

147 FERC ¶ 61,002
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

WBI Energy Transmission, Inc.

Docket No. RP14-118-001

ORDER ON REHEARING

(Issued April 1, 2014)

1. On December 26, 2013, WBI Energy Transmission, Inc. (WBI Energy) sought rehearing of the Commission's November 26, 2013 Order¹ which accepted and suspended WBI Energy's proposed general section 4 rate filing and other tariff changes, subject to refund, and subject to the outcome of hearing procedures. On rehearing, WBI Energy asserts that the November 26 Order erroneously provided that the hearing may also address pursuant to section 5 of the Natural Gas Act issues related to WBI Energy's fuel mechanism and fuel rates. As discussed below, the Commission denies WBI Energy's rehearing request.

I. Background

2. On October 31, 2013, WBI Energy filed revised tariff records reflecting a general rate increase under section 4 of the Natural Gas Act (NGA). Among other changes, WBI Energy proposed to create separately stated transportation and fuel rates for the Garden Creek and Stateline laterals. WBI Energy asserted that these facilities are not integrated with the rest of WBI Energy's system and require no compression or electric power. Protests were filed by the WBI Shipper Group,² Northern States Power Company, and CHS Inc.

¹ *WBI Energy Transmission, Inc.*, 145 FERC ¶ 61,176 (2013) (November 26 Order).

² The WBI Shipper Group consists of Cross Timbers Energy Services, Inc.; Hess Corporation and Sequent Energy Management, L.P.

3. The November 26 Order established a hearing to explore the issues raised regarding WBI Energy's October 31 filing pursuant to section 4 of the NGA, including WBI Energy's proposed separately stated fuel rates for the Garden Creek and Stateline lateral projects. The November 26 Order also stated that other issues related to WBI Energy's fuel mechanism in section 37 of its General Terms and Conditions (GT&C) or fuel rates may also be considered at the hearing pursuant to section 5 of the NGA.

II. Rehearing

4. WBI Energy asserts that the Commission erred by permitting the hearing to explore issues related to WBI Energy's fuel mechanism. WBI Energy states that its existing fuel mechanism is consistent with Commission policy which permits pipelines to recover "fuel costs in a periodic limited section 4 rate case."³ WBI Energy explains that it recovers its fuel costs pursuant to its fuel mechanism in section 37 of its GT&C. WBI Energy states that shortly before filing the general section 4 rate case at issue in this proceeding, WBI Energy filed a periodic update to its fuel rates to be effective on October 1, 2013.⁴ WBI Energy states that this filing was unopposed and that any objections to WBI Energy's fuel mechanism or fuel rates should have been raised in that proceeding. WBI Energy states that the Commission has failed to abide by its precedent and "overruled" WBI Energy's election to recover fuel costs via a tracker mechanism subject to periodic limited section 4 filings.

5. WBI Energy argues that the November 26 Order exceeded the Commission's NGA section 5 authority. WBI Energy claims that prior to initiating an investigation via a hearing under NGA section 5, the Commission must first determine that "the presumptively just and reasonable existing rate is no longer just and reasonable."⁵ WBI Energy argues that the Commission had no justification for ordering the review of its fuel mechanism and fuel rates.

³ WBI Energy Rehearing at 6 (citing *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 28 (2005)).

⁴ WBI Energy filed the periodic update to its fuel rates in Docket No. RP13-1292-000. The Commission accepted the filing on September 26, 2013.

⁵ WBI Energy Rehearing at 8 (citing *Western Resources, Inc. v. FERC*, 9 F.3d 1568, at 1579-80 (1993); *Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 446, 456 (D.C.Cir.1988)).

III. Discussion

6. The Commission denies rehearing. The Commission's November 26 Order reasonably permitted parties at the hearing to address WBI Energy's existing fuel mechanism and fuel rates pursuant to section 5 of the NGA. In its October 31 general section 4 rate filing, WBI Energy proposed to modify its fuel mechanism so that the Garden Creek and Stateline laterals have separately stated fuel rates. Given that the parties at hearing will be addressing these proposed changes to WBI Energy's fuel mechanism, the Commission properly allowed the parties at hearing to also address unchanged aspects of WBI Energy's fuel mechanism. This decision was informed by administrative efficiency. If parties have objections regarding WBI Energy's existing fuel mechanism, it would not be administratively efficient to require the initiation of a completely separate proceeding, including the possibility of yet another hearing.⁶ The November 26 Order reasonably exercised the Commission's authority to allow the hearing to consider any and all issues related to WBI Energy's fuel rates and mechanism.

7. WBI Energy's reliance upon *Western Resources* and *Tennessee* is misplaced. The limits upon Commission authority discussed in these cases apply when the Commission "imposes a new rate under section 5."⁷ In the November 26 Order, the Commission did not impose a new rate. Rather, the Commission merely stated "Other issues related to WBI's fuel mechanism in section 37 of its GT&C or fuel rates *may* also be considered at the hearing pursuant to section 5 of the NGA."⁸ The Commission made no final

⁶ Under the NGA, an action may originate as a section 4 proceeding only to be transformed later into a section 5 proceeding. *See Robin Pipeline Co., v. FERC*, 795 F.2d 182, 184 (D.C. Cir. 1986); *Western Resources*, 9 F.3d at 1579-80. When authorized by the Commission, the hearing associated with a general section 4 rate case may serve as a forum for addressing issues under section 5 related to a pipeline's fuel rates and mechanism. *See Southern Natural Gas Co., L.L.C.*, 144 FERC ¶ 61,023, at P 13 (2013) (deferring consideration of a pipeline's fuel mechanism under section 5 of the NGA until the pipeline's upcoming general rate case). Whether to set an issue for hearing is subject to the Commission's discretion. *Trailblazer Pipeline Co. LLC*, 144 FERC ¶ 61,252, at P 6 (2013) (citations omitted). As noted above, such consideration is appropriate here where WBI Energy has proposed to change aspects of its fuel recovery process as a part of its general section 4 rate filing.

⁷ *Western Resources*, 9 F.3d at 1579-80; *Tennessee*, 860 F.2d at 453-456.

⁸ November 26 Order, 145 FERC ¶ 61,176, at P 11 (2013) (emphasis added).

determination as to whether WBI Energy's existing fuel rates or fuel mechanism are just and reasonable.

8. Merely permitting the parties to explore WBI Energy's fuel rates and mechanism at hearing does not violate Commission precedent. Commission policy permits pipelines to recover fuel costs via periodic limited section 4 filings, and, contrary to WBI Energy's claims, the November 26 Order did not alter this policy.⁹ However, to be just and reasonable, a pipeline's fuel mechanism must conform to the Commission's specific policies related to these fuel mechanisms. Whether WBI Energy's mechanism and rates conform with Commission policy may, to the extent any party wishes to pursue this matter, be an issue at hearing. Of course, any party challenging the existing provisions in WBI Energy's fuel mechanism pursuant to section 5 will have the burden to show that: (a) WBI Energy's existing mechanism is no longer just and reasonable; and (b) any replacement mechanism proposed by the party is just and reasonable.¹⁰

The Commission orders:

The Commission denies rehearing as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ As noted previously, the hearing associated with a general section 4 rate case may serve as a forum for addressing issues under section 5 related to a pipeline's fuel rates and mechanism. *Southern*, 144 FERC ¶ 61,023 at P 13. Such consideration is appropriate here where WBI Energy has proposed to change aspects of its fuel recovery process as a part of its general section 4 rate filing.

¹⁰ *E.g. Western Resources*, 9 F.3d at 1579-80; *Tennessee*, 860 F.2d at 456.