

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Colorado Interstate Gas Company

Docket No. RP05-515-000

ORDER ACCEPTING TARIFF SHEET AND SERVICE AGREEMENT SUBJECT
TO CONDITIONS

(Issued August 18, 2005)

1. On July 20, 2005, Colorado Interstate Gas Company (CIG) filed a revised tariff sheet¹ and one firm transportation service agreement (FTSA) for the Commission's review and information as a potential non-conforming agreement. As discussed below, the Commission accepts CIG's FTSA, subject to conditions, and accepts the tariff sheet to be effective August 22, 2005.

Background

2. CIG states that in light of the Commission's material deviation policies, it reviewed all its FTSA's and form of service agreements. As a consequence, CIG identified provisions in several FTSA's that were not specifically provided for in its tariff or form of service agreement and that could be considered non-conforming provisions. In some cases, CIG submitted tariff changes to make such terms available to all similarly situated shippers. In other cases, CIG requested certain shippers to revise their FTSA's to remove the subject provisions and, in many cases, the agreements have been revised. Where a shipper did not agree to revise its FTSA, CIG submitted the FTSA for Commission review in a September 2003 filing, in Docket No. RP03-617-000.² In the instant filing, CIG states that, out of an abundance of caution, it is submitting an additional FTSA that may contain a non-conforming provision for Commission review.

¹ First Revised Volume No. 1, Eleventh Revised Sheet No. 1.

² See *Colorado Interstate Gas Company (CIG)*, 105 FERC ¶ 61,124 (2003).

Instant Filing

3. CIG's filing consists of an amended FTSA with the Public Service Company of Colorado (PSCo) executed in March 2005 and a tariff sheet referencing the FTSA as a potential non-conforming agreement. The FTSA, with a contract term from December 1, 2002 through November 30, 2012, has a current maximum daily quantity effective from May 1, 2005 to the end of the contract of 53,000 Dth per day. The contract has a primary receipt point at First Creek and a primary delivery point at Blue Spruce. Secondary receipt points are at Box Elder, Lakin PEPL, Watkins KN, CIG Storage and all CIG southern system receipt points, excluding Picketwire. Secondary delivery points are at Blue Spruce, Brighton, East Denver, Ft. Lupston, Hudson (Low), Limon and "other similarly situated power plants (backhaul)."

4. CIG's FTSA with PSCo is a discounted firm transportation rate contract.³ The contract contains a reservation rate of \$1.1369 per Dth and it also provides that for every 10,000 Dth tendered by PSCo during the month, the reservation rate will be further discounted by \$.0031 per Dth. The contract states that the discounted rate shall never be greater than the applicable maximum rate, or less than the applicable minimum rate.⁴

5. The discount rate will apply at primary receipt and delivery points listed in the FTSA and certain specified secondary receipt and delivery points. In addition, the FTSA states that the discount rates will apply at "other similarly situated power plants (backhaul)." The maximum reservation rate of \$9.65 applies to all other transactions. The FTSA also provides that no fuel will be charged on Box Elder, First Creek or Watkins KN Receipts, since no fuel is consumed along this path. However, applicable lost and unaccounted for gas charges will be assessed.⁵

6. CIG explains that when the parties entered into the FTSA, CIG agreed to discount its applicable maximum reservation rate for firm service between the agreement's primary receipt/delivery points and to extend the discount to specified secondary receipt points located along CIG's low pressure, southern system and other receipt points along the southern system. CIG also agreed to extend the discount to specified secondary power plant(s)/delivery points(s) and other, unspecified similarly-

³ Firm service under this contract is provided under CIG's Rate Schedule TF-1.

⁴ See Exhibit B to the FTSA.

⁵ See *Id.*

situated power plant(s)/delivery point(s) (*i.e.*, plants that PSCo may build in the future “along the path” of CIG’s low pressure system).⁶ CIG states that it included such unspecified points because, at the time, PSCo was planning to add additional gas fired electric generation into its Front Range portfolio, but the specific location for this new electric generation was unknown. CIG explains that by agreeing to add this language to the FTSA, CIG was merely extending the contract’s discount on a secondary basis to delivery points that had yet to be built, but were anticipated to be built in the future along the same pipeline segment. CIG also states it granted these discounts for competitive reasons in order to retain the shipper’s commitment for the firm capacity contracted for under this FTSA.

7. Further, CIG states that it does not believe that any of the terms of this FTSA rise to the level of material deviations for the reasons so stated. However, because the Commission has never reviewed this precise language, CIG has filed the PSCo contract with the Commission for review. If the Commission finds that no material deviation arises from these provisions, CIG requests that the Commission so state in its order and reject the tendered tariff sheet.

Notice, Interventions and Protests

8. Notice of CIG’s filing was issued on July 29, 2005, with interventions and protests due on or before August 3, 2005. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations.⁷ Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and 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. On August 1, 2005, the Indicated Shippers filed a protest,⁸ and on August 10, 2005, CIG filed an answer. Although our

⁶ Exhibit B to the PSCo FTSA lists several Secondary Points of Delivery, including Blue Spruce Brighton, East Denver, Ft. Lupton, Hudson (Low) Limon *and other similarly situated power plants (backhaul)*.

⁷ 18 C.F.R. § 154.210 (2005).

⁸ The Indicated Shippers are BP Energy Company, BP America Production Company, Chevron U.S.A., and Marathon Oil Company, all of whom have an interest in the transportation of gas on the CIG system and/or in the supplying of gas to other shippers on the CIG system.

rules prohibit answers to protests, we may for good cause, waive this provision. We find good cause to do so in this instance as the answer has assisted in our decision-making.⁹

9. The Indicated Shippers argue that CIG's fuel exemption clause in the PSCo contract violates Commission policy. They argue that Commission precedent does not allow pipelines to discount the charges through which they recover the cost of fuel used in connection with transportation services.¹⁰ They argue that fuel is a variable cost, and the Commission's regulations do not permit discounts below the variable cost.¹¹ Therefore, they request that the Commission reject the CIG's fuel exemption provision.

Discussion

10. The Commission requires that pipelines file all contracts that contain material deviations from their form of service agreements.¹² The Commission has defined a material deviation as "any provision of a service agreement which goes beyond the filling in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of parties."¹³

FTSA Amendment

11. We find that CIG's inclusion of the language "and other similarly situated power plants (backhaul)" is not a material deviation from CIG's *pro-forma* service agreement. Section 40 of CIG's General Terms and Conditions lists types of permissible discounts that would be applicable to a shipper's contract, such as those based on certain service entitlements, and those applicable to specified points, or specified mainline and supplies areas, transportation routes, or defined geographical areas. We believe that CIG has adequately identified in Exhibit B that the discounted rate would apply to power plants within the same area as other secondary delivery

⁹ See 18 C.F.R. § 213(a)(2) (2005).

¹⁰ Citing *Mississippi River Transmission Corporation*, 98 FERC ¶ 61,119 at 61,352 (2002) (*MRT*).

¹¹ *Id.*

¹² 18 C.F.R. § 154.1(b), (d) (2005), *Columbia Gas Transmission Corp.* 97 FERC ¶ 61,221 (2001) (*Columbia*).

¹³ *Columbia*, 97 FERC ¶ 61,221 at 62,002.

points that are already listed, even though the exact location of the plant is unknown because it has yet to be built. Further, under section 284.13(b) of our regulations, pipelines are required to post on their website information concerning any discounted transactions, including the name of the shipper, the maximum rate, the rate actually charged, the volumes, receipt and delivery points, the duration of the contract, and information on any affiliation between the shipper and the pipeline. Thus, when the power plant is built and gas deliveries commence, the information concerning the discounted transaction, including a description of the receipt and delivery points would be posted on the website.

Exemption of Fuel Charges

12. In their protest, the Indicated Shippers argue that the PSCo fuel exemption violates Commission policy and creates a risk of preferential treatment of PSCo. They assert that when a pipeline desires to exempt certain transactions from its fuel use charges, it must show that no fuel is consumed in connection with those transactions. The Indicated Shippers assert that if a pipeline can demonstrate to the Commission that the pipeline does not consume fuel to support transportation on a specified flow path, the pipeline must identify the flow path in its tariff (referred to here as the fuel exemption tariff requirement).¹⁴ They state that the fuel exemption tariff requirement ensures that all shippers are aware of the fuel exemption and, hence, are aware of the actual cost of transportation on the pipeline system. Indicated Shippers acknowledge that the Commission has approved fuel exemptions for numerous pipelines based upon a demonstration by the pipeline that it does not consume fuel to support transportation on the pertinent flow paths.

13. The Indicated Shippers assert, however, that CIG's tariff does not establish a fuel exemption for the pertinent flow paths in the PSCo contract and that the PSCo contract is not a negotiated contract. Consequently, they request that CIG submit a tariff filing that demonstrates that CIG does not utilize fuel to support transactions on the specified flow paths. They state that if the Commission approves the fuel exemption in response to such a tariff filing, the inclusion of the exemption in CIG's tariff will ensure that all shippers that utilize the PSCo flow paths get this exemption. Indicated Shippers ask that if the Commission approves the PSCo exemption in this proceeding, the Commission should bar CIG from shifting unrecovered fuel costs to the shippers.¹⁵

¹⁴ *Citing Williams Natural Gas Co.*, 75 FERC ¶ 61,023 at 61,075 (1996).

¹⁵ *See Gulf South Pipeline Co.*, 111 FERC ¶ 61,463 (2005) (*Gulf South*) (approving a limited departure from its fuel exemption policy to post fuel exemptions on specific flow paths, but requiring Gulf South to bear the risk of under-recovery of fuel costs as a result of its proposal).

14. CIG answers that its tariff allows it to exempt particular transactions under the subject PSCo agreement. In support it cites language on Sheet No. 385A and Sheet No. 230A as follows:

1. Fuel Reimbursement shall be as stated on Transporter's Schedule of Surcharges and Fees . . . **unless otherwise agreed between the parties** [and]
2. "Fuel Gas" shall mean a quantity of Gas . . . **which is required to provide service under this Tariff.** [Emphasis added by CIG.]

15. CIG argues it would be unreasonable to make it charge fuel on every transaction, whether it consumes fuel or not, simply because CIG's tariff does not contain a list of each route that does not consume fuel. CIG points out that the Indicated Shippers have not asserted that the PSCo path in question in fact consumes fuel, and CIG insists it does not.

16. CIG also explains that because it is a highly reticulated system, it would be impractical to identify each such non-fuel-consuming route on its system, and that its online nomination system (CIG Xpress) identifies such routes, and is programmed so that CIG cannot discriminate among shippers regarding fuel charges on such routes. In any event, CIG states that PSCo has agreed to amend the FTSA to remove the contested provision, and therefore asks that Indicated Shippers' protest be dismissed as moot.

17. CIG indicates that in accord with its tariff, it uses its online system for identifying paths for which only lost-and-unaccounted-for gas charges apply, but not fuel charges, citing Sheet No. 230B, section 1.30(c). CIG states that its online system is programmed so that every transaction that uses the Box Elder, First Creek or Watkins KN receipt point paths described in the PSCo TSA is exempted from a fuel charge.

18. Finally, CIG states it is required to file a new rate case to be effective no later than October 1, 2006, and in that filing it would be willing to submit revised tariff language addressing in greater detail its fuel exemption criteria. CIG argues that the rate case would be a more appropriate forum (and not the subject filing seeking review of a single contract with one shipper) -- to address the issue of identifying which paths on its system should be exempt from fuel charges because they use no fuel.

19. The Commission does not permit pipelines to discount the charges through which they recover the cost of fuel used in connection with transportation services because fuel is a variable cost, and the Commission's regulations do not permit

discounts below the variable cost.¹⁶ The Commission has permitted pipelines to exempt certain transactions from fuel charges or portions of their pipeline systems if no fuel is used in those transactions or portions of their system. However, the Commission has only permitted the pipeline to provide such exemptions, if the pipeline has first made a filing with the Commission that identifies the specific transactions which the pipeline proposes to exempt from fuel charges and demonstrated that those transactions do not require the use of fuel.¹⁷ Once the pipeline has made the required demonstration, the exempted transactions are then listed the pipeline's tariff. As the Commission stated in *Northern Natural*, "The Commission has insisted on those requirements to assure that there will be non-discriminatory selection of exempted transactions and to avoid unwarranted costs shifts to other customers."¹⁸

20. CIG has not made a filing with the Commission identifying any transactions to be exempted from fuel charges or demonstrating that those transactions do not use fuel. Nor does its tariff identify any transactions that do not use fuel. While CIG states in its answer that section 1.30(c) authorizes it to use its online system, CIG Xpress, for identifying paths exempt from fuel charges, an examination of that section reveals no reference to CIG Xpress as a substitute for proposing fuel-exempt paths via a fully supported tariff provision. Rather, that section provides an exemption from fuel reimbursement obligation for certain transportation service provided in

¹⁶ In Order No. 436, the Commission announced that it was impermissible for a pipeline to provide service at a rate that would not allow it to recover the variable costs of the service. This policy is now codified in section 284.10(c)(4) of the Commission's regulations, stating that a pipeline's minimum rate "must be based on the average variable costs which are properly allocated to the service to which the rate applies." *MRT*, 98 FERC ¶ 61,119 at 61,352 .

¹⁷*Northern Natural Gas Co.*, 82 FERC ¶ 61,270 at 62,062 (1998). *NorAm Gas Transmission Co.*, 84 FERC ¶ 61,006 at 61,021 (1998). In *Williams Natural Gas Company*, the Commission accepted tariff sheets filed by Williams proposing a zero fuel charge for all transportation backhauls between specified receipt and delivery points because Williams made the requisite showing that the subject transactions did not require any compression or fuel consumption. *Williams Natural Gas Co.*, 75 FERC ¶ 61,023 at 61,075 (1996).

¹⁸ 82 FERC at 62,062.

conjunction with storage.¹⁹ To the extent the provision in CIG's tariff that "Fuel Reimbursement shall be as stated on Transporter's Schedule of Surcharges and Fees . . . unless otherwise agreed between the parties" may be interpreted as giving CIG discretion to agree not to charge for fuel in discounted rate agreements, such as the instant agreement, without first filing with the Commission to demonstrate that the relevant transactions do not consume fuel, that provision would be contrary to Commission policy as discussed above.²⁰

21. Therefore, the Commission finds that CIG's fuel exemption clause in its contract with PSCo is a material deviation from its form of service agreement and tariff. Moreover, CIG's current practice, as described in its answer, of exempting various transactions from fuel charges through notices on its online system, without having first filed with the Commission to demonstrate that those transactions do not use fuel, is contrary to Commission policy. Therefore, CIG is directed to remove from the PSCo agreement the fuel exemption provision, as it agreed to do in its answer. If CIG desires to continue exempting transactions along certain paths from fuel on the basis that those transactions do not use fuel, it must within 60 days make a filing showing that the transportation paths in question do not use fuel and tariff language exempting such paths from fuel charges.

The Commission orders:

(A) CIG is directed to file a revised agreement with PSCo within 30 days of the date of this order consistent with the discussion above.

(B) Eleventh Revised Sheet No. 1 is accepted, to be effective August 22, 2005.

¹⁹ Section 1.30 (c) states: "Except as provided below, when Transporter provides Transportation Service, Shipper shall be responsible for providing Fuel Reimbursement at each Point of Receipt on a pro rata basis However, for Transportation Service provided in conjunction with Storage Service, when Fuel . . . has been furnished . . . to the Point of Injection, no additional Fuel Reimbursement shall be required"

²⁰ The Commission does permit pipelines to agree not to charge for fuel in negotiated rate transactions, and thus the quoted provision in CIG's tariff is permissible if interpreted to apply only to negotiated rate transactions.

(C) If CIG desires to continue exempting transactions along certain paths from fuel on the basis that those transactions do not use fuel, it must within 60 days make a filing showing that the transportation paths in question do not use fuel and tariff language exempting such paths from fuel charges.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.