145 FERC ¶ 61,092
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Washington Gas Light Company — Docket Nos. PR13-6-000, PR13-7-000 (not consolidated)

ORDER REJECTING AND ACCEPTING TARIFF RECORDS

(Issued October 31, 2013)

1. On November 9, 2012, in Docket Nos. PR13-6-000 and PR13-7-000, Washington Gas Light (WGL) filed tariff records updating its Firm Interstate Transportation Service Operating Statement (FITSOS) to revise its reimbursement percentages for its fuel, lost and unaccounted-for gas (LAUF) on WGL's Shenandoah system. In Docket No. PR13-6-000, WGL filed a tariff record[1] that contains a revised LAUF of 51.32 percent covering the two-year period from September 2009 through August 2011. In Docket No. PR13-7-000, WGL filed a tariff record[2] to reflect a LAUF of 3.63 percent for the period from September 2011 through August 2012. As discussed below, the tariff record filed in Docket No. PR13-7-000 and referenced in Footnote No. 2 is accepted effective November 1, 2012, as requested. The tariff record filed in Docket No. PR13-6-000 and referenced in Footnote No. 1 is rejected.

I. Background

2. WGL is a local distribution company (LDC) operating a closed loop pipeline in Virginia, known as the Shenandoah system. All gas transported on the Shenandoah

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[1] Washington Gas Light Company, FERC NGPA Gas Tariff, Firm Interstate Transportation Service Operating Statement, Interstate Service Rates, Statement of Interstate Service Rates, 1.0.0.

[2] Washington Gas Light Company, FERC NGPA Gas Tariff, Firm Interstate Transportation Service Operating Statement, Interstate Service Rates, Statement of Interstate Service Rates, 2.0.0.

system is received from Columbia Gas Transmission, LLC (Columbia Gas) at two receipt points on the Shenandoah system known as Nineveh and Cedar Creek.

3. WGL provides non-jurisdictional local distribution service on the Shenandoah System to approximately 19,000 retail customers. In addition, WGL provides interstate transportation service over the Shenandoah system to Mountaineer Gas Company (Mountaineer) under a limited jurisdiction certificate issued under section 284.224 of the Commission's regulations.[3] Mountaineer is an LDC operating solely within the state of West Virginia, and serves almost 6,000 commercial and residential customers in and near the City of Martinsburg, West Virginia.

4. The FITSOS governing WGL's service to Mountaineer requires Mountaineer "to arrange for the delivery of [its] gas to the [Nineveh[4]] Receipt Point utilizing" Columbia Gas. WGL then transports Mountaineer's gas for delivery to Mountaineer at Clearbrook, Virginia, on the northern end of the Shenandoah system. WGL's deliveries to Mountaineer are measured by a meter owned by WGL. The FITSOS requires Mountaineer to pay reservation and usage charges for this transportation service. In addition, Paragraph IV. F of the FITSOS provides that the "Shipper shall compensate WGL for actual lost and unaccounted for volumes (LAUF) adjusted annually on November 1." In each annual filing, WGL calculates the revised LAUF retention percentage based on its actual LAUF during the annual period ending on the preceding August 31.

5. On October 31, 2011, WGL sent a letter notifying the Commission and Mountaineer that the LAUF filing due on November 1, 2011 would be delayed and that it hoped to file by December 1, 2011.[5] WGL stated that, due to "the press of business . . . personnel at the Company do not have the time necessary to complete the LAUF adjustment filing at this time." WGL stated that when it did make the filing to update its LAUF filing, it would seek to make the revised rate effective on November 1, 2011. On November 30, 2011, WGL sent a second letter informing the Commission and Mountaineer that its filing would be further delayed. WGL stated that it required additional time to review and confirm the data for the filing.

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[3] *Shenandoah Gas Co.*, 44 FERC ¶ 61,108 (1988).

[4] FITSOS Paragraphs I, J. and IV. G. The FITSOS also permits Mountaineer to use the Cedar Creek receipt point "in times of emergency as a back up Receipt Point." FITSOS Paragraph I. J.

[5] *See* WGL Transmittal at 1, Docket No. PR10-105-000 (filed October 31, 2011).

6. Nearly a year later, on November 9, 2012, WGL submitted, in Docket No. PR13-6-000, the LAUF adjustment filing which had been due November 1, 2011. On the same date, WGL submitted, in Docket No. PR13-7-000, the LAUF adjustment filing, which was due on November 1, 2012.

A. Description of LAUF Filings

1. Docket No. PR13-6-000

7. In Docket No. RP13-6-000, WGL asserts that, in the fall of 2011, as it was preparing to make its LAUF filing effective November 1, 2011, it became clear that there was a nine percent increase in the LAUF for the Shenandoah system. Because of this increase, WGL states that it undertook an investigation to determine the source of the increased LAUF before making its annual LAUF filing at the Commission. WGL states that it isolated the northern part of its Shenandoah system and compared its receipts and its retail billings for the Shenandoah system to determine the cause of the LAUF. After determining that the retail billings accurately tracked the natural gas volumes received by its retail customers on the Shenandoah system, WGL asserts that it then compared the receipts in the system and the retail billings on a monthly basis for two annual periods. WGL states that, after this investigation, it ultimately concluded that it had delivered substantially more gas to Mountaineer at the Clearbrook delivery point than had been measured at that point during the relevant period, because there was no other explanation for receipts into the system being significantly higher than deliveries out of the system.[6] WGL states that its data appear to indicate that there may be issues with the metering station at Clearbrook, where it makes deliveries to Mountaineer. However, the specific cause of the LAUF is unclear, because the Clearbrook meter had been tested and inspected on a regular basis and that testing showed no irregularities.

8. Specifically, WGL asserts its investigation shows that during the September 2009 through August 2010 annual period used to calculate the LAUF retention percentage it implemented effective November 1, 2010,[7] it delivered to Mountaineer 373,937 Dth more gas than it had previously thought. In addition, WGL states that, during the September 2010 through August 2011 annual period used to calculate the LAUF retention percentage for the delayed LAUF update filing that should have taken effect on November 1, 2011, it delivered to Mountaineer 541,017 Dth more than it had previously thought. WGL proposes to treat both these amounts as LAUF.

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[6] WGL Transmittal at 3, Docket No. PR13-6-000.

[7] WGL made its 2010 LAUF filing in Docket No. PR10-105, and that filing was accepted in a delegated letter order issued on November 5, 2010.

9. Accordingly, WGL proposes a 21.48 percent LAUF retention percentage to recover the alleged 373,937 Dth of additional LAUF which it failed to include in its 2010 LAUF update filing. WGL also proposes a 26.21 percent LAUF retention percentage to recover the alleged 541,017 Dth of LAUF incurred during the September 2010-August 2011 period used to calculate the 2011 LAUF retention percentage. WGL states that this two-part increase (September 2009 through August 2010 and September 2010 through August 2011) in the LAUF percentage results in a total retention percentage of 47.69 percent.[8] The total LAUF of all three periods would result in a retention factor of 51.32 percent, including the 3.63 percent proposed in Docket No. PR13-7-000 discussed below. WGL asserts that this LAUF adjustment permits recovery of the total 914,954 Dth which was unaccounted-for during that two-year period and which WGL has now concluded after its investigation was actually delivered to Mountaineer.[9] In support of its filing, WGL argues that the 914,954 Dth of natural gas should be recovered by an adjustment to the LAUF retention percentage because it falls within the Commission definition of LAUF. Specifically, WGL contends that the Commission defines LAUF as gas which is inevitably lost through routine pipeline operations.[10] WGL states that the standard for recovery under a fuel tracker is whether the gas losses are due to "normal pipeline operations" and extraordinary losses not associated with routine maintenance or other normal operations are not recoverable. In addition, WGL asserts that the pipeline in *Transco* filed to revise its fuel retention percentages due to, among other things, gas metering measurement errors.[11] WGL states the Commission allowed the pipeline in *Transco* to recover these costs.[12] Moreover, WGL contends that the Commission also allowed *Northern Natural* to recover its unaccounted-for volumes from measurement errors as LAUF.[13]

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[8] WGL Transmittal at 2, Docket No. PR13-6-000.

[9] WGL Transmittal at 2 and n. 3-4, Docket No. PR13-6-000.

[10] WGL Transmittal at 4, Docket No. PR13-6-000 (citing *Colorado Interstate Gas Co.*, 121 FERC ¶ 61,161 (2007) (*CIGI*) *order on reh'g*, 123 FERC ¶ 61,183 (2008) (*CIGI Rehearing*), *aff'd Colorado Interstate Gas Co. v. FERC*, 599 F.3d 698 (D.C. Cir. 2010) (collectively, *CIGI* proceedings)).

[11] WGL Transmittal at 4-5, Docket No. PR13-6-000 (citing *Transcontinental Gas Pipe Line Corp*., 93 FERC ¶ 61,114 (2000), *order on reh'g*, *Transcontinental Gas Pipe Line Corp*., 95 FERC ¶ 61,299 (2001) (*Transco*)).

[12] *Id.* at 5 (citing *Transco*, 95 FERC ¶ 61,299).

[13] WGL Transmittal at 7, Docket No. PR13-6-000 (citing *Northern Natural Gas Co*., 110 FERC ¶ 61,253 (2005) (*Northern Natural*)).

10. Here, WGL argues that the quantities at issue were lost through routine pipeline operations and are recoverable as LAUF. WGL further claims that this adjustment is clearly recoverable as LAUF because it arises due to routine pipeline operations and is not considered an extraordinary loss. WGL states that the loss volume was calculated based on the difference between the gas received as measured at the receipt points and gas delivered as measured at the delivery points.[14] WGL attributes all the quantities it seeks to recover from Mountaineer to "issues with the metering station at Clearbrook where Mountaineer receives its gas."[15] Further, WGL proposes to recover its LAUF solely from Mountaineer because "Mountaineer is the only customer that has benefitted from the gas that was unaccounted-for during the September 2009 through August 2011 period."[16] WGL argues it "conducted a thorough investigation" and has accurately calculated the amount of the proposed adjustment.[17]

11. Upon completing its investigation, WGL states it informed Mountaineer of the unaccounted-for volumes. By letter dated May 7, 2012, WGL states that it requested the return of unaccounted-for volumes in the amount of 989,470 Dth.[18] Subsequently, WGL deducted LAUF and Company Use Gas as reflected in Attachment B of the instant filing, which reduced the 989,470 Dth to 914,954 Dth.[19] WGL states it calculated the retention percentage based upon the throughput of Mountaineer alone so that Mountaineer, the sole beneficiary, bears sole responsibility for compensating WGL.[20]

12. Finally, WGL notes that, to the extent it has recovered these costs for this gas from its retail customers, any amounts that it recovers from Mountaineer will be passed through to those customers. WGL requests an effective date of December 15, 2012 for this filing to permit recovery under its LAUF mechanism as proposed herein. WGL states that it has proposed a fair and equitable solution to recover the costs of the unaccounted-for gas from Mountaineer and to the extent the Commission believes this issue should be the subject of a complaint in another forum, WGL requests that the

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[14] WGL Transmittal at 5, Docket No. PR13-6-000.

[15] WGL Transmittal at 3 n. 8, Docket No. PR13-6-000.

[16] *Id.* at 5 (addressing the out-of-period LAUF adjustment).

[17] *Id*. at 6-7.

[18] WGL Transmittal at 7 n. 32, Docket No. PR13-6-000.

[19] *Id*.

[20] WGL Transmittal at 7, Docket No. PR13-6-000.

Commission issue an order without prejudice to permit WGL to pursue recovery in such forum.

2. Docket No. RP13-7-000

13. In Docket No. PR13-7-000, WGL filed its annual LAUF adjustment applicable to the firm transportation service provided to shippers effective November 1, 2012. WGL proposes, in compliance with paragraph IV. F of the FITSOS, an actual LAUF adjustment of 3.63 percent for its firm transportation service, an increase from the currently approved LAUF rate, of 1.22 percent.

II. Public Notice, Protest and Answer

14. Notices of the filings were issued on November 19, 2012, with protests or interventions due on or before November 27, 2012. On November 27, 2012, Mountaineer filed a motion to intervene and protest. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)), all timely filed motions to intervene and any unopposed 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.

15. On December 5, 2012, WGL filed a motion to answer and answer to Mountaineer's protest, and on December 17, 2012, Mountaineer filed motion to answer and reply to WGL's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213(a)(2) (2013)) prohibits answers to protests unless otherwise ordered by the decisional authority. In this case, the Commission will accept WGL's answer and Mountaineer's reply because they assisted us in our decision-making process.

A. Mountaineer Protest

16. In its protest, Mountaineer asserts that, while WGL blames the unaccounted-for quantities on meter error, it virtually ignores the applicable contract provisions governing how meter errors between the parties will be addressed. Specifically, Mountaineer argues WGL fails to acknowledge that it is prohibited from recovering all of the out-of-period quantities that it seeks to recover because Article X, Section C of the FITSOS sets forth a specific formula for calculating the amount of gas WGL may recover from Mountaineer due to meter error. Mountaineer notes the above section, among other things, states: "[t]he parties agree to be bound by the proper implementation of FERC approved Tariffs of Buyer's Transporter regarding the measurement of receipts under this agreement."[21] In this case, Mountaineer asserts the transporter is Columbia Gas. Mountaineer argues

[21] Mountaineer Protest at 7 (citing Article X, Section C of the FITSOS).

that Columbia Gas' meter error tariff provisions do not provide for recovery of this gas through a LAUF mechanism and WGL may not "back-door" a binding contract provision by reformulating the gas as LAUF. In these instances, Mountaineer claims that the Commission has declined to exercise jurisdiction, finding that such contract disagreements should be settled in the court system.[22] Therefore, Mountaineer states the Commission should reject WGL's out-of-period adjustment filing in PR13-6-000 and instead, direct WGL to pursue its contractual remedies regarding the unaccounted-for volumes in court.

17. Next, Mountaineer contends that, even if the Commission considers WGL's LAUF filings, the quantities WGL seeks to recover fall outside normal pipeline operations and cannot be considered "LAUF" under Commission precedent. Mountaineer argues that, the Commission defines LAUF as that which "occurs from leakage, variations in metering at different locations and other reductions in the volume of gas transmitted that cannot be allocated to a particular operating account."[23] However, Mountaineer maintains that the Commission has narrowed the definition of "normal operations" noting that the definition of LAUF should not be over-expansive because it would allow for windfalls and over-recovery. Mountaineer claims that, in WGL's LAUF filings, WGL is seeking such a windfall by claiming all its losses as LAUF.

18. In addition, Mountaineer contends that WGL's position is no different in effect as that rejected by the Commission in *CIG I Rehearing*.[24] Mountaineer states the pipeline in *CIG I Rehearing* identified a loss of 451,000 Dth of gas to a down-hole failure of casing equipment on a storage injection/withdrawal well.[25] Mountaineer asserts that, in rejecting CIG's argument for full recovery, the Commission stated that CIG "appears to argue that, no matter the cause or size, all gas losses whether known or accounted-for may be recovered in its L&U tracker."[26] Mountaineer argues that the Commission expressly rejected this hypothesis, stating that, "[t]o classify all losses as L&U would create a perverse incentive for the pipeline to avoid insuring against losses of gas in its

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[22] Mountaineer Protest at 12 (citing *City of Glendale v. Portland Gen Elec. Co.*, 113 FERC ¶ 61,285 (2005) declining primary jurisdiction over a contract dispute).

[23] *Id.* (citing *Transwestern Pipeline Co.*, 51 FERC ¶ 61,343, at n.3 (1990) (*Transwestern*)).

[24] Mountaineer Protest at 10 (citing *CIG I Rehearing*, 123 FERC ¶ 61,183).

[25] *Id.*

[26] *Id*. (citing *CIG I Rehearing*, 123 FERC ¶ 61,183 at P 13).

possession and control."[27] In addition, Mountaineer contends that the Commission has recognized that there are multiple ways by which lost gas may be recovered, specifically referring to the fact that contract provisions in the appropriate tariff may offer other avenues for recovery.[28]

19. Next, Mountaineer argues that WGL seeks to attribute all the quantities it seeks to recover from Mountaineer to issues with the metering station at Clearbrook but ignores the fact that the Clearbrook meter was tested in June 2009, May 2010, June 2011, and in November and December 2011 and was found to be reading accurately. However, Mountaineer asserts that WGL totally ignores its own meter tests and attributes the entire LAUF volumes on the Shenandoah system to Mountaineer's 6,000 customers while ignoring its own 19,000 customers served by the same system. Mountaineer also acknowledges that, while it has probably received over-deliveries of gas, it is erroneous to suggest as WGL does that it has received 100 percent of the unaccounted-for deliveries.

20. Finally, Mountaineer argues that the Commission should also reject the LAUF filing in Docket No. PR13-7-000 because it is based on the erroneous assumption that Mountaineer is receiving over-deliveries of gas on the Shenandoah system.

B. WGL Answer

21. In its answer, WGL re-iterates its previous arguments that the volumes it seeks to recover from Mountaineer are LAUF as defined by Commission precedent and that these volumes were found to be delivered to Mountaineer after investigation. WGL asserts that the Commission has routinely found that gas losses associated with measurement errors are part of normal pipeline operations and are recoverable under LAUF gas trackers. WGL argues that it calculated the quantities based on the difference between gas received (measured at receipt points) and gas delivered (measured at delivery points), which is the same type of calculation used in both *CIG II*[29] and *HIOS*.[30] In addition, WGL argues that the case cited by Mountaineer is distinguishable. WGL contends that Mountaineer cites the *CIG I* proceedings, in which the Commission rejected the pipeline's apparent

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[27] *Id*. (citing *CIG I Rehearing*, 123 FERC ¶ 61,183 at P 13).

[28] *Id*. at 11 (citing *CIG I Rehearing*, 123 FERC ¶ 61,183 at P 13).

[29] WGL Answer at 10 (citing *Colorado Interstate Gas Co*., 104 FERC ¶ 61,334, at PP 1, 7, 9 (2003) (*CIG II*)).

[30] *Id.* (citing *High Island Offshore Sys., LLC*, 118 FERC ¶ 61,256, at P 17 (2007) (*HIOS*)).

argument that all gas losses, except for those resulting from pipeline negligence, whether known or unaccounted-for should be recovered under the LAUF tracker.[31] WGL asserts that the *CIG I* proceedings are completely irrelevant to the instant proceedings because it is not proposing to recover all possible gas losses except for losses resulting from pipeline negligence. Moreover, WGL avers that the losses from Clearbrook due to measurement errors are not catastrophic or abnormal losses; they are part of normal pipeline operations and recoverable under LAUF trackers.

22. In addition, WGL argues that, contrary to Mountaineer's statements, it is not contractually barred from recovering the gas volumes as LAUF volumes. WGL asserts that Mountaineer's entire argument is premised on a misreading of Article X, Section C of the FITSOS which governs receipts and deliveries of gas. WGL states that the language Mountaineer relies on states that the parties will be bound by the proper implementation of FERC approved tariffs of Columbia regarding the measurement of "receipts" under the FITSOS. WGL states that this LAUF issue does not relate to the "receipt" of gas but to the "delivery" of gas and therefore, it does not fall within the relevant sentence. Finally, WGL contends that Mountaineer even admits to having received over-deliveries of gas.

23. Next, with regard to the parties' contract dispute, WGL refers to *Bay Gas*[32], stating that the Commission is empowered and has asserted primary jurisdiction over LAUF charges to ensure that rates were consistent with the Commission's regulations. Therefore, WGL states the Commission has primary jurisdiction over this matter and should hear the parties' claims.

C. <u>Mountaineer Reply</u>

24. In its reply, Mountaineer re-iterates its position that the volumes WGL seeks to recover from it are not LAUF; instead, the volumes are measurement errors properly treated as contract disputes that the Commission typically leaves up to the courts to settle. Mountaineer asserts that WGL did not supply the underlying data to support its calculations of LAUF in either Docket No. PR13-6-000 or PR13-7-000, but it instead relies on estimates and guesses contested by Mountaineer. Accordingly, short of rejecting WGL's filings, Mountaineer requests a hearing or technical conference be held to clarify the issues.

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[31] WGL Answer at 11 (citing *CIG I Rehearing*, 123 FERC ¶ 61,183 at PP 10-11).

[32] WGL Answer at 8 (citing *Bay Gas Storage*, 131 FERC ¶ 61,034 (2010) (*Bay Gas*)).

III. Discussion

25. The Commission rejects WGL's LAUF filing in Docket No. PR13-6-000 for the reasons discussed below. With regard to the tariff record filed in Docket No. PR13-7-000, the Commission accepts the filing as just and reasonable for the reasons discussed below.

A. PR13-6-000

26. In this filing, WGL proposes to recover as LAUF 914,954 Dth which it states it actually delivered to Mountaineer during the two-year period September 2009 through August 2011. The Commission rejects this proposal, because gas delivered to a customer is neither lost nor unaccounted for. Therefore, such gas may not be recovered pursuant to the LAUF provisions of a pipeline's tariff.

27. In order for gas to be lost or unaccounted for, it must be lost while in transit on the pipeline's system between the receipt point onto the system and the delivery point off the system. As the United States Court of Appeals for the District of Columbia Circuit has explained, "[t]he amount of gas a shipper delivers to the pipeline will never be exactly the same as *the amount of gas that arrives at the destination. In the course of moving gas from one place to another*, some of it is lost due to small leaks or metering errors. Gas lost in this way is known as lost and unaccounted for gas."[33] Consistent with this definition, natural gas pipelines calculate LAUF by subtracting total deliveries of natural gas off their systems from total receipts onto their systems.[34] The amount by which deliveries are less than receipts is considered to be lost or unaccounted for and, therefore, qualifies as LAUF. WGL states that it uses this method to measure its LAUF quantities.[35]

28. By WGL's own account, the 914,954 Dth it seeks to recover as LAUF "arrive[d] at [its] destination" -- the Clearbrook delivery point. Moreover, WGL states it delivered the full 914,954 Dth to Mountaineer. Therefore, WGL did not lose that gas "in the course of moving [it] from one place to another." In these circumstances, the 914,954

[33] *CIG I*, 599 F.3d 698, 700.

[34] *See Northern Natural*, 110 FERC ¶ 61,253 at P 3 (Northern determines the quantify of its unaccounted for gas by subtracting the amount of system deliveries from the amount of system receipts. The difference is considered to have been lost. Thus, the fewer deliveries Northern makes in comparison to its receipts, the greater the level of LAUF gas).

[35] WGL Transmittal at 5, Docket No. PR13-6-000.

Dth cannot be considered either lost or unaccounted for, and therefore that quantity of gas is not eligible for recovery under the LAUF provisions of WGL's FITSOS.

29. WGL contends that it should be permitted to recover the 914,954 Dth under the LAUF provisions of its tariff, as a prior period adjustment required in order to correct a meter error at the Clearbrook delivery point. WGL asserts that the Commission has permitted pipelines to recover such prior period adjustments as LAUF in a number of cases, including *Transco,*[36] *Northern Natural,*[37] *CIG II,*[38] *TransColorado*,[39] and *HIOS.*[40] However, these cases are all distinguishable from the present case for the simple reason that in those cases correction of the meter or other accounting error caused the pipeline's LAUF to increase, whereas in this case correction of the meter error causes the pipeline's LAUF to decrease.

30. As described above, pipelines calculate LAUF by subtracting total system deliveries from total system receipts. Thus, the fewer deliveries a pipeline makes in comparison to its receipts, the greater its LAUF. It follows that any meter error that reduces the difference between receipts and deliveries will make LAUF appear to be less than it actually is. For example, in *Northern Natural,*[41] the pipeline stated that a calibration error in a delivery point meter led it to believe that during 1999 to 2001 it delivered 1.3 Bcf more gas at that delivery point than it actually delivered, and this error had been reflected in the pipeline's 1999-2001 fuel filings. "Correcting this error reduced its deliveries for that period by 1.3 Bcf and accordingly increased its [LAUF] by the same amount."[42] The Commission therefore allowed the pipeline to recover this increase in LAUF in its 2002 fuel filing.

31. This case, however, involves the reverse situation. WGL's meter incorrectly underestimated its gas deliveries to Mountaineer. As a result, when WGL subtracted its deliveries from its receipts, its LAUF appeared higher than it actually was, leading WGL

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[36] *Transco*, 93 FERC ¶ 61,114, *reh'g denied*, 95 FERC ¶ 61,299.

[37] *Northern Natural*, 110 FERC ¶ 61,253.

[38] *CIG II*, 104 FERC ¶ 61,134.

[39] 112 FERC ¶ 61,135 (2005).

[40] *HIOS*, 118 FERC ¶ 61,256 at PP 10, 17.

[41] *Northern Natural*, 110 FERC ¶ 61,253 at PP 3, 31-33

[42] *Id*. P 3.

to investigate why its LAUF was unusually high. Unlike in *Northern Natural*, WGL's correction of its error reduces the difference between its system receipts and system deliveries and thus reduces its LAUF. The correction cannot be treated as an *increase* in LAUF, because it is actually a *reduction* in LAUF.

32. The other cases relied on by WGL are distinguishable on the same grounds. In *CIG II*, as in *Northern Natural,* a calibration error at a delivery point caused the pipeline to overestimate its deliveries. Correction of the error decreased its deliveries, thereby increasing its LAUF.[43] In *TransColorado*,[44] the pipeline incorrectly accounted for certain linepack purchases as deliveries to shippers. Correction of that error also decreased its deliveries, thereby increasing its LAUF. In *Transco*, various accounting and metering errors led the pipeline to underestimate receipts onto its system.[45] Similar to the measurement errors in *Northern Natural* and *CIG II*, this reduced the difference between receipts and deliveries, making it appear that the pipeline's LAUF was less than it actually was. Correction of the errors increased LAUF, and the Commission ultimately allowed the pipeline to recover the increased LAUF. Finally, *HIOS* is not on point, because it involved actual physical losses of gas as opposed to metering or accounting errors.[46]

33. WGL's contentions in this case appear to start from the premise that its showing that it delivered 914,954 Dth to Mountaineer is sufficient, by itself, to justify its recovery of that quantity of gas from Mountaineer. That premise is wrong. WGL provides a transportation service to Mountaineer, not a sales service. Thus, the gas WGL transports for Mountaineer is owned by Mountaineer, not WGL. Consistent with these facts, Section IV. G of WGL's FITSOS requires Mountaineer to arrange for its gas to be transported to WGL on the Columbia Gas system, so that WGL can then transport that gas across its system to Mountaineer. It follows that, so long as Mountaineer has

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[43] *CIG II*, 104 FERC ¶ 61,334 at PP 6-9. *See also* CIG's explanation of the error in its September 22, 2003 answer in Docket No. RP03-585 at p 6-7.

[44] 112 FERC ¶ 61,135 at P 4.

[45] *See Transco,* 90 FERC at 61,502, describing the measurement errors. See also Transco's explanation of the errors in its April 20, 1999 filing in Docket No. TM99-6-29-000.

[46] *HIOS*, 118 FERC ¶ 61,256 at PP 10, 17 (Commission declines to hold a technical conference and accepts revisions to the fuel tracker mechanism due to unaccounted-for gas resulting from a leak in two ball valves at its Stingray interconnect and fragments of a pipeline pig got stuck in a delivery meter facility at the Sabine Plant inlet).

complied with this requirement, the gas WGL delivers to Mountaineer is Mountaineer's gas, and there is no basis for WGL to charge Mountaineer for that gas.

34. It is only when Mountaineer takes more gas from WGL than it arranged to have Columbia Gas place on WGL's system that WGL could be entitled to recover the cost of that gas from Mountaineer. Such conduct by Mountaineer would create an imbalance between receipts onto WGL's system and deliveries off its system. Resolution of such imbalances is governed by Section IV. E of WGL's FITSOS concerning balancing, not Section IV. F concerning LAUF. FITSOS Section IV. E provides, "Balancing of receipts and deliveries of shipper's gas hereunder shall be arranged between Shipper and Shipper's Transporter [Columbia Gas]. If balancing arrangements between Shipper and Shipper's transporter do not become and remain effective, Transporter and Shipper shall negotiate the terms applicable to balancing."

35. WGL has not contended in this proceeding that it is entitled to recover any portion of the 914,954 Dth pursuant to the Section IV. E balancing provisions of the FITSOS. The record before us contains no information as to what balancing arrangements Mountaineer may have with Columbia Gas or whether WGL and Mountaineer may have negotiated among themselves any arrangements as to balancing. Nor does the record contain any information as to whether Mountaineer may have arranged with Columbia Gas to have some or all of the 914,954 Dth placed onto WGL's system. Therefore, we make no finding in this order concerning whether WGL may be entitled to recover any of the 914,954 Dth as an imbalance.

36. For the reasons discussed above, the Commission concludes that WGL may not recover the disputed 914,954 Dth of gas delivered to Mountaineer pursuant to the LAUF provisions of the FITSOS, and therefore the Commission rejects WGL's filing in Docket No. PR13-6-000. However, this holding is without prejudice to WGL pursuing recovery of some or all of the disputed 914,954 Dth under the Section IV. E balancing provisions of its FITSOS.

B. Docket No. PR13-7-000

37. In Docket No. PR13-7-000, WGL submitted a LAUF adjustment for the "current period" beginning on November 1, 2012, requesting an adjusted retainage factor of 3.63 percent (an increase from its current 1.22 percent rate). According to Mountaineer, the Commission should reject this filing because the calculations used in preparing the LAUF adjustment are based upon the alleged over-deliveries to Mountaineer as described in the out of period LAUF adjustment filing in Docket No. PR13-6-000.

38. The Commission review of this filing does not show that the calculations in this docket allocate the lost and unaccounted for volumes in a discriminatory manner. To the contrary, the calculations presented by WGL are for only the current period and are allocated to all deliveries on the Shenandoah system, not just to deliveries to

Mountaineer. Therefore, the Commission will accept the 2012 LAUF Filing and its proposed 3.63 percent LAUF rate with the requested November 1, 2012, effective date.

The Commission orders:

(A) WGL's tariff record referenced in Footnote No. 2 above, filed in Docket No. PR13-6-000, reflecting a 51.32 percent adjusted LAUF retainage with requested effective date of December 15, 2012 is rejected.

(B) WGL's tariff record referenced in Footnote No. 1 above, filed in Docket No. PR13-7-000, with a percentage of gas retained for LAUF equal to 3.63 percent with requested effective date of November 1, 1012 is accepted.

(C) Within 30 days of a final order in this case, WGL must refund fuel recovered in excess of the just and reasonable rates approved by the Commission.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.