

129 FERC ¶ 61,183
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 30, 2009

In Reply Refer To:
Wyoming Interstate Company, Ltd.
Docket No. RP10-103-000

Wyoming Interstate Company, Ltd.
Post Office Box 1087
Colorado Springs, Colorado 80944

Attention: Catherine E. Palazzari, Vice President

Reference: Fuel Tracker and True-Up Filing

Ladies and Gentlemen:

1. On October 30, 2009, Wyoming Interstate Company, Ltd, (WIC) filed revised tariff sheets¹ to update its fuel retention percentages pursuant to section 30 of its General Terms and Conditions (GT&C).² WIC also includes with this filing a proposed true-up refund report to comply with the Commission's October 1, 2009 order issued in Docket No. RP07-699-000, *et al.*, to remove its cost/revenue true-up mechanism.³ WIC proposes a December 1, 2009, effective date for its tariff sheets. The tariff sheets are accepted and suspended, to be effective December 1, 2009, subject to refund and conditions. WIC's proposed refund report is also accepted for filing.

2. WIC's tariff sheets set forth adjusted fuel retention percentages for its mainline system and five incremental systems. WIC states it calculated its fuel retention percentages using data for the 12-month period ending August 31, 2009, and sets forth all calculations in Appendices A and B of its filing. WIC proposes an increased total fuel

¹ Twenty-Fifth Revised Sheet No. 4C, Ninth Revised Sheet No. 4D, and Fifth Revised Sheet No. 4E to its FERC Gas Tariff, Second Revised Volume No. 2.

² On November 12, 2009, WIC filed supplemental information to assist reviewers in understanding its fuel tracker filing.

³ *Wyoming Interstate Co., Ltd.*, 129 FERC ¶ 61,001 (2009).

retention percentage on its mainline system from 0.81 percent to 1.20 percent, which it attributes to increased fuel consumption and lower mainline billing determinants. WIC proposes an increase in certain lateral fuel retention percentages, and a decrease in others.

3. WIC includes with its filing a proposed refund true-up report to comply with the Commission's October 1, 2009 Order referenced above. In that proceeding, the Commission originally approved for WIC a new fuel tracking mechanism referred to as the cost/revenue true-up mechanism. WIC states that it operated under this mechanism from December 1, 2008, through August 31, 2009. In the October 1, 2009 Order, the Commission rejected this mechanism and directed WIC to true-up to shippers all quantities of gas it had retained under this mechanism. In the instant filing, WIC states it retained 363,534 Dth under the mechanism. WIC proposes to value these quantities at its tariff cash out price and refund the appropriate amounts to shippers, on a pro rata basis, by invoice credit within 45 days of the date this order issues. WIC states that total remittances would total \$1,084,141. WIC provides refund data in Appendix C.

4. WIC's filing was noticed on November 2, 2009, with protests due as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), 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 this proceeding or place additional burdens on existing parties. BP America Production Company and BP Energy Company (collectively, BP) filed a protest, which we address below.

5. BP asserts that in the instant filing, WIC is attempting to roll in, as part of its mainline system fuel rate, the fuel charges that WIC pays to Overthrust Pipeline Company (Overthrust) in connection with capacity that WIC acquired on Overthrust.⁴ BP asserts that rolling-in of the Overthrust fuel costs violates both WIC's tariff and the Commission's rate principles. BP states that section 6.2 of WIC's GT&C provides that "if capacity is acquired on behalf of multiple shippers, any fees or charges not directly attributable to reservation and/or usage charges will be allocated pro rata among those shippers based on the contract quantity of each shipper." BP further explains that for Colorado Interstate Gas Company (CIG), an affiliate of WIC, the Commission approved tariff language that provided for the allocation of off-system costs (including fuel costs) only to those shippers that utilize the capacity. BP also notes that in *Tennessee Gas*

⁴ BP states the amount of capacity that WIC holds on Overthrust varies over the course of the contract, from a low of 230,000 Dth per day to a high of 405,000 Dth per day, and the contract extends through September 2020.

Pipeline Company, the Commission approved certain tariff language regarding off-system costs, noting that “the charges incurred by the pipeline for [the Off-System Capacity] are properly passed along to the shipper.”⁵

6. BP also argues that the Commission’s ratemaking principles concerning cross-subsidization and double-recovery of costs support its position. BP contends that Overthrust fuel costs should only be allocated to those shippers whose transactions are supported by the Overthrust capacity. BP asserts this will ensure that other shippers are not forced to subsidize off-system shippers. BP adds that the allocation of Overthrust costs only to the off-system shippers ensures that there are clear market signals regarding the cost of off-system capacity. BP is concerned that WIC appears to want not only to roll in the Overthrust fuel costs with its mainline system fuel costs, but also to impose an incremental fuel surcharge for the Overthrust off-system capacity. BP states this will allow WIC to double-recover the Overthrust fuel costs, which would impose excessive and unfair costs on shippers. BP contends that the Commission should determine that an incremental rate imposed on WIC shippers using Overthrust capacity is the only vehicle for WIC to recover the Overthrust fuel costs.

7. WIC’s proposed fuel tracker filing appears to generally comply with the fuel tracker filing provisions set forth in section 30 of its GT&C. However, the Commission shares the concerns expressed by BP in its protest, and finds that the filing may result in fuel charges that are not just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission suspends WIC’s tariff sheets for the period set forth below, subject to refund, conditions discussed below, and further review and order of the Commission. The Commission directs WIC to file additional information, within 30 days of the date this order issues, addressing the protests and comments that BP filed concerning improper cross-subsidization, possible double-recovery of costs, and alleged non-compliance with its tariff. Parties will have 20 days to comment on WIC’s information filing. Among other things, WIC should (1) explain in detail how it recovers fuel costs for its off-system Overthrust capacity; (2) show that its fuel costs collection for its Overthrust capacity conforms to its tariff and Commission regulations and principles; and (3) show that it is not double-recovering fuel costs on its Overthrust capacity.

8. The Commission’s policy regarding rate suspensions is that rate 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 that it may be inconsistent with other statutory standards.⁶ It is recognized, however, that

⁵ *Tennessee Gas Pipeline Co.*, 118 FERC ¶ 61,159, P 10 (2007).

⁶ *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.⁷ Such circumstances exist here where WIC is filing to adjust fuel retention percentages pursuant to a tracking mechanism. Therefore, the Commission shall exercise its discretion to suspend the tariff sheets to become effective on December 1, 2009, subject to refund, the conditions set forth in the body of this order, and further review and order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties

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⁷ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).