125 FERC ¶ 61,226
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.

Hardy Storage Company, LLC | Docket No. RP09-42-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEET, SUBJECT TO REFUND AND CONDITIONS AND ESTABLISHING TECHNICAL CONFERENCE

(Issued November 25, 2008)

1. On October 31, 2008, Hardy Storage Company, LLC (Hardy) filed a tariff sheet[1] to reflect its annual Retainage Adjustment Mechanism (RAM) in accordance with section 33 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, with a proposed effective date of December 1, 2008. As discussed below, the Commission accepts and suspends the revised tariff sheet effective December 1, 2008, subject to refund and conditions and the outcome of a technical conference to address the issues raised in this proceeding. In addition, the Commission grants Hardy's request for waiver of its tariff to amortize the under-recovered fuel over a three-year period to minimize the rate increase.

Details of Filing

2. Hardy submitted its annual RAM filing, which was delayed because of anomalies in its retainage data that required investigation.[2] Section 33 of the GT&C of Hardy's tariff provides a tracker mechanism to recover company use gas (CUG) and lost and unaccounted-for gas (LAUF). These costs are recovered through retainage percentages, which consist of a current and an over-/-under recovered component. The over-/-under component reflects the reconciliation of actual CUG and LAUF quantities with quantities

[1] First Revised Sheet No. 13 to Hardy's FERC Gas Tariff, Original Volume No. 1.

[2] On September 30, 2008, Hardy requested a one-month extension to ensure the accuracy of the retainage data, which was approved by the Commission. *Hardy Storage Company, LLC*, Docket No. RP08-637-000 (Oct. 8, 2008) (unpublished letter order).

retained by Hardy for the preceding calendar year (i.e., the deferral period). Although the deferral period is normally a full calendar year, the deferral period for this filing is March 1, 2007 through December 31, 2007, which reflects testing of the Hardy storage field in March 2007 and its commencement of service on April 1, 2007.

3. In its tariff, Hardy proposes a total retainage percentage of 3.227 percent, which represents a 0.697 increase from the existing rate of 2.53 percent. Hardy reports that it under-collected 227,525 Dth of gas, which is comprised of two components: CUG gas over collection of 50,334 Dth and LAUF gas under collection of 277,859 Dth.

4. In addition, Hardy requests waiver of section 33.4(b) of its GT&C to allow the company's amortization of its net under-collection over three years. Hardy contends that amortizing the net 2007 under-recovery over three years will prevent shippers from experiencing significant increases in their retainage rates and will allow Hardy to recover these lost quantities over a reasonable period of time. Finally, Hardy argues, the Commission has previously approved another such request. [3]

Public Notice, Comments, and Answer

5. Public notice of the filing was issued on November 4, 2008. Interventions and protests were due on or before November 12, 2008 as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), 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 will not disrupt the proceeding or place additional burdens on existing parties. Protests were filed by Piedmont Natural Gas Company (Piedmont) and the City of Charlottesville, Virginia (Charlottesville), and comments were filed by Washington Gas Light Company (Washington Gas). Hardy filed an answer to the protests. While the Commission's regulations do not permit the filing of answers to protests,[4] the Commission will accept the answer because it provides additional information which aids in our decision-making process.

6. In its protest, Piedmont states that Hardy's inability to accurately account for and identify LAUF quantities is a major concern because it results in an increased retainage rate paid by Hardy's customers. Of particular concern to Piedmont is the cause of the increase in LAUF quantities. Piedmont questions if this increase is attributable to actual lost quantities or is a reflection of inaccurate metering, defective accounting, and/or

---

[3] *Columbia Gulf Transmission Co.*, 123 FERC ¶ 61,216, at P 15 (2008).

[4] 18 C.F.R. § 385.213 (2008).

defective account systems or methods. Piedmont requests these matters be properly explained before it is charged.

7. In addition, Piedmont states that Hardy has failed to offer an explanation as to where the lost quantities of gas it now seeks to recover from its customers has gone. Piedmont asserts that there is no analysis regarding whether these quantities are still in Hardy's custody or have been passed through to the custody of connecting pipeline facilities, including Hardy's affiliated pipeline, Columbia Gas Transmission Corp. Piedmont argues that absent supportable analysis regarding the fuel loss from Hardy, the Commission should reject its proposal to increase the fuel retention percentage.

8. Finally, Piedmont requests that the Commission convene a technical conference so that Hardy has the opportunity to explain the possible causes and current location of the lost quantities of gas underlying Hardy's proposed LAUF retainage factor.

9. In its protest, Charlottesville states that Hardy should be required to exempt Charlottesville from the under-recovery surcharge for LAUF gas accrued during the Deferral Period from March 1, 2007 to December 31, 2007. Charlottesville argues that as a future customer that lacked service rights during the deferral period, it could not have contributed to Hardy's LAUF issue and was not the beneficiary of the fuel retainage rates that under-collected LAUF during the deferral period. Moreover, Charlottesville asserts that its service rights will not commence until April 1, 2009. Therefore, Charlottesville argues that requiring Charlottesville to pay for costs incurred while it was not a customer of Hardy is both unjust and unreasonable.

10. Charlottesville avows that if Hardy is permitted to collect its under-recovery surcharge from Charlottesville, the Commission should deny Hardy's request to waive the twelve-month recovery period mandated by Hardy's tariff. Charlottesville argues that allowing Hardy to amortize the under-recovery over thirty-six months instead of the twelve months approved in its tariff would result in Charlottesville paying a greater portion of the net under-recovery fee than under the tariff-approved twelve-month period.

11. Charlottesville also states that the Commission should convene a technical conference regarding Hardy's LAUF gas. It argues that the Commission has previously convened technical conferences to address LAUF issues[5] and should do so here as well.

12. Washington Gas contends that Columbia's Navigates system does not accurately measure the Hardy imbalances and could be the cause of the increased LAUF quantities. Washington Gas requests that the Commission require Hardy to demonstrate the discrepancies and whether Navigates is causing Hardy to misidentify certain quantities as

[5] *Columbia Gulf Transmission Co.*, 123 FERC ¶ 61,216 (2008); *Crossroads Pipeline Co.*, 119 FERC ¶ 61,221 (2007).

LAUF. Finally, Washington Gas states that all shippers should share in the LAUF costs regardless of when the subscriber's commitment commences because of the phasing-in of the available capacity over the three-year period and the increased LAUF claimed in the filing related to start-up costs.

13. In its answer, Hardy dismisses Piedmont's assertion that the large LAUF quantities were the result of inaccurate metering. Hardy states that it uses ultrasonic meters that were wet flow tested prior to installation and were all found to be measuring accurately. Hardy also states that if the cause of the elevated LAUF levels were related to faulty metering equipment, then LAUF quantities for 2008 should be similar to those recorded in 2007. Hardy argues that the 2008 LAUF quantities are significantly lower than those of 2007. As an assurance of the accuracy of its information, Hardy asserts that it is willing to provide shippers with monthly measurement data for 2007 detailing the receipts and deliveries used to calculate the LAUF quantities.

14. Regarding Piedmont's protest that Hardy should not be permitted to recover LAUF quantities until Hardy can accurately identify and account for the LAUF quantities, Hardy states in its answer that LAUF, by definition, is gas lost that cannot be attributed to a specific cause.[6] Furthermore, Hardy states that it has made every effort to reduce LAUF quantities, and these efforts are reflected in the relatively low projected LAUF rate of 0.437 percent. Despite its efforts to reduce LAUF, Hardy asserts that it should still be able to recover the quantities lost during 2007, as specifically set forth in GT&C section 33 of its FERC Gas Tariff.

15. Hardy dismisses Washington Gas' assertion that discrepancies in the Navigates system could be a cause of the increased LAUF quantities. Specifically, Hardy contends that it did not rely on Navigates for its RAM filing, but rather on data received directly from its measurement system.

16. In its answer, Hardy also addresses Charlottesville's requested exemption from the three-year amortization of the under-recovered surcharge. Hardy states that its proposal is reasonable and supported by another customer.[7] Hardy also maintains that such a proposal has been previously approved by the Commission.[8] Accordingly, Hardy states Charlottesville's request to be exempt from the under-recovery surcharge beginning April 1, 2009 should be rejected.

---

[6] *Algonquin Gas Transmission Co.*, 82 FERC ¶ 61,167 (1998).

[7] Washington Gas Comments at 3.

[8] *Columbia Gulf Transmission Co.*, 123 FERC ¶ 61,216, at P 15 (2008).

17. Finally, Hardy states that it is not necessary for the Commission to convene a technical conference, as suggested by both Piedmont and Charlottesville. Hardy argues that it has accurately addressed the concerns of its shippers and is also willing to provide shippers with measurement data so that shippers can verify the accuracy of Hardy's calculations. Hardy states that the decrease in LAUF quantities for the first seven months of 2008 as compared to 2007 volumes, suggests that the LAUF issue is resolving itself and that a technical conference is not necessary.

Discussion

18. Hardy reports that while it experienced higher LAUF quantities in 2007 than anticipated, it is taking significant measures to review and address the CUG and LAUF quantities on its system. Hardy states that it has reduced the LAUF by 87 percent from 277,859 Dth for the 10-month period from March 1 to December 31, 2008 to 34,852 Dth for the seven-month period of January 1 to July 31, 2008. While such a significant reduction in the LAUF quantity results in lower operating costs and is encouraged, it is not possible at this time for the Commission to determine the accuracy of Hardy's RAM projections and who is responsible for the costs. Hardy states in its answer that a technical conference is not needed since it has adequately addressed the concerns of its shippers and is willing to provide measurement data for 2007. However, Hardy's answer still fails to address why there is such a huge disparity in LAUF quantities between 2007 and 2008, the accuracy of the LAUF volumes, and why Hardy's customers should be required to bear the full cost of under-recovery. Therefore, the Commission will convene a technical conference.

19. A technical conference will afford the Commission Staff and the parties to the proceeding an opportunity to discuss all of the issues raised by Hardy's proposal to increase its total retainage percentage. Specifically, Hardy should be prepared to address the concerns raised in the protests, and if necessary, to provide additional technical, engineering and operational support for its proposal. Any party proposing alternatives to Hardy's proposals should also be prepared to similarly support its position. Finally, based upon its analysis of the information provided in this proceeding, the Commission Staff may issue data requests prior to the technical conference, or a notice of the technical conference may contain questions that need to be addressed by Hardy or other parties at the conference.

20. Because of the size of the net under-recovery, Hardy requests a waiver to amortize its under-recovery over a three-year period. The Commission finds that good cause exists to grant such a waiver because a three-year amortization will lower the annual total retainage percentage.

Suspension

21. Based on a review of the instant filing, the Commission finds that the proposed tariff sheet has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept such tariff sheet for filing and suspend its effectiveness for the period set forth below, subject to the conditions set forth in this order.

22. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.[9] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[10] The Commission finds that circumstances exist here where Hardy is filing its first annual filing pursuant to an approved gas tracker mechanism. Therefore, the Commission will accept and suspend the proposed tariff sheets to be effective December 1, 2008, subject to refund, the conditions of this order and the outcome of the technical conference established herein and further orders of the Commission in this proceeding.

The Commission orders:

(A) Hardy's proposed tariff sheet listed in footnote no. 1 is accepted and suspended to be effective December 1, 2008, subject to refund, the conditions of this order, and the outcome of the technical conference established by this order and further orders of the Commission in this proceeding.

(B) The Commission's staff is directed to convene a technical conference to address the issues raised by Hardy's filing and report the results of the conference to the Commission within 120 days of the date this order issues.

---

[9] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

[10] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(C) The requested waiver is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.