122 FERC ¶ 61,299
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Wyoming Interstate Company, Ltd. Docket No. RP08-203-000

ORDER DENYING WAIVER OF TARIFF

(Issued March 31, 2008)

1. On February 19, 2008, Wyoming Interstate Company, Ltd. (WIC) filed a request to make a cash-out payment to its customers for over-collection of fuel gas and lost and unaccounted-for gas (collectively, FL&U) that occurred between September 1, 2007 and November 30, 2007. As discussed below, we deny WIC's request.

I. **Background**

2. Article 30 of the General Terms and Conditions (GT&C) of WIC's tariff requires WIC to calculate its FL&U reimbursement percentages at least annually and file them with the Commission.[1] WIC states that these periodic limited rate filings consist of both a projected FL&U retention requirement and an adjustment, or true-up, to the FL&U requirement to account for under- or over-recoveries during prior periods. Prior to this filing, WIC filed its most recent revision to its FL&U percentages on October 31, 2007, which accounted for the period from September 1, 2006 to August 31, 2007 (2007 Fuel Filing).[2] In that filing, WIC also proposed to make a cash payment for the value of certain over-recovered quantities that would otherwise be deferred to offset future FL&U requirements. The Commission accepted WIC's cash-out proposal and its FL&U percentages, effective December 1, 2007.[3]

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[1] WIC, FERC Gas Tariff, Second Revised Vol. No. 2, Eighth Revised Sheet No. 83.

[2] WIC, October 31, 2007 Filing, Docket No. RP08-47-000.

[3] *Wyoming Interstate Company*, 121 FERC ¶ 61,213 (2007). The order also required WIC to amend the manner in which it defers over-collected quantities in certain situations.

3. WIC states that subsequent to the data period reflected in its current FL&U percentages but before the effective date of these FL&U percentages (i.e., September 1, 2007 to November 30, 2007), WIC experienced over-collections of FL&U gas. Specifically, WIC states that it over-recovered the following fuel gas amounts: (1) 93,143 Dth on the mainline; (2) 12,647 Dth on the incremental Echo Springs Lateral system; and (3) 18,275 Dth on the incremental Piceance Lateral system. WIC states that it over-recovered the following lost-and-unaccounted-for gas amounts: (1) 23,631 Dth on the mainline; (2) 63,115 Dth on the incremental Medicine Bow Lateral system; and (3) 4,099 Dth on the incremental Powder River Lateral system.

4. WIC does not propose, as provided for in its tariff, an out-of-cycle adjustment to adjust its FL&U percentages here; rather, WIC proposes to provide its customers with an interim cash-out (rather than in-kind reimbursement) of these over-collected quantities. WIC states that the purpose of this cash-out payment is to minimize delay in returning these quantities to customers and to extinguish the liability from WIC's books. WIC further states that the cash-out value of the over-collected quantities due shippers will be based on the cash-out index price for the month the over/under collection occurred. WIC further states that it calculates the total amount due shippers at $452,112.00, which WIC will pay via invoice credit within 31 days of a Commission order in this proceeding. WIC states that it will apportion these monetized amounts to each shipper on each WIC lateral on a prorated basis based on the amounts of fuel and/or lost and unaccounted-for gas retained from each shipper during the three-month period.[4]

5. In support of its proposal, WIC notes that prices in the Rocky Mountain region have recently increased and are expected to remain at high levels for the near future. WIC argues that given these unique price conditions, it would be unjust and unreasonable if WIC were required to defer the return of these quantities in kind to shippers until a future period. WIC further argues that its cash-out payment should be valued at existing monthly prices at the time the over-collections occurred in order to fairly reflect market conditions during that time and to return shippers to the position they would have been in had there been no over-recovery.

II. Public Notice, Intervention, and Comments

6. Notice of WIC's filing was issued on February 21, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely filed motions to intervene and any 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

[4] WIC asserts that this method is consistent with its cash-out methodology in its 2007 Fuel Filing, which the Commission approved. *WIC*, 121 FERC ¶ 61,213 at P 14.

will not disrupt this proceeding or place additional burdens on existing parties. Indicated Shippers,[5] Williams Gas Marketing, Inc. (Williams), and Yates Petroleum Corporation (Yates) filed protests.

7. On March 19, 2008, WIC filed a motion for leave to answer and an answer.[6] Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept WIC's answer because it has provided information that assisted us in our decision-making process.

8. Indicated Shippers argue that WIC's cash-out proposal is both unnecessary and contrary to its existing tariff, which provides for in-kind annual as well as out-of-cycle FL&U true-ups. Indicated Shippers explain that although WIC's tariff requires WIC to file updated FL&U percentages on or about October 31 of each year, it also permits WIC to submit an out-of-cycle fuel filing during the period between the annual filings. Indicated Shippers argue that WIC's proposal fails to explain why WIC should not be required to make a typical out-of-cycle FL&U filing, as provided for in WIC's current tariff.

9. Furthermore, Indicated Shippers state that use of a volumetric true-up mechanism in WIC's FL&U tracker reflects a balancing of risks and opportunities between WIC and its shippers that acknowledges the fluctuating price of gas and provides for annual true-ups while also allowing for out-of-cycle true-ups as needed. Indicated Shippers assert that WIC's cash-out payment, utilizing the cash-out index prices from September to November 2007, ignores this balancing of risks and opportunities under the existing volumetric true-up, and penalizes shippers by using cash-out prices that date back several months, rather than volumetric reimbursements as provided under the current tariff. Indicated Shippers argue that by using outdated prices to implement an immediate cash-out, WIC will fail to return shippers the full thermal quantity of WIC's over-collection. Indicated Shippers state that by contrast, an out-of-cycle FL&U filing pursuant to the existing tariff would return to shippers the same volume that shippers overpaid to WIC via the volumetric FL&U rate. Indicated Shippers also note that an out-of-cycle filing would have the benefit of amortizing WIC's over-recoveries over a multi-month period, thereby reducing the cost impact to shippers.

10. Indicated Shippers also argue that WIC's proposal inappropriately refunds only over-collections, while deferring under-collections to WIC's next annual filing. Indicated Shippers state that the component-specific nature of this proposal is inconsistent with the Commission's recent decision to require WIC to offset negative components of the

[5] The Indicated Shippers are BP Energy Company, BP America Production Company, and Marathon Oil Company.

[6] On March 20, 2008, WIC filed an erratum to correct a sentence in its answer.

FL&U rate (*e.g.*, under-recovered fuel and over-recovered lost and unaccounted-for) with each other before deferring any negative amounts.[7] Indicated Shippers argue that it would be inequitable to allow WIC to cash out its over-collections without valuing and offsetting any under-collections.

11. Like the Indicated Shippers, Williams objects to WIC's inclusion of over-recoveries and exclusion of under-recoveries in its proposed cash-out payment. Williams states that the same pricing concerns that WIC uses in support of its proposal to cash out over-recoveries would suggest that WIC should have included these under-recoveries to afford shippers the same relief. Williams argues that if the Commission accepts WIC's proposal, it should require WIC to offset these over-recovered quantities with any corresponding under-recovered quantities. Additionally, Williams requests that if the Commission approves WIC's proposal, it should clarify that such approval will not serve as precedent for WIC to choose to either abide by its existing volumetric tracker provisions or cash-out its volumetric true-up obligations depending on WIC's assessment of price projections.

12. Yates argues that WIC's cash-out payment proposal is, in effect, a request that WIC be permitted to game its fuel mechanism in a manner that is contrary to its tariff and to the detriment of its customers. Yates states that WIC's proposal reflects an effort by WIC to avoid carrying forward these over-collected quantities to the next annual period—when WIC projects higher gas prices—as required by WIC's tariff. Yates asserts that WIC's argument amounts to an assertion that it would be unjust and unreasonable for it to follow the terms of its current tariff. Yates also objects to the price with which WIC proposes to cash-out these over-collections, arguing that it is both arbitrary and unrepresentative of the actual market value of the gas.

13. In its answer, WIC reiterates that its cash-out proposal is not inconsistent with its tariff and merely seeks to expedite the return of amounts due shippers via a cash-out payment. WIC states that in its best operational judgment, an out-of-cycle filing would not result in the timely return of these over-collected fuel amounts. Further, WIC argues that it did not make an out-of-cycle filing because it is not convinced that it will continue to over-collect fuel. WIC argues that it should not have to bear a cost burden of these over-collected amounts in a climate of rising prices and maintains that the cash-out price is the most reasonable pricing mechanism because it is an accurate reflection the value shippers could have received for their gas at the time of the over-collections. WIC also argues that its proposal is not intended as a method to profit on the purchase or sale of natural gas.

14. WIC also states that it did not require the netting of under-collections against over-collections because WIC believed it would be presumptuous to require accelerated cash

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[7] Indicated Shippers, March 4, 2008 Protest at 5-6 (citing *WIC*, 121 FERC ¶ 61,213 at P 15).

payments from customers. Furthermore, WIC presents a number of administrative issues that would result from requiring WIC to offset under-collections against over-collections. However, WIC states that it would be receptive netting under- and over-collections for the Mainline, Piceance Lateral, Powder River Lateral, Echo Springs Lateral, and Medicine Bow Lateral.[8] WIC states that the total refund due shippers under this assumption is $404,713.00.

III. Discussion

15. WIC has not shown good cause as to why it should be permitted to cash out over-collections from the period between September 1, 2007 and November 30, 2007, and we therefore deny its request to do so.

16. Section 30.2 of the GT&C of WIC's current tariff requires WIC to file an annual re-computation of its FL&U reimbursement percentages on October 31 of each year.[9] That section also allows WIC, at its election, to submit FL&U re-computation filings more frequently than once a year.[10] Thus, as Indicated Shippers note in their protest, WIC's tariff permits WIC to make an out-of-cycle FL&U filing to deal with circumstances beyond its control, such as unanticipated changes in FL&U.

17. In its filing, WIC has not demonstrated good cause for waiving its tariff to make a monetized cash-out for over-collections for this three-month period, rather than the annual or out-of-cycle volumetric FL&U filings provided for in its current tariff. WIC points to the rising cost of natural gas in an effort to argue that the gas it over-collected will have a lower value than the likely value of the gas it will return in a year. However, both WIC and its shippers had reasonable expectations that only in-kind adjustments would be utilized under its existing tariff. Market fluctuations are inevitable, and good cause for waiver of existing tariff mechanisms cannot be demonstrated if the waiver unreasonably upsets the balance of expectations of the parties subject to those provisions.[11] WIC's arguments fail to demonstrate good cause so as to show why it would be reasonable for the Commission to upset the operations of the existing tariff, or

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[8] WIC opposes netting under- and over-collections for the Powder River Lateral because such netting would not result in an amount due to all shippers and would require WIC to directly bill and invoice individual shippers.

[9] WIC, FERC Gas Tariff, Second Revised Vol. No. 2, Eighth Revised Sheet No. 83.

[10] *Id.*

[11] *See, e.g., Calif. Independent System Operator*, 118 FERC ¶ 61,226, at P 24 (2007) (elements of waiver for good cause include no undesirable consequences, and resultant benefits to customers that are evident).

why it would be unreasonable for WIC to use the method provided by its tariff to return these over-collections to shippers. In sum, WIC has failed to show good cause for it to be permitted to make the type of cash-out payment it has proposed, over the objections of its customers.

18. In support of its request WIC cites its 2007 Fuel Filing, in which the Commission allowed WIC to make a cash payment to shippers for the value of certain quantities of gas.[12] However, that situation is different from the one presented here. In response to WIC's 2007 Fuel Filing, the Commission allowed WIC to make a cash-out payment for a large quantity of gas that would have resulted in negative fuel and/or lost and unaccounted-for percentages, which are not contemplated by WIC's tariff.[13] Additionally, that quantity included amounts that had been deferred from the previous year so as to avoid negative FL&U percentages in that year, and shippers, recognizing its essential fairness in the circumstances, did not rebuff that proposal. Thus, in the 2007 Fuel Filing, the Commission allowed WIC to cash-out a quantity of gas after it had already followed the method prescribed in its tariff for offsetting under-recovered fuel gas with over-recovered lost and unaccounted-for, so as not to withhold over-recovered lost and unaccounted-for reimbursements due to shippers. Here, WIC does not follow the method in its tariff that shippers reasonably expected for returning FL&U over-collections.

19. Thus, WIC's waiver proposal appears to selectively apply elements of its existing tariff, and is strongly opposed by its customers as upsetting reasonable expectations under the existing tariff. We agree and find there has been an insufficient showing to justify waiving the terms of WIC's tariff, which at present requires WIC to return over- or under-collected FL&U through an annual volumetric mechanism, as well as providing for interim adjustments in-kind when needed.[14] Therefore, for the reasons discussed above, we deny, for failure to demonstrate good cause, WIC's request for waiver.

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[12] *WIC*, 121 FERC ¶ 61,213 at P 14.

[13] *Id.* at 3, 14.

[14] We note that in Docket No. RP07-699-000, WIC filed to change its existing volumetric FL&U tracker to a monetized tracker that reflects the cost/revenue of over- and under-collections. Regardless of that filing, during the time of the over-collections at issue here, WIC was operating under its volumetric tracking mechanism, and interim adjustments thereunder are governed by the existing tariff.

<u>The Commission orders</u>:

WIC's request for waiver of its tariff is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.