

129 FERC ¶ 61,007
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Colorado Interstate Gas Company

RP07-666-004
RP08-600-002

ORDER GRANTING CLARIFICATIONS

(Issued October 1, 2009)

1. On August 31, 2009, Colorado Interstate Gas Company (CIG) filed a request for clarification or, in the alternative, rehearing of the Commission's July 31, 2009 order in this proceeding.¹ Although CIG does not generally seek rehearing of the July 31 Order, it requests clarification, or in the alternative rehearing, of two statements made in that order. For the reasons set forth below, we grant CIG's request for clarification of these two statements.

I. Background

2. The July 31 Order addressed CIG's proposal to modify its method of tracking and recovering fuel and lost, unaccounted for and other fuel (LUF). Prior to CIG's August 31, 2007 filing in RP07-666-000, CIG's tariff provided only for volumetric adjustments to the reimbursement percentages to eliminate any actual over- or under-collections of fuel and LUF quantities. In its August 31, 2007 filing, CIG proposed a "monetized" cost/revenue true-up to track the changes in financial value in addition to the volumetric tracking of gas quantities used and retained, which CIG argued would eliminate any actual over- or under-collections of costs and revenues associated with fuel and LUF. After holding a technical conference and receiving comments on CIG's proposal, the Commission originally accepted CIG's cost/revenue true-up, given representations that it would lead to greater accuracy in the tracking of CIG's fuel and LUF.² A request for rehearing of this decision was filed. Subsequently, CIG filed an annual fuel adjustment in Docket No. RP08-600-000, which incorporated the

¹ *Colorado Interstate Gas Co.*, 128 FERC ¶ 61,117 (2009) (July 31 Order).

² *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,191 (2008).

cost/revenue true-up for the first time in determining CIG's annual fuel and LUF reimbursement percentages. CIG's first annual reimbursement filing under the new mechanism was strongly protested, and the Commission set the matter for technical conference in order to gain a better understanding of how CIG implemented its cost/revenue true-up.³

3. The July 31 Order addressed both requests for rehearing of the Commission's decision to accept CIG's cost/revenue true-up in Docket No. RP07-666-000, as well as the post-technical conference comments pertaining to CIG's first annual fuel adjustment filing utilizing the cost/revenue true-up in Docket No. RP08-600-000.⁴ Having actual data from CIG's annual update before it, the Commission was able to assess the full ramifications of CIG's proposal, and was able to re-assess the reasonableness of the cost/revenue true-up mechanism, the method by which CIG calculates costs and revenues, and its ability to accurately track costs and revenues in a transparent manner. The Commission found CIG's cost/revenue true-up mechanism was unworkable in practice, because of its inability to accurately track costs and revenues, its expansion of the universe of costs contemplated by fuel and LUF tracking mechanism to include shipper-related imbalance costs, and its general lack of transparency.⁵

4. The technical conference process revealed that CIG's cost/revenue true-up recovered shortfalls or flowed through over-recoveries of cost and revenue values that had accrued on its books, but that were not yet actually incurred through third-party transactions. In the July 31 Order, the Commission found that recovery of such estimated values contravened Commission policy against recovery of what amount to "deemed" costs, as discussed in *ANR Pipeline Company*,⁶ and more recently in *Colorado Interstate Gas Company*.⁷

5. Additionally, the Commission found that CIG's proposal improperly broadened the scope of its fuel and LUF tracking mechanism to include costs related to shipper imbalances, storage gas, linepack, and operational balancing agreement (OBA)-related imbalances, that are misplaced in a fuel and LUF mechanism. The Commission determined that shipper-related imbalances are more appropriately borne by the shippers

³ *Colorado Interstate Gas Co.*, 124 FERC ¶ 61,311 (2008).

⁴ July 31 Order, 128 FERC ¶ 61,117.

⁵ *Id.* P 31.

⁶ *ANR Pipeline Co.*, 80 FERC ¶ 61,173 (1997) (*ANR*).

⁷ *Colorado Interstate Gas Co.*, 126 FERC ¶ 61,085 (2009).

causing such imbalances. With respect to CIG's proposed expansion of its tracking mechanism by means of the cost/revenue true-up, the Commission stated:

Adding to our concerns is the fact that CIG has included estimates of storage gas, linepack, OBA-related imbalances, and net shipper imbalances in this mechanism. This expansion of the LUF mechanism renders cost elements more uncertain because CIG's filing does not adequately show the manner in which such costs and revenues would be treated in its cash-out mechanism or base rates as opposed to which and/or how much of these costs would be included in the newly broadened cost/revenue true-up.⁸

6. The July 31 Order also found that the nature of the OBA-related imbalance costs and revenues that CIG intended to flow through its cost/revenue true-up was not clear, and that CIG had not demonstrated that it is appropriate to charge its customers for agreements that may not have cash-out mechanisms. The Commission stated: "[E]ven if all of CIG's OBAs included cash-out mechanisms, to the extent that such costs and revenues are derived from individual OBAs not filed with the Commission, any attempt to include such costs and revenues may run afoul of the filed rate doctrine."⁹

7. In sum, in the July 31 Order the Commission found that CIG's use of deemed costs and revenues, its inclusion of shipper- and OBA-related imbalance costs and revenues (among other categories of fuel not traditionally recovered in a tracking mechanism), and its general lack of transparency rendered the cost/revenue true-up unjust and unreasonable. Therefore, the Commission required CIG to file revised tariff sheets to reinstitute its former volumetric tracking mechanism. In light of this determination, the Commission rejected CIG's annual fuel adjustment under the new mechanism as moot, and required CIG to recalculate and refile fuel reimbursement percentages that remove the impact of the cost/revenue true-up.

II. CIG's Request for Clarification or, in the Alternative, Rehearing

8. CIG raises two issues in its request for clarification/rehearing. First, CIG requests that the Commission clarify the statement quoted in Paragraph 6 above, regarding the use of OBA-related costs and revenues, is *dicta* and not a finding of fact or conclusion of law. CIG also asks the Commission to clarify that the sentence was not essential to the disposition of the July 31 Order. CIG argues that the sentence hypothesizes that there

⁸ July 31 Order, 128 FERC ¶ 61,117 at P 37 n.39.

⁹ *Id.* P 39.

may be an issue related to the filed rate doctrine if all of CIG's OBAs contained cash-out mechanisms, which CIG notes is not the case. To the extent the Commission relied on the sentence in the July 31 Order, CIG argues that it is improperly vague and that it misapplies the filed rate doctrine. CIG states that it is not necessary for the Commission to pre-approve all contracts for which costs are incurred to provide jurisdictional transportation service before such costs are included in rates; instead, CIG states that the Commission may examine costs proposed to be recouped in rates when the Commission approves such rates. CIG then argues that the Commission reviewed the costs to be included in its reimbursement percentages, and that to the extent the Commission finds any specific cost to be irrelevant or imprudently incurred, it may preclude recovery of that cost. Moreover, CIG argues that while the filed rate doctrine requires that rates may not be changed retroactively without notice, this proceeding was to determine the Commission approved rate for a tracking mechanism on a prospective basis.

9. Second, CIG argues that the Commission erred by stating, in the statement quoted in Paragraph 5 above, that CIG included *estimates* of various categories of costs in its cost/revenue true-up mechanism. CIG seeks clarification that the Commission did not make a finding of fact or a conclusion of law that CIG's accounting practices, which include the calculation of storage gas, linepack and imbalances, are in any way deficient or improper. CIG states that this request is congruent with the Commission's earlier statement in the July 31 Order that it did not take issue with CIG's accounting practices.¹⁰ CIG asserts that it follows the fixed asset accounting method approved by the Commission in Order No. 581¹¹ and properly flows through actual recorded quantities and costs such as those reflected in CIG's sworn accounting filing with the Commission and the Securities and Exchange Commission. CIG states that the July 31 Order provides no evidence that CIG's accounting procedures were deficient or improper and therefore argues that the Commission should either grant clarification that the above-quoted sentence was not intended to conclude that CIG's accounting practices, including the use of the fixed asset method to account for its pipeline investment in storage gas and linepack, were in any way deficient, or it should grant rehearing.

¹⁰ CIG, August 31, 2009, Rehearing Request at 6 (citing July 31 Order, 128 FERC ¶ 61,117 at P 33 n.29).

¹¹ *Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies*, Order No. 581, FERC Stats. & Regs. ¶ 31,026 (1995), *order on reh'g*, Order No. 581-A, FERC Stats. & Regs. ¶ 31,032 (1996).

III. Discussion

10. To the extent discussed below, the Commission grants CIG's requests for clarification of the July 31 Order. Accordingly, CIG's alternative requests for rehearing of that order are denied as moot.

11. CIG's first request for clarification pertains to the following statement in Paragraph No. 39 regarding CIG's proposal to reflect the costs and revenues associated with OBA-related imbalances in its cost/revenue true-up mechanism: "[E]ven if all of CIG's OBAs included cash-out mechanisms, to the extent that such costs and revenues are derived from individual OBAs not filed with the Commission, any attempt to include such costs and revenues may run afoul of the filed rate doctrine."¹² As requested by CIG, we clarify that this statement was *dicta*, and not necessary to the determination in the July 31 Order.

12. The statement reflected the Commission's concern with CIG's inclusion of certain OBA-related imbalance costs and revenues in its fuel tracking mechanism via the cost/revenue true-up. An OBA is defined as "a contract between two physically interconnected parties specifying the procedures to be used in processing imbalances or differences in hourly flows between the parties,"¹³ which the Commission has held need not be filed with the Commission.¹⁴ Because the purpose of an OBA is to provide a means for interconnected parties to process imbalances through the terms of the OBA (as opposed to pursuant to the terms of the pipeline's imbalance cash-out mechanism), the specific nature of the OBA-related costs and revenues that CIG planned to include in its cost/revenue true-up was unclear. The above-quoted statement only postulated that a possible issue involving the filed rate doctrine *may* arise in some circumstances, without making any specific findings that such issues were present here. Because we did not rely on the issue hypothesized in the above-quoted passage in reaching our decision, we grant CIG's request for clarification that the statement was *dicta*.

13. CIG's second request for clarification pertains to the use of the term "estimates" in the following statement in Footnote No. 39: "Adding to our concerns is the fact that CIG has included estimates of storage gas, linepack, OBA-related imbalances, and net shipper imbalances in this mechanism."¹⁵ Footnote No. 39 reflected the concern that CIG's

¹² July 31 Order, 128 FERC ¶ 61,117 at P 39.

¹³ *Standards For Business Practices Of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs. ¶ 31,062, at 30,675 (1998).

¹⁴ *Id.* at 30,676.

¹⁵ July 31 Order, 128 FERC ¶ 61,117, at P 37 n.39.

expanded fuel and LUF tracking mechanism included deemed or accrued costs that are not properly includable in such tracking mechanisms. Thus, the intent of the footnote was not to question CIG's accounting practices, but rather its use of accruals rather than actual costs or revenues to effectuate a rate impact via its new tracking mechanism.

14. The July 31 Order explained at length the Commission's objections to CIG's use of "deemed" costs in its cost/revenue true-up, i.e., the valuation of different categories of gas via the cash-out index price and inclusion of those costs in the fuel and LUF tracking mechanism. Accordingly, the term "estimates" in Footnote No. 39 should be understood in tandem with the discussion of "deemed" costs in the July 31 Order. Footnote No. 39 was not intended to impugn CIG's accounting procedures per se. The July 31 Order did not focus on the conformance of CIG's accounting practice with our accounting regulations;¹⁶ rather, the focus of the order was on the use of deemed or accrued costs in a rate adjustment using a tracker mechanism. Accordingly, we grant CIG's request for clarification on this issue.

The Commission orders:

(A) CIG's requests for clarification are granted, as discussed in the body of this order.

(B) CIG's alternate requests for rehearing are denied as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ July 31 Order, 128 FERC ¶ 61,117, at P 33 n.29.