the loss at issue here would automatically be recovered in its L&U tracker.”⁹ Since the definition of lost and unaccounted-for gas in the tariff necessarily incorporates common industry usage and Commission precedent addressing the term “lost and unaccounted-for gas,” the Commission is not contradicting the plain language of the tariff and there is no need to take any section 5 action to change the tariff.

17. ANR’s argument that the fuel tracker mechanism is the appropriate vehicle for recovery of extraordinary losses, such as the Hurricane Ike gas losses here, is without merit. First, the tracking mechanism at issue here is designed to recover “lost and unaccounted-for” gas. We have explained that the losses resulting from Hurricane Ike do not fall within the meaning of that term. Second, tracking mechanisms in general are designed to allow for streamlined rate adjustments for certain routine costs that arise from a pipeline’s normal operations. Allowing the review of tracker adjustments to expand into a sweeping examination of the circumstances surrounding an extraordinary loss and how various tariff provisions address such a loss would threaten this policy objective. For example, a determination of the ultimate recoverability of the losses attributable to Hurricane Ike would have to consider the scope and operability of Section 18.1 of the ANR tariff concerning responsibility for gas.

⁶ *Colorado Interstate Gas Company*, 123 FERC ¶ 61,183, at P 12 (2008) (*CIG*).

⁷ *West Ohio Gas Co. v. Pub. Util. Comm’n of Ohio*, 294 U.S. 63, 67 (1935).

⁸ *Northwest Pipeline Corp.*, 61 F.3d 1479, 1482 (10th Cir. 1995).

⁹ *CIG*, 123 FERC ¶ 61,183 at P 12.

18. ANR's argument that the size of the Hurricane Ike losses would only amount to a 0.01 percent increase in the fuel charge is irrelevant to the question of whether those losses are properly recoverable under the lost and unaccounted-for gas tracker. The criteria for determining whether fuel losses should be included in such a tracker is whether they are due to normal pipeline operations. There is no standard indicating that if an extraordinary loss is a small size it should be included in a tracker.

19. Contrary to ANR's argument, the Commission is not suggesting that ANR over-insure its assets and as a result increase its rates. The Commission simply stated that the Hurricane Ike losses are extraordinary losses that should be recovered through a pipeline's insurance or the normal ratemaking process. Thus, to the extent a pipeline has insurance for certain losses that would be the appropriate avenue to pursue. On the other hand, absent insurance, a pipeline has the opportunity to file a limited section 4 filing to recover extraordinary losses.¹⁰ The Commission's decision in the March 31 Order did not address the merits of whether ANR's Hurricane Ike gas losses are recoverable. Rather, the Commission found that ANR's annual fuel tracker was not the appropriate forum to recover such costs.

20. Finally, the Commission rejects ANR's argument that the Commission is wasting the Commission's and the parties' resources by requiring a separate limited section 4 filing. It is within the Commission's discretion to allocate its resources as it deems appropriate and to determine which procedural vehicles should be used to address specific issues. In addition, it was ANR's shippers themselves who requested that the Hurricane Ike costs be rejected here and argued that they would be properly recoverable through the pipeline's insurance or a limited section 4 filing. Clearly, these parties were well aware of the costs involved in participating in a limited section 4 filing. Accordingly, for all the reasons discussed above, ANR's request for rehearing is denied.

The Commission orders:

ANR's April 30, 2009 request for rehearing is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ See *Chandeleur Pipe Line Company*, 117 FERC ¶ 61,250 (2006).