

155 FERC ¶ 61,132
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Gulf South Pipeline Company, LP

Docket No. RP16-131-002

ORDER DENYING CLARIFICATION AND REHEARING

(Issued May 3, 2016)

1. In a February 18, 2016 Order, the Commission accepted Gulf South Pipeline Company LP's, (Gulf South) proposed tracking mechanism for the recovery of Fuel and Company-Used Gas (CUG) and Lost and Unaccounted for Gas (LAUF), subject to conditions.¹ On March 18, 2016, Gulf South filed a request for clarification of the February 18 Order or, alternatively, rehearing, objecting to the conditions that the Commission imposed on Gulf South's tracker proposal. As discussed below, the Commission denies Gulf South's request for clarification and rehearing.

I. Background

2. Gulf South proposed to replace its fixed rate fuel recovery mechanism with a tracking mechanism for CUG and LAUF in accordance with a settlement approved by the Commission on December 18, 2015.² Gulf South's proposal included establishing a fuel tracking mechanism, pursuant to which it would establish Effective Fuel Retention Percentages (EFRP) to be charged to all natural gas volumes transported on its system. Gulf South proposed that the EFRPs contain two components: (1) Projected Fuel Retention Percentages (PFRP or projection) and (2) the Fuel Adjustment Percentage (FAP or true-up). Gulf South proposed to calculate the PFRP by projecting its total CUG volumes and LAUF volumes for the next year,³ and dividing those total volumes by its

¹ *Gulf South Pipeline Co., LP*, 154 FERC ¶ 61,115 (2016) (February 18 Order).

² *Gulf South Pipeline Co., LP*, 153 FERC ¶ 61,326 (2015).

³ Gulf South would make this projection based on actual volumes during the preceding September 1 through August 31 annual period, as adjusted for known and measurable changes.

total quantities of gas received during the same preceding annual period. Gulf South proposed that the FAP would true up any over- or under-collections incurred during the prior annual period. According to Gulf South, the sum of the PFRP and FAP equals the EFRP that Gulf South will charge on all volumes transported.

3. As pertinent to Gulf South's request for rehearing, its proposed General Terms and Conditions (GT&C) section 6.9.4(5)(b) provides that if "any EFRP reflects a gain, the identified EFRP rate shall equal zero and the gain balance shall be carried forward into the next 12 month period for the identified EFRP."⁴ Gulf South's tariff provides for certain transactions to be subject only to LAUF charges because the relevant transportation service does not require it to incur fuel costs.⁵ Gulf South accordingly proposed to list separately the EFRPs for "System Fuel and Company-Used Gas Allowance (Inclusive of LAUF)," "Southeast Market Expansion Fuel and Company-Used Gas Allowance," and "LAUF Allowance." Thus, Gulf South proposed different EFRPs for different classes of shippers.

4. In the February 18 Order, the Commission found that Gulf South's proposed tariff records, as written, provided a just and reasonable method of assessing fuel use and LAUF charges. Among other things, the Commission interpreted GT&C section 6.9.4(5)(b) as being consistent with the Commission's policy, set forth in *Wyoming Interstate Company*,⁶ that a negative LAUF component must be used to reduce a positive fuel use component when setting the overall fuel and LAUF retention percentage. The Commission agreed with a protester that proposed GT&C section 6.9.4(5)(b) would be inconsistent with Commission policy if it permitted Gulf South to set the LAUF percentage at zero, even when a negative LAUF percentage was more than offset by a positive fuel use percentage. However, the Commission found that Gulf South's proposed tariff language required it to offset any negative LAUF percentage against a positive CUG percentage, when calculating the EFRPs applicable to transactions subject to both CUG and LAUF charges.⁷ The Commission explained:

GT&C section 6.9.4(3) requires Gulf South to calculate a single overall projected fuel retention percentage for each

⁴ Proposed section 6.9.4(5) (b) of Gulf South's GT&C.

⁵ These transactions include all transactions in the Lake Charles Zone, Brewton-Flomaton transactions and certain posed transactions between particular receipt and delivery points.

⁶ *Wyoming Interstate Co.*, 121 FERC ¶ 61,213, at P 17 (2007) (*WIC*).

⁷ February 18 Order, 154 FERC ¶ 61,115 at P 13.

EFRP category that includes both Fuel and Company Used Gas and LAUF. GT&C section 6.9.4 requires Gulf South to calculate a single overall fuel adjustment percentage for purpose of truing up under- and over-recoveries of both Fuel and Company Use and LAUF. Thus, both the projected fuel retention percentage and the fuel adjustment percentage will reflect an offsetting of any negative component, such as fuel, by any positive component such as fuel use, consistent with *WIC*. Similarly, the EFRPs which result from combining the projected fuel retention percentage and the fuel adjustment percentage will reflect an offsetting of any negative by any positive components. Proposed section 4.22 of Gulf South's tariff makes this clear by stating that the EFRP for System Fuel and Company Used Gas Allowance is "Inclusive of LAUF." Thus, Gulf South is authorized to set the EFRP for transactions that are subject to both fuel use and LAUF charges at zero only when the overall EFRP reflecting both types of costs would be less than zero. The Commission has previously found that holding overall reimbursement rates at zero, rather than allowing the overall reimbursement rates to become negative, is reasonable so long as all of the over-recovered amount is eventually returned to the shippers.⁸ Gulf South's proposal includes a true-up mechanism that ensures that any EFRP gains are eventually returned to shippers. If Gulf South's interpretation of its proposed GT&C section 6.9.4 differs from our interpretation described herein, then our acceptance of Gulf South's proposal is conditional, and subject to Gulf South filing a revised proposal to match our above explanation of Commission policy.⁹

5. In its rehearing request, Gulf South argues that the Commission should have allowed it to adjust negative LAUF rates to zero, not only when LAUF rates are a stand-alone charge but also when LAUF rates are a component of a LAUF-plus-fuel-use rate.¹⁰

⁸ *ETC Tiger Pipeline, LLC*, 147 FERC ¶ 61,166, at P 7 (2014) (citing *ETC Tiger Pipeline, LLC*, 141 FERC ¶ 61,159 (2012) (*ETC Tiger*); *Columbia Gulf Transmission Co.*, 132 FERC ¶ 61,134, at P 43 (2010) (*Columbia Gulf*)).

⁹ *Gulf South*, 154 FERC ¶ 61,115 at P 13.

¹⁰ Gulf South Request for Clarification or Rehearing, filed March 8, 2015 at 9-10.

Gulf South requests “that the Commission clarify that Gulf South may, to the extent the LAUF reflects a gain, set at zero the LAUF EFRP in all instances, including when calculating the LAUF EFRP component for transactions that incur Fuel and Company-Used Gas.”¹¹ In the event clarification is not granted, Gulf South contends that rehearing is warranted because the Commission “erred” by rejecting Gulf South’s proposed methodology “without finding that the Gulf South proposal was not just and reasonable and that the alternative methodology is just and reasonable.”¹² Gulf South also contends that the Commission failed to engage in reasoned decision making “by rejecting Gulf South’s proposal to set negative LAUF EFRP rates at zero when any over-recovered amounts would be returned to shippers in subsequent retainage periods.”¹³ Gulf South further claims that the Commission erred “by requiring Gulf South to adopt different LAUF EFRP rates for differing transactions, when those transactions do not cause different incurrences of system-wide LAUF.”¹⁴

II. Commission Determination

6. We deny clarification and rehearing. A fundamental requirement for all fuel use and LAUF cost trackers is that they assess shippers no more or less than the cost of service.¹⁵ The Commission has recognized a narrow exception when overall fuel and LAUF retention percentages become negative. The Commission has previously found that holding overall retention percentages at zero, rather than allowing the overall retention percentages to become negative, is reasonable so long as all of the over-recovered amount is eventually returned to the shippers.¹⁶ The Commission permits this narrow exception because charging a negative rate – in other words, paying shippers to use the system – could distort the incentive to use capacity efficiently. However, the Commission has consistently ruled that pipelines may not apply this “never less than

¹¹ Gulf South Request for Clarification or Rehearing, filed March 8, 2016, at 7.

¹² *Id.* at 9.

¹³ Request for Clarification or Rehearing at 10.

¹⁴ *Id.*

¹⁵ See *Colorado Interstate Gas Co.*, 128 FERC ¶ 61,117, at P 32 (2009) (“It is well-established that when a pipeline is permitted to track changes in a particular cost item without regard to changes in other cost items[,], there should be a guarantee that changes in that cost item are tracked accurately.”) (citations omitted).

¹⁶ See *Columbia Gulf*, 132 FERC ¶ 61,134 at P 43; *ETC*, 141 FERC ¶ 61,159 at P 8.

zero” convention for individual components of a fuel redetermination filing because doing so could prevent a positive component from fully offsetting a negative component,¹⁷ which in turn would lead to a rate that is higher than the cost of service.¹⁸

7. Consistent with this policy, in *WIC*, the Commission found that the pipeline’s existing fuel use and LAUF tracking mechanism was unjust and unreasonable under NGA section 5, because it permitted the pipeline to set a negative LAUF component at zero, even when the negative LAUF percentage was more than offset by a positive fuel use component. The Commission held that, “[i]f the [LAUF] rate is negative, but is factored into the overall Fuel and [LAUF] adjustment as zero . . . , rather than deducted from a much higher, positive Fuel component, shippers would be forced to pay a higher overall [fuel and LAUF] rate than would be justified by WIC’s actual costs. Such incongruence between cost incurrence and allocation is inconsistent with Commission policy and precedent.”¹⁹ In its rehearing request, Gulf South asserts that it intended in its NGA section 4 filing in this proceeding to propose that, whenever its LAUF rate is negative, it could treat its LAUF rate as zero for all transactions, rather than deducting it from a higher, positive Company-Use Gas charge when calculating its EFRPs for transactions subject to both fuel use and LAUF charges. That proposal is unjust and unreasonable for the same reasons that the Commission found WIC’s similar existing tariff provision to be unjust and unreasonable under NGA section 5.

8. Gulf South argues that the February 18 Order obligates it to adopt a fuel tracking method that is administratively burdensome, or unduly discriminatory, because of the large number of LAUF-only transactions on its system.²⁰ Gulf South contends that, if it is not permitted to set a negative LAUF rate at zero before calculating the EFRP for

¹⁷ See *Sabine Pipe Line LLC*, 125 FERC ¶ 61,241, at P 7 (2008) (*Sabine*).

¹⁸ Consider the following annual tracker filing, using simplified numbers: Assume that Gulf South’s fuel use and LAUF calculations show that its company fuel use percentage should be 5 percent and its LAUF percentage should be negative 2 percent. Based on its request for clarification, Gulf South would set the LAUF percentage at zero for all customers. As a result, customers who are only subject to LAUF would pay zero, and the customers who pay both LAUF and fuel use would pay 5 percent. However, this is unfair to the customers who pay both LAUF and fuel use, because Gulf South only has cost justification to charge those customers a 3 percent EFRP (5 percent minus 2 percent = 3 percent).

¹⁹ *WIC*, 121 FERC ¶ 61,213 at P 15.

²⁰ Gulf South Request for Clarification or Rehearing at 15.

transactions subject to both fuel use and LAUF charges, it will be required to apply different LAUF percentage rates to different groups of customers during any period in which LAUF rates would be negative. Gulf South argues that the differences in LAUF percentages would be carried over into future tracking periods, because each group of customers would be subject to a different true-up. Gulf South also suggests it would be required to attempt to develop a more complicated true-up mechanism to address the cascading effects caused by differences in the assessed LAUF percentages during the initial period.

9. We reject these arguments. In *WIC*, as here, the pipeline provided some services that were only subject to LAUF charges, in addition to providing other services that were subject to both fuel and LAUF charges.²¹ Nevertheless, the Commission required *WIC* to amend its fuel and LAUF recovery mechanism to provide that a negative LAUF percentage must be deducted from a positive fuel percentage in calculating the retention percentages applicable to transactions subject to both fuel and LAUF charges, while the LAUF rate is set at zero for transactions subject only to LAUF charges. The Commission did not permit *WIC* to establish a single uniform LAUF rate applicable to all transactions, as Gulf South seeks in the instant proceeding.

10. In acting on *WIC*'s filing to comply with the requirement that it amend its tariff the Commission addressed similar concerns about both burden and undue discrimination as those raised by Gulf South here. *WIC* proposed to comply with Commission policy concerning negative return percentages by adding two sections to its tariff. One section, applicable to transactions subject to both fuel and LAUF charges, required that any negative LAUF percentage be subtracted from a positive fuel percentage, and only if the overall result was negative would the negative amount be carried forward to a future period. The other section, applicable to LAUF-only transactions, provided that the LAUF percentage cannot go below zero, and that any negative LAUF quantities which would have reduced the calculation to less than zero will first be applied to offset fuel gas in the current period, with any remaining quantity carried forward to future periods.²²

11. The Commission found that *WIC*'s compliance filing reasonably implemented Commission policy in an administratively feasible manner, without unduly discriminating among different customer groups. In particular, the *WIC Compliance Order* rejected contentions that using negative LAUF quantities that would otherwise be allocated to fuel-exempt transactions as an offset against the fuel use quantities allocated to non-fuel-

²¹ *Wyoming Interstate Co.*, 123 FERC ¶ 61,124, at PP 3 and 12, & n.8 (2008) (*WIC Compliance Order*).

²² *Id.* PP 3-4.

exempt transactions “would deprive shippers in fuel-exempt transactions from receiving the benefits of a negative [LAUF] percentage.”²³ Ruling that “perfection in the tracking of [fuel and LAUF] amounts is never fully achievable,” the Commission found it permissible for WIC to retain its single-charge mechanism for recovering fuel and LAUF in the manner it proposed, rather than creating a separate tracker for fuel-only customers that would guarantee that a portion of any negative LAUF amounts would be carried forward to future periods for their benefit. The Commission stated that it was “not persuaded that the relatively small percentage of the overall [fuel and LAUF] charge that the [LAUF] constitutes warrants requiring the pipeline to implement a separate tracking mechanism given the administrative burden and costs associated with implementing such a tracker.”²⁴ Using negative LAUF quantities as an offset against current fuel costs for purposes of calculating the overall fuel and LAUF retention percentages to be in effect in the current period should minimize the need to carry forward such negative quantities to a future period. Thus, the Commission has provided pipelines in Gulf South’s circumstances with flexibility as to how to comply with Commission policy concerning zero fuel and LAUF rates so long as the tariff “provide[s] for the prompt return of over-recovered ... quantities to shippers, and [limits] the quantities that could be deferred to future periods.”²⁵

12. Finally, Gulf South contends that the Commission has erred by “rejecting” its proposed fuel tracking mechanism and imposing its own approach without finding the Gulf South proposal unjust and unreasonable and the Commission approach just and reasonable.²⁶ Gulf South inaccurately characterizes the record. The Commission did not reject the Gulf South tariff in the February 18 Order because on its face the tariff language appeared consistent with our policy as described above.²⁷ The Commission recognized, however, that Gulf South might interpret its proposed tariff in a manner that was inconsistent with Commission policy and *WIC*. Thus, the Commission gave Gulf South the opportunity to adopt the February 18 Order’s interpretation as its own but noted

²³ *WIC Compliance Order*, 123 FERC ¶ 61,124 at P 15.

²⁴ *Id.* P 17. Gulf South’s LAUF costs also appear to constitute a very small percentage of its overall CUG and LAUF. For example, in this proceeding Gulf South proposed a LAUF only retention percentage of 0.02 percent, while it proposed an overall CUG and LAUF retention percentages of 1.23 percent.

²⁵ *Id.* P 16.

²⁶ Gulf South Request for Clarification or Rehearing at 9.

²⁷ February 18 Order, 154 FERC ¶ 61,115 at P 9.

that if Gulf South chose to defend an interpretation that contravened *WIC*, “then our acceptance of Gulf South’s proposal is conditional, and subject to Gulf South filing a revised proposal to match our above explanation of Commission policy.”²⁸

13. Instead of accepting our interpretation of its tariff proposal, Gulf South has sought clarification and rehearing of that interpretation. For the reasons discussed above, we deny rehearing and clarification and find that Gulf South’s proposal, as explained in its request for clarification and rehearing, is unjust and unreasonable. Accordingly, we direct Gulf South to file revised tariff language concerning its treatment of negative LAUF and/or CUG retention percentages consistent with the discussion above.

The Commission orders:

(A) Gulf South’s request for clarification, or, in the alternative, rehearing, is denied as discussed in the body of this order.

(B) Within 30 days of the date of this order, Gulf South must file revised tariff records concerning its treatment of negative LAUF and/or CUG retention percentages, consistent with the discussion above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁸ *Id.* P 13.