

121 FERC ¶ 61,115
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 31, 2007

In Reply Refer To:
Colorado Interstate Gas Company
Docket No. RP07-706-000

Colorado Interstate Gas Company
P.O. Box 1087
Colorado Springs, CO 80944

Attention: Catherine E. Palazzari
Vice President

Reference: Revised Tariff Sheets

Dear Ms. Palazzari:

1. On September 24, 2007, Colorado Interstate Gas Company (CIG) filed revised tariff sheets¹ to propose a mechanism that would allow CIG to fully recover the costs incurred by CIG in contracting for off-system capacity for the benefit of shippers. CIG's proposed tariff sheets also allow it to make available any unused off-system capacity on a secondary and interruptible basis, and address contract extensions for agreements that rely on off-system capacity where CIG does not have the unilateral right to extend the term of the off-system contract. The Commission accepts the tariff sheets, as conditioned below, to be effective November 1, 2007, as proposed.

2. In its filing, CIG states that Article 41 of the General Terms and Conditions (GT&C) of its tariff permits it to acquire off-system capacity from a third-party pipeline for operational purposes or to provide service to its shippers. CIG states that when such capacity is acquired for the benefit of its shippers, the off-system capacity is treated as an extension of CIG's pipeline system and shippers receiving service from or to an off-

¹ First Revised Sheet No. 22A, Fifth Revised Sheet No. 23, Seventh Revised sheet No. 67, Sixth Revised Sheet No. 147, Fifth Revised Sheet No. 148, Fifth Revised Sheet No. 166, Ninth Revised Sheet No. 269, Seventeenth Revised Sheet No. 272, and First Revised Sheet No. 380E to its FERC Gas Tariff, First Revised Volume No. 1.

system point(s) are billed transportation rates as if those points were part of CIG's system. CIG further states that its proposal addresses situations where CIG has acquired capacity on an upstream or downstream pipeline and is providing service on that capacity, as requested by a shipper.

3. First, CIG proposes to revise its tariff such that if CIG acquires off-system capacity from a third party and provides transportation and/or storage service for the benefit of a shipper, the shipper may be required to pay CIG, in addition to its recourse or discounted rates, any additional amounts, including fuel, not to exceed the charges CIG is obligated to pay the third-party pipeline or storage facility for the off-system capacity.² CIG states that it will include in its Electronic Bulletin Board postings of firm unsubscribed capacity and operational available capacity the available receipt and deliver point capacity acquired on upstream/downstream pipelines. CIG states that its proposal is consistent with Commission precedent approving similar proposals by *ANR Storage Company*, in Docket No. RP06-421-000 (unpublished letter order issued July 19, 2006); *Tennessee Gas Pipeline Company*, 118 FERC ¶ 61,159 (2007) (*Tennessee*); and *Wyoming Interstate Company, Ltd.*, 120 FERC ¶ 61,126 (2007).

4. Second, CIG proposes to revise its tariff to provide that if the shipper for whom the off-system capacity was acquired (original benefiting shipper) is not using the capacity, such capacity will be made available to other shippers on a secondary and interruptible basis. Furthermore, CIG states that those shippers may, on a non-discriminatory basis, be required to pay the applicable third-party rates and fuel charges.

5. Third, CIG states that it is revising its tariff to address contract extensions for agreements that rely on off-system capacity where CIG does not have the unilateral right to extend the term of its contract for the off-system capacity. CIG proposes to revise the right-of-first-refusal (ROFR) section of its tariff to provide that if the off-system capacity used to render service is subject to such renewal limitations, CIG will indicate in any posting of such capacity any limitation of the extension rights that will apply as a result of the limitations on the off-system capacity. CIG states that the Commission has recently approved similar limitations to regulatory ROFR rights in *Columbia Gas Transmission Corporation*, 120 FERC ¶ 61,127 (2007).

6. Notice of CIG's filing was issued on September 27, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 385.210 (2007). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all

² CIG notes that pursuant to the Commission's orders in Docket Nos. CP98-128-000, *et al*, such third party charges would not be applicable to Wyoming Interstate Company capacity acquired by CIG because the costs of that capacity are included in CIG's rates.

timely-filed motions to intervene and any motions to intervene out-of-time 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 October 8, 2007, Williams Power Company, Inc. (Williams) filed a protest and a request for clarification.

7. In its protest, Williams states that with CIG's proposed tariff changes, CIG is "perfectly hedged" against any third party charges that may be incurred on behalf of an original benefiting shipper. Williams argues that under CIG's proposal, the original benefiting shipper will fully compensate CIG for any off-system capacity related third-party charges, thereby allowing CIG to reap a windfall by releasing off-system capacity not being used by the original benefiting shipper to other shippers on a secondary and interruptible basis. Williams further argues that absent a requirement that incremental net revenue generated by CIG by releasing such capacity be credited to the original benefiting shipper, collections made by CIG in excess of the incremental volumetric charges by the third-party pipeline will flow directly to CIG's equity holders. Williams argues that this scenario represents a mismatch of risk and reward, as the originally benefiting shipper will bear the full cost (risk) of the acquired third-party capacity, and CIG will obtain a windfall reward.

8. Williams further argues that although the Commission has recognized the opportunity for such incremental net revenue to the pipeline,³ it ruled that the general ratemaking process would address the windfall issue. Williams states that the facts of CIG's rate case status are different, specifically, that CIG, as a result of the settlement agreement in its last Natural Gas Act section 4 rate case, is under a rate moratorium for four or possibly five years. Thus, Williams states that any off-system capacity contracts and associated releases by CIG that extend for under three years will not be reflected in the pipeline's rates in the next general rate case.

9. Accordingly, Williams requests that section 41.3 of CIG's tariff be modified, in part, to read:

Transporter will indicate in its posting of any off-system capacity available for service whether any, and, if so, what, Third Party Charges will apply to the use of such off-system capacity. Any amounts collected in excess of such Third Party Charges will be refunded to Shipper for the benefit of which the third-party capacity was acquired.

10. Williams also seeks clarification as to whether the third-party charges referenced in section 41.3 are the same as the Third Party Charges referenced in sections 3.5, 3.7,

³ *Wyoming Interstate Company, Ltd.*, 120 FERC ¶ 61,162 (2007).

and 3.10. Williams states that referring to the defined term will ensure that the charges referred to in section 41.3 will not exceed the amount incurred and paid by Transporter for the off-system capacity. If this is CIG's intent, William suggests that the term should be capitalized as follows:

Transporter will indicate in its posting of any off-system capacity available for service whether any Third Party Charges will apply to the use of such off-system capacity.

11. As to Williams' protest, the Commission denies Williams' proposed revision to GT&C section 41.3 (quoted in paragraph 9 above). The proposed revisions would require CIG to reimburse the shipper the amount that CIG receives, if and when another shipper is scheduled to use the capacity on a secondary or interruptible basis. The revision is unnecessary because the requesting shipper can achieve the requested reimbursement simply by releasing the capacity through CIG's capacity release procedure. However, to the extent this shipper chooses not to release the capacity it has under contract, the Commission's open-access transportation rules require the pipeline to make all idle capacity available for use by other shippers on a secondary firm or interruptible basis. To the extent there is increased revenue to the pipeline, current Commission policy allows the pipeline to retain the revenue from such service.⁴

12. In this situation, the revenue CIG receives from marketing the idle capacity will be treated in the same manner as it treats other interruptible transportation revenue that it receives under its open-access provisions. Ultimately, these revenues and volumes will be reflected in the design of the pipeline's rates in its next general rate case. Williams points to the possibility that revenues flowing from certain contracts will not be reflected in CIG's post-moratorium rate design. This argument, however, misses the point that CIG's proposal, which results in the more efficient use of existing off-system capacity, results in no new costs to Williams or any of its shippers. Rather, the proposal allows CIG to maximize the service it can provide to all shippers. Therefore, CIG may retain revenue acquired from such service, regardless of the exact timing of its next section 4 rate case.

13. As to Williams' clarification request, the Commission finds that Williams' proposed revision to GT&C section 41.3 is reasonable under the circumstances. Williams states that the purpose of its proposed revision is to limit the amount of the third-party charges to the amount incurred and paid by Transporter for the off-system capacity. In its transmittal letter, CIG states that, under its proposal, if CIG acquires off-system capacity for the benefit of a shipper, the shipper may be required to pay, in

⁴ See *ANR Pipeline Co.*, 110 FERC ¶ 61,069 P 25 (2005), and *Canyon Creek Compression Co.*, 99 FERC ¶ 61,351 P 14 (2002) ("pipeline is at risk for under-recovery of its costs between rate cases, but may retain any over-recovery").

addition to its recourse or discounted rates, additional amounts, including fuel, not to exceed the amount CIG is obligated to pay the third party. The capitalization of the term “Third Party Charges”⁵ suggested by Williams serves to ensure that the third-party charges referred to in section 41.3 shall not exceed the amounts actually incurred and paid by Transporter for the applicable off-system capacity. This appears consistent both with CIG’s explanation in its transmittal letter, and with the disposition of a similar issue raised in Wyoming Interstate Company, Ltd.’s filing in Docket No. RP07-529-000. Therefore, we will require CIG either to submit revised tariff sheets that reflect the capitalization of the term “Third Party Charges” in section 41.3 of its GT&C, or support and fully explain why it should not be required to incorporate that defined term in section 41.3.

14. Accordingly, the Commission accepts the tariff sheets referenced in footnote 1, to be effective on November 1, 2007, subject to CIG’s filing revised tariff sheets or a further explanation within ten days of the date of this order, as discussed above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁵ Sections 3.5, 3.7, and 3.10 of the tariff provisions for Rate Schedules IS-1, TF-1, and TI-1, respectively, contain the following definition: “Third Party Charges: Shipper may, on a non-discriminatory basis, be required to pay to Transporter, if applicable, any Third Party Charges in accordance with Article 41 of the General Terms and Conditions. In no event shall such Third Party Charges paid by Shipper exceed the amount incurred and paid by Transporter for the applicable off-system capacity.”