

128 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Colorado Interstate Gas Company

Docket No. RP08-484-002

ORDER ACCEPTING, IN PART, AND REJECTING,
IN PART, TARIFF SHEETS

(Issued August 26, 2009)

1. On February 27, 2009, CIG filed revised tariff sheets¹ to comply with the Commission's January 30 Order, which accepted CIG's proposal to amend its penalty crediting mechanism, subject to conditions.² In this order, we accept in part and reject in part CIG's proposed tariff revisions submitted in compliance with the Commission's January 30 Order. The accepted tariff sheets are effective February 1, 2009.

I. Background

2. CIG's tariff provides for the crediting of cash-out and scheduling imbalance penalty (SIP) amounts to shippers. Prior to the initial filing in this proceeding, these amounts were credited net of costs, via a pro rata allocation based on transported quantities, to shippers every 90 days as a credit on shippers' invoices. In its initial filing, CIG proposed to change the timing of its penalty crediting mechanism to credit retained amounts annually rather than every 90 days. Additionally, CIG proposed to provide interest on retained amounts at rates accrued pursuant to 18 C.F.R. 154.501(d) (2009). CIG also proposed to revise language describing the type of costs that it will offset against penalty revenues to include "carrying costs." CIG changed the term "carrying cost" to "Imbalance Resolution Timing Costs" and CIG defined this term as "the

¹ Sixth Revised Sheet No. 318 and Seventh Revised Sheet No. 320 to its FERC Gas Tariff, First Revised Volume No. 1.

² *Colorado Interstate Gas Co.*, 126 FERC ¶ 61,085 (2009) (January 30 Order).

difference between the cashout price paid or received by Shipper/Operator and the price of gas at the time the physical imbalance is resolved by Transporter (such price determined by using transporter's accounting practices and using actual prices paid or received when applicable and otherwise using the average Cash Out Index Price)."³

3. CIG argued that its proposal to clarify the costs it may offset against penalty revenues was just and reasonable as there was no fundamental difference between the term "Transporter's Gas costs" (in CIG's existing tariff) and the term "Transporter's costs, including Imbalance Resolution Timing Costs."

4. The Commission's January 30 Order accepted CIG's proposal to amend the timing of its penalty crediting mechanism, including its proposal to include interest on penalty revenues and provide an annual penalty crediting report. The Commission, however, rejected CIG's proposal to clarify the types of costs it may offset against penalty revenue credits to include Imbalance Resolution Timing Costs associated with penalties.

II. Compliance Filing

5. On February 26, 2009, CIG filed revised tariff sheets to comply with the Commission's January 30 Order. The revised tariff language modifies section 7.13 of CIG's General Terms and Conditions (GT&C) to provide the following: "Penalties that are in excess of the Transporter's actual cash Gas costs that are received by the Transporter pursuant to the operation of sections 7.11 and 7.12 shall be credited annually to Transporters firm and interruptible Transporters Shippers...." Additionally, CIG proposes to amend section 7.11 of the GT&C to add a new section 7.11(c) that states: "Transporter will defer as a regulatory asset in FERC Account 182.3 accrued revaluation gains and/or losses that are to be recovered from or given to Shippers until such gains and/or losses are realized by a cash transaction in future period."

III. Public Notice, Interventions and Comments

6. Notice of CIG's compliance filing was issued on March 10, 2009. Interventions and protests were due on or before March 13, 2009. 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 (2009), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. BP Energy Company and BP America Production Company (collectively referred to as BP) filed a protest. Black

³ Citing CIG's revised *pro forma* Third Revised Sheet No. 231B in its October 14, 2008 Supplement Filing.

Hills Utility Holdings, Inc. d/b/a Black Hills Energy (Black Hills) filed comments and a request for technical conference.

7. On April 9, 2009, CIG filed an answer to the protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), 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. BP argues that the Commission should reject CIG's proposed tariff language regarding regulatory asset treatment of unrealized costs and revenues. BP asserts that CIG's new section 7.11(c) is not justified and is unrelated to the subject matter of the original tariff filing to modify its penalty crediting mechanism. BP further claims that section 7.11(c) might permit CIG to recover unrealized cost/revenues as a regulatory asset whenever CIG files to recover other realized costs without affording either shippers or the Commission the opportunity to review the costs. BP also contends that CIG has not supported section 7.11(c) with substantial evidence to justify the need for a provision relating to the classification of certain unrealized costs under the Uniform System of Accounts. Lastly, BP contends that compliance by a pipeline with the Commission's accounting procedures is not typically effectuated by a tariff provision because this potentially restricts the Commission's ability to assess the reasonableness of the costs placed into Account 182.3 by the pipeline, and allows unspecified costs to be classified as regulatory assets without examination or evaluation by the Commission's audit staff or by shippers.

9. In its comments, Black Hills argues that the addition of section 7.11(c) is a new proposal, and it has not been part of this docket nor was it discussed at the technical conference. Black Hills notes CIG's contention that proposed section 7.11(c) is submitted pursuant to the following statement in the January 30 Order: "To the extent that CIG experiences timing differences between the incurrence of gas costs due to shipper imbalances and their resolution at a later time, it may accrue those costs in an appropriate account and propose a method for their recovery consistent with Commission policy."⁴ Black Hill asserts that this contemplates a new tariff proposal and not a compliance matter. Black Hills avers that CIG's attempt to propose a method for recovery raises questions concerning the scope of section 7.11(c), how revaluation gains and/or losses are calculated, and the impact of classifying them as regulatory assets in FERC Account 182.3.

10. Black Hills argues that it is inappropriate for CIG to characterize this new tariff change as a compliance filing so as to eliminate the need for full explanation and

⁴ January 30 Order, 126 FERC ¶ 61,085 at P 24.

justification. Black Hills further contends that the proposal requires proper examination by the Commission and shippers to insure it is in accord with the January 30 Order. Accordingly, if the Commission does not reject proposed section 7.11(c), Black Hill requests the Commission order a technical conference so the proposal may be fully addressed and explored by the Commission and shippers.

11. In its answer, CIG asserts that proposed section 7.11(c) was properly submitted pursuant to language in the January 30 Order, which CIG claims permits it to accrue in a deferred account gas costs due to timing differences between the incurrence and resolution of shipper imbalances.⁵ CIG disputes assertions that the provision would give CIG too much discretion to classify a broad array of costs as regulatory assets, arguing that it merely implements the January 30 Order and does not grant CIG any additional discretion not already provided by the Commission. CIG states that the Commission would retain the ability to audit such accounting entries, and that its proposal to file an annual report will provide transparency to the penalty crediting process. Additionally, CIG contends that the scope of these costs has been fully addressed in this proceeding, comprising costs directly related to the “Gas costs” defined in section 7.13 of the GT&C, which includes costs resulting from the change in gas prices from the time that the imbalances were created to the time they were physically or financially resolved by CIG and its shippers. CIG notes that there will be no immediate effect on shippers from its proposal to classify “revaluation gains and/or losses” as regulatory assets and that such regulatory assets would be cleared over time when there is a cash or physical transaction.

12. CIG opposes Black Hills’ request for a technical conference, arguing that it would be a waste of resources. CIG contends that the expenses and accruals that would be included in FERC Account 182.3 have been fully vetted in the previous technical conference held in this proceeding and in comments filed thereon.

IV. Discussion

13. In this order, the Commission is evaluating whether CIG has complied with the requirements of the January 30 Order.

14. CIG’s proposed tariff language regarding the calculation of penalties, as set forth in section 7.13 complies with the Commission’s January 30 Order and is hereby accepted for filing, effective February 1, 2009. Specifically, the proposed revision to the penalty crediting mechanism reflects the Commission’s determination that it should include only actual gas costs, and it removes language that would have allowed CIG to offset carrying costs and/or Imbalance Resolution Timing Costs.

⁵ CIG, April 9, 2009 Answer at 4-5 (citing January 30 Order, 126 FERC ¶ 61,085 at P 24).

15. However, CIG has also proposed section 7.11(c)—a new tariff provision that would allow CIG to defer as a regulatory asset in FERC Account 182.3 accrued revaluation gains and/or losses that are to be recovered from or given to shippers until such gains and/or losses are realized by a cash transaction in future periods—which goes beyond the scope of what the Commission intended for the instant compliance filing. Section 154.203(b) of our regulations states: “Filings made to comply with Commission orders must include only those changes required to comply with the order.”⁶ As part of the discussion in the January 30 Order, the Commission explained that CIG may propose a method to accrue certain costs in an appropriate account. However, the Commission did not intend by this that CIG propose a tariff revision that would automatically accord regulatory asset status to such costs,⁷ or that CIG be required to do so as a condition of accepting CIG’s initial proposal. In sum, the instant compliance filing was not to be the vehicle by which CIG might seek to implement an accrual methodology within its penalty crediting mechanism. Accordingly, proposed section 7.11(c) is rejected.

16. This rejection of CIG’s proposed section 7.11(c) effectively moots Black Hills request for a technical conference. Accordingly, the request for a technical conference is denied.

The Commission orders:

(A) CIG’s proposed Seventh Revised Sheet No. 320 FERC Gas Tariff, First Revised Volume No. 1 is accepted, effective February 1, 2009.

(B) CIG’s proposed Sixth Revised Sheet No. 318 to FERC Gas Tariff, First Revised Volume No. 1 is rejected.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶ 18 C.F.R. § 154.203(b) (2009).

⁷ See *Colorado Interstate Gas Co.*, 128 FERC ¶ 61,117, at P 36 (2009) (explaining that booked costs may not necessarily reflect costs to be flowed through and recovered from CIG’s shippers).