

131 FERC ¶ 61,002
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Cheyenne Plains Gas Pipeline Company, LLC

Docket No. RP09-566-000

ORDER ON COMPLIANCE FILING

(Issued April 1, 2010)

1. On May 1, 2009, Cheyenne Plains Gas Pipeline Company, LLC, (Cheyenne Plains) filed primary and alternate tariff sheets to revise Fuel and Lost and Unaccounted for Gas (FL&U) reimbursement percentages pertaining to service offered under Rate Schedules FT (Firm Transportation), IT (Interruptible Transportation), and SS (Interruptible Swing). In a May 29, 2009 order,¹ the Commission accepted and suspended Cheyenne Plains' primary tariff sheet,² to become effective June 1, 2009, subject to refund, conditions, and further review and order of the Commission; the Commission rejected Cheyenne Plains' alternate tariff sheet.³ Cheyenne Plains thereafter filed additional information in support of its primary tariff sheet, as required by the May 29 Order.

2. In this order, we find that the additional information filed by Cheyenne Plains complies with the May 29 Order, and we therefore affirm our acceptance of Cheyenne Plains' primary tariff sheet, effective June 1, 2009.⁴ However, in accord with recent

¹ *Cheyenne Plains Gas Pipeline Company, LLC*, 127 FERC ¶ 61,195 (2009) (May 29 Order).

² Eighth Revised Sheet No. 20 to its FERC Gas Tariff, Original Volume No. 1.

³ Alternate Eighth Revised Sheet No. 20 to its FERC Gas Tariff, Original Volume No. 1.

⁴ Cheyenne Plains did not seek rehearing of the May 29 Order's rejection of its proposed alternate tariff sheet, so we address only Cheyenne Plains' primary tariff sheet here.

Commission decisions,⁵ we find Cheyenne Plains' fuel tracker mechanism to be unjust and unreasonable. Pursuant to the Commission's authority under section 5 of the Natural Gas Act (NGA), Cheyenne Plains is directed to file revised tariff sheets within 15 days of the date of this order, to be effective the date this order issues, modifying its fuel tracker mechanism to be consistent with the directives herein. Cheyenne Plains is also directed to file revised fuel percentages that reflect the revisions to its tracking mechanism, to be effective the date this order issues.

I. Background

3. Cheyenne Plains' FL&U reimbursement percentage comprises two components—a fuel component (F) and a lost and unaccounted for (L&U) component. To calculate its fuel component, Cheyenne Plains adds together (1) an estimate of how much fuel it will need to support the anticipated transportation service for all shippers under all rate schedules during the upcoming fuel reimbursement period; and (2) an adjustment reflecting the difference between actual quantities of fuel Cheyenne Plains used during the data collection period, and quantities of gas Cheyenne Plains retained for fuel during that collection period.

4. To calculate its L&U component, Cheyenne Plains adds together (1) an estimate of how much L&U it will experience supporting the anticipated transportation service for all shippers under all rate schedules during the upcoming reimbursement period; (2) an adjustment reflecting the difference between actual quantities of L&U Cheyenne Plains experienced during the data collection period and quantities of gas Cheyenne Plains retained for L&U during that collection period; and (3) a cost/revenue true-up adjustment. The Commission accepted Cheyenne Plains' cost/revenue true-up in May 2008, to be effective on June 1, 2008,⁶ and this is the first annual fuel filing to incorporate the cost/revenue true-up. Cheyenne Plains states the cost/revenue true-up adjustment reflects over- or under-recovery of costs and revenues related both to fuel and to system balancing. This component is the dekatherm-equivalent of the monetized costs and revenues attributable to fuel, shrinkage, linepack adjustments, system balancing activities, and other credit/debit activity.

⁵ *El Paso Natural Gas Co.*, 129 FERC ¶ 61,006 (2009) (*El Paso*); *Colorado Interstate Gas Co.*, 128 FERC ¶ 61,117 (2009) (*CIG*); *Wyoming Interstate Co., Ltd.*, 129 FERC ¶ 61,001 (2009) (*WIC*).

⁶ *Cheyenne Plains Gas Pipeline Company, LLC*, 123 FERC ¶ 61,227 (2008) (Cost/Revenue True-up Order).

II. Details of Initial Fuel Adjustment Filing and Responsive Comments

A. Fuel Reimbursement Percentage

5. In its Primary Case fuel adjustment proposal, Cheyenne Plains used a data collection period of February 1, 2008, through January 29, 2009.⁷ Cheyenne Plains proposed to increase its fuel reimbursement percentage from 0.72 percent to 0.94 percent, explaining that the increase was primarily due to the expiration of the prior volumetric true-up percentage of negative 0.11 percent and an increase in fuel use due to increased throughput. The proposed 0.94 percent fuel reimbursement percentage consists of a base percentage of 0.89 percent and a true-up percentage of 0.05 percent.

6. In addition, in its response to a December 20, 2007 certificate order,⁸ in which the Commission directed Cheyenne Plains to separately track the fuel attributable to its Kirk Expansion Project facilities from its system fuel, Cheyenne Plains provided information in support of its system-wide fuel percentages separately from information supporting its Kirk Expansion Project fuel use. Cheyenne Plains explained that while its total system fuel rate was 0.89 percent, the fuel rate for the Kirk project was 1.10 percent. Cheyenne Plain asserted these figures are consistent with the net benefit test information filed in the certificate proceeding for the Kirk Expansion Project.⁹

7. BP America Production Company and BP Energy Company (BP) argued that the Commission should rescind the rolled-in rate treatment with respect to fuel for the Kirk Expansion Project because existing shippers are facing higher fuel rates as a result of that project. In support of its contention, BP cited the Certificate Order, which allowed rolled-in rate treatment for the Kirk Expansion facilities “barring any significant change

⁷ Because the cost/revenue true-up was accepted effective June 1, 2008, however, the relevant data collection period for that component is the eight months between June 1, 2008, and January 31, 2009.

⁸ *Cheyenne Plains Gas Pipeline Company, LLC*, 121 FERC ¶ 61,273 (2007) (Certificate Order).

⁹ Cheyenne Plains, May 1, 2009 Filing at 8. In its tariff filing, Cheyenne Plains pointed to information it filed in the certificate proceeding in which it projected a system-wide rate of 0.98 percent (with a corresponding Kirk compressor fuel rate of 1.18 percent) under a “realistic scenario.” Cheyenne Plains also projected a “worst-case scenario,” in which the system-wide fuel rate would be 1.03 percent (with a corresponding Kirk compressor fuel rate of 1.51 percent). *Id.* (citing Cheyenne Plains, May 1, 2007 Answer, Docket No. RP07-128-000, at App. C).

in the circumstances presented by Cheyenne Plains in this proceeding.”¹⁰ BP also noted that the Certificate Order explained that if a future rate review showed “that the revenue benefits generated by the project are offset by the fuel consumption associated with the project, the Commission would consider such offset a significant change in circumstances.”¹¹

B. L&U Reimbursement Percentage

8. Cheyenne Plains also proposed to decrease its L&U reimbursement percentage from 0.08 percent to 0.07 percent. The proposed 0.07 percent L&U reimbursement percentage consists of a base percentage of 0.03 percent and a net true-up percentage (incorporating both the volumetric and its cost/revenue true-up components) of 0.04 percent.

9. Cheyenne Plains stated that its cost/revenue true-up adjustment is supported by the system gas balance information displayed in its Operational Purchases and Sales report, which includes monetized amounts for shipper imbalance cash-outs, operational balancing agreement (OBA) cash-outs, operational sales and purchases, line pack and net system balancing activity, net fuel and L&U, capitalized line pack, and other gas adjustments. Cheyenne Plains acknowledged that the Cost/Revenue True-up Order made clear that purchases and sales for system balancing must be kept separate and recovered through the cash-out provisions and not through the fuel mechanism. However, Cheyenne Plains argued that because its system is operationally integrated, it is impossible to discern which purchase/sales were attributable to shipper and OBA imbalance activity and which were attributable to fuel-related activity. As a result, Cheyenne Plains used an allocation methodology to create two different reports from the operational purchases and sales report—one solely related to shipper and OBA imbalance activity and the other related to fuel activity.

10. Kansas Corporation Commission (KCC) filed a request for technical conference. BP protested Cheyenne Plains’ filing, arguing that Cheyenne Plains failed to adequately explain the allocation methodology it utilized in determining its cost/revenue true-up percentage. BP also argued that the Commission should reject Cheyenne Plains’ proposal because it includes accrued and imputed costs in its fuel and L&U rates,¹² and

¹⁰ BP, Protest at 6 (citing Certificate Order, 121 FERC ¶ 61,273 at P 43).

¹¹ *Id.* (citing Certificate Order, 121 FERC ¶ 61,273 at P 44).

¹² BP defines “accrued costs” as costs due to changes in the value of gas from the date of the imbalance to the date of an actual purchase or sale to make up for the imbalance. BP defines “imputed costs” as costs derived from the cash-out index price.

that under Commission policy, pipelines may only collect costs actually incurred due to purchases or sales of gas to make up for imbalances (fuel or otherwise).¹³ BP also asserted that Cheyenne Plains' proposal would include approximately \$3.4 million of accrued/imputed operational sales and approximately \$2.3 million of accrued/imputed operational purchases that Cheyenne Plains never actually incurred.

III. May 29 Order

11. In the May 29 Order, the Commission accepted and suspended Cheyenne Plains' primary tariff sheet, subject to refund and further review.¹⁴ Although the Commission did not convene a technical conference, it directed Cheyenne Plains to file additional information in support of its primary tariff sheet. Specifically, the Commission directed Cheyenne Plains to provide information fully explaining and detailing the following: (1) the proposed allocation methodology it employed to create reports for operational purposes due to system balancing activities and due to fuel-related activities; (2) the extent to which Cheyenne Plains' fuel tracker incorporates accrued and imputed costs; (3) the "operational purchases" inconsistency that BP identified in its protest; and (4) why the Commission should continue to allow rolled-in fuel treatment for the Kirk Expansion Project facilities (i.e., a comparison of the revenue benefits of the project compared with the cost of fuel consumption associated with the project), addressing the concerns that BP raised.¹⁵

IV. Discussion

12. In this order, we find that Cheyenne Plains' supplemental filing generally supports the fuel reimbursement percentages proposed by Cheyenne Plains in its May 1, 2009 fuel adjustment filing. We therefore affirm our acceptance of Cheyenne Plains' primary tariff sheet, to be effective June 1, 2009. However, because we find that the cost/revenue true-up component of Cheyenne Plains' fuel tracking mechanism is unjust and unreasonable, we will also require Cheyenne Plains to file revised tariff sheets eliminating the cost/revenue true-up component (and revising its reimbursement percentages

¹³ BP, May 13, 2009, Protest at 4-5 (citing *Colorado Gas Interstate Gas Co.*, 126 FERC ¶ 61,085, at P 23-24 (2009); *Northern Border Pipeline Co.*, 103 FERC ¶ 61,134, at P 82 (2003); *ANR Pipeline Co.*, 80 FERC ¶ 61,173 (1997)).

¹⁴ May 29 Order, 127 FERC ¶ 61,195 at P 22.

¹⁵ *Id.* P 23

accordingly), consistent with Commission decisions addressing nearly identical mechanisms.¹⁶

A. Fuel Percentage and the Kirk Expansion Project

1. Cheyenne Plains' Supplemental Filing

13. Cheyenne Plains asserts that BP has not shown that circumstances have changed since the Commission's predetermination of rolled-in treatment of fuel costs in the Certificate Order, and Cheyenne Plains objects to BP's call for such fuel costs to be incrementally priced. Cheyenne Plains states that once the Commission makes a predetermination of rolled-in rate treatment, parties later challenging that roll-in must demonstrate that circumstances have materially changed.¹⁷ Cheyenne Plains argues that BP has not shown any such material changes in circumstances. Cheyenne Plains states that at the time the Commission granted pre-determination of rolled-in rate treatment, the Commission was aware that the expansion project had one shipper and that all fuel (whether due to acquired capacity on a neighboring pipeline or from the Kirk compressor station) would be rolled-into the system-wide fuel rate. Cheyenne Plains also states that BP's emphasis on the fact that many of Cheyenne Plains' shippers are negotiated rate shippers is not only irrelevant, but was also known to the Commission when it granted the rolled-in rate treatment. Cheyenne Plains points out that the increase in the fuel percentage is within the range of potential increase (from 0.93 percent to 1.03 percent) Cheyenne Plains estimated in the certificate proceeding. Therefore, Cheyenne Plains asserts that no material change has occurred, and BP is simply repeating arguments previously considered by the Commission.

14. Furthermore, Cheyenne Plains disputes BP's assertion that it failed to provide an updated net benefits test, stating that while the Certificate Order required the separate tracking of fuel associated with the Kirk Expansion Project, it did not require an updated net benefits test. Nonetheless, Cheyenne Plains provides an updated illustrative net benefits test in support of its contention that revenues from the Kirk Expansion Project continue to exceed the fuel costs. Cheyenne Plains dismisses as irrelevant to the determination of net benefits BP's arguments that rolled-in treatment is inappropriate because (1) the Kirk Expansion Project is a single-customer facility; and (2) most of Cheyenne Plains' customers are negotiated rate shippers. Cheyenne Plains emphasizes that in deciding to become a negotiated rate shipper paying the system-wide fuel charge,

¹⁶ *El Paso*, 129 FERC ¶ 61,006. See also *CIG*, 128 FERC ¶ 61,117; *WIC*, 129 FERC ¶ 61,001.

¹⁷ Cheyenne Plains, June 29, 2009 Supplemental Filing at 10 (*Southern Natural Gas Co.*, 113 FERC ¶ 61,199, at P 37 & n.25 (2005)).

BP made a calculated choice that results in both benefits and costs. Cheyenne Plains states that ultimately, the issue of whether BP is a negotiated rate shipper does not bear on whether the Commission should revisit its determination of rolled-in treatment for the Kirk Expansion Project. Cheyenne Plains indicates that the Kirk Expansion Project resulted in enhanced system reliability and other operational benefits that BP does not take into consideration. In further support, Cheyenne Plains cites benefits such as increased efficiency resulting from the additional compressor station, increased shipper flexibility, and the ability to sell additional seasonal capacity on a firm basis.

2. Responsive Comments

15. BP argues that Cheyenne Plains should exclude all fuel costs attributable to the Kirk Expansion Project from the system-wide fuel percentage because the project benefits only one shipper, not the system as a whole. BP also renews arguments that there has been a significant change in circumstances since the Commission's predetermination of rolled-in treatment in the Certificate Order, and that such a change justifies eliminating the rolled-in treatment. In support of its argument that circumstances have changed significantly, BP cites (1) the higher fuel rate attributable to the Kirk Expansion Project (1.10 percent) than to the system as a whole (0.89 percent); (2) the increase in fuel attributable to the Kirk Expansion Project during the last six months of the data collection period (1.60 percent); and (3) the fact that when Kirk Expansion fuel is eliminated from the system-wide fuel rate, the system-wide fuel rate drops to 0.86 percent.¹⁸ BP objects to the argument that because the Commission knew system-wide fuel rates could increase in the certificate proceeding, there has been no change in circumstances, stating that such an argument would allow pipelines to establish a wide range of potential fuel costs in a certificate proceeding in order to later claim that a subsequent increase in fuel costs does not amount to changed circumstances. BP further argues that because fuel rates increased as a direct result of the Kirk Expansion Project, and because most shippers are negotiated rate shippers that must pay the system-wide fuel rate (but will not see a benefit if and when the recourse rate is reduced at some point in the future), there will be no benefit to shippers. BP states that such a result would be unjust and unreasonable.

16. BP asserts that the Kirk Expansion Project has not resulted in overall net benefits, because negotiated rate shippers may never reap any such benefits. BP dismisses as irrelevant Cheyenne Plains' argument that BP chose to be a negotiated rate customer subject to fuel fluctuations because BP states it only agreed to reimburse Cheyenne Plains' fuel costs due to normal fluctuations in throughput, not changes due to the roll-in

¹⁸ See BP, July 20, 2009 Protest at 6-7 (incorporating by reference arguments made in its May 13, 2009 Protest at 6-9).

of a new expansion project. Finally, BP states that Cheyenne Plains failed to provide evidence that upstream fuel costs benefit Cheyenne Plains' system as a whole.

3. Commission Determination

17. We first address the May 29 Order's inquiry into whether rolled-in fuel treatment for the Kirk Expansion Project facilities is still appropriate.¹⁹ As a general matter, "[the Commission aims] to resolve the issue of rate treatment in advance of the construction of new facilities, in order to 'enable existing and potential new shippers to make appropriate decisions pre-construction to protect their interests either in the certificate proceeding or in their contracts with the pipeline.'"²⁰ In the Certificate Order, the Commission accepted Cheyenne Plains' proposal to roll in the expansion fuel-related costs, subject to Cheyenne Plains tracking the fuel attributable to the expansion volumes separately.²¹ The Commission indicated that it would revisit its approval if there was a "significant change in the circumstances."²² The Commission stated that "[i]f future rate review shows that the revenue benefits generated by the project are offset by the fuel consumption associated with the project, the Commission would consider such offset a significant change in circumstances."²³

18. Despite BP's arguments to the contrary, we do not find that a "significant change in circumstances" has occurred that would merit reversing the Commission's predetermination of rolled-in rate treatment for fuel costs on the Kirk Expansion Project. BP's arguments focus primarily on the increase in system-wide fuel percentage costs, without considering the revenue benefits associated with the Kirk Expansion Project. For instance, BP points to the increase in Cheyenne Plains' proposed system-wide fuel reimbursement percentage from the year before, and argues that the proposed rate of 0.89

¹⁹ May 29 Order, 127 FERC ¶ 61,195 at P 23.

²⁰ *Southern Natural Gas Co.*, 113 FERC ¶ 61,199, at P 37 (2005) (*Southern Natural*).

²¹ Certificate Order, 121 FERC ¶ 61,273 at 44 (citing *Dominion Cove Point*, 115 FERC ¶ 61,337, at P 121 (2006)).

²² *Id.*

²³ *Id.*

percent would be reduced to 0.86 percent if the fuel volumes associated with the Kirk Expansion Project were removed from the calculation and allocated on an incremental basis.²⁴

19. However, simply because there has been an increase in the system-wide fuel rate does not mean that there has been a significant change in circumstances since the Commission made its predetermination of rolled-in rate treatment. As Cheyenne Plains rightly points out, the Commission was aware that the fuel reimbursement percentage might increase to as much as 1.03 percent (under a worst-case scenario) once the expansion project was operational.²⁵ The increase here is well within the range of potential fuel cost increases contemplated by the Commission in the certificate proceeding, and it does not amount to a “significant change in circumstances.”

20. BP suggests that such a result would allow pipelines to establish an unreasonably wide range of potential fuel costs in a certificate proceeding in order to later be able to increase the fuel rate while claiming there has been no change in circumstances. However, any potential range of fuel cost increases is considered during the certificate proceeding, when the Commission evaluates whether an expansion project will result in net benefits to existing shippers. As stated in the Certificate Order, “[w]ith respect to rolling in the expansion fuel-related costs, the Commission will accept a pipeline’s estimate of project costs and revenues, *including fuel charges and revenues*, as long as the pipeline’s estimates are generally reasonable.”²⁶ Having evaluated the estimated fuel costs (including the range of potential fuel cost increases) in the certificate proceeding to determine whether the proposed expansion project would result in net benefits to existing

²⁴ BP, May 13, 2009 Protest at 7-8. BP also points to a higher fuel rate for the Kirk compressor station during the last six months of the data collection period, arguing that fuel usage is increasing.

²⁵ Certificate Order, 121 FERC ¶ 61,273 at P 40 & n.27.

²⁶ *Id.* P 44 (citing *Southern Natural*, 113 FERC ¶ 61,199 at P 35-38 (approving pipeline’s proposed rolled-in rate treatment based on estimated project and fuel costs); *Southern LNG, Inc.*, 101 FERC ¶ 61,187, at P 23-24 (2002) (declining to condition the predetermination of rolled-in rate treatment because the pipeline’s revenues may decrease or its expenditures increase, where protestors’ concerns were premature and speculative.) (emphasis in original).

shippers, we do not consider a revised fuel rate that fits comfortably within these estimates to be a “significant change in circumstances” that would support rescinding rolled-in treatment for these fuel costs.²⁷

21. BP argues that because the Kirk Expansion Project was built for a single shipper and most other shippers on Cheyenne Plains’ system are negotiated rate shippers that pay the full fuel percentage, they will not receive any benefits from the project (in the form of lower recourse rates) but will bear the increased fuel costs. This argument, however, does not represent a significant change in circumstances from those that existed when the Commission granted predetermination of rolled-in rate treatment. In the Certificate Order, the Commission explained how it determines whether to roll-in the costs of an expansion project:

In determining the impact on a pipeline’s existing customers of a proposed project priced at a negotiated rate, the Commission calculates the project revenue using the pipeline’s applicable maximum recourse rate. This approach protects the existing customers from potential cross-subsidization, in that, if the negotiated rate is lower than the maximum recourse rate, the pipeline accepts the responsibility for any revenue shortfall.²⁸

22. BP’s argument regarding the inequity of the rolled-in treatment to negotiated rate shippers goes to the manner in which the Commission weighs net benefits of an expansion project. The fact that many shippers on Cheyenne Plains’ system may be negotiated rate shippers was already weighed in the certificate proceeding allowing

²⁷ It is generally understood that fuel reimbursement rates have the potential to vary significantly from year to year. *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 19 (2005) (recognizing that the tracking of individual cost-of-service items for cost items such as fuel may be permitted, as such costs are subject to significant change from year to year and difficult to project). In light of the expected unpredictability of fuel costs, it would be unreasonable to revisit a predetermination of rolled-in rate treatment based only on an increase in the fuel rate, which is within the range anticipated by the Commission in allowing rolled-in treatment.

²⁸ Certificate Order, 121 FERC ¶ 61,273 at 43 (citing *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 at 61,241, *reh’g and clarification denied*, 75 FERC ¶ 61,024, *reh’g denied*, 75 FERC ¶ 61,066 (1996), *petition for review denied*, *Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998)).

rolled-in rate treatment. The negotiated rate shippers could have chosen to be recourse rate shippers, and still have that option upon expiration of their negotiated contracts. Because there has been no significant change in circumstances, we accept Cheyenne Plains' proposed fuel reimbursement percentage and decline to revisit the predetermination of rolled-in fuel treatment for the Kirk Expansion Project.

B. Cost/Revenue True-up

1. Cheyenne Plains' Supplemental Filing

23. In its supplemental filing, Cheyenne Plains responds to the issues regarding its cost/revenue true-up mechanism raised in the May 29 Order.²⁹ Cheyenne Plains argues that its proposed methodology for allocating operational purchases and other activities between shipper-related activities and fuel-related activities is reasonable and is grounded in the physical requirement that at all times gas transactions on the pipeline must be in balance. Cheyenne Plains further supports its allocation by pointing to more detailed explanations of similar allocation methodologies that were proposed by its affiliates.³⁰

24. Cheyenne Plains next responds to the Commission's question regarding accrued and imputed costs. Cheyenne Plains states that its cost/revenue true-up incorporates revaluations of encroachments on system gas in accordance with the fixed asset method of accounting required by Order No. 581³¹ and accepted accounting principles. Cheyenne Plains explains that although the accrued costs it uses in its cost/revenue true-up are not yet out-of-pocket "cash" costs, they are actual costs reflected on Cheyenne Plains' books and financial statements. Although Cheyenne Plains supports utilizing these monthly revaluation costs in its cost/revenue true-up, it states that it is willing to defer revaluations of gas imbalance items and flow through only the cost and revenue

²⁹ May 29 Order, 127 FERC ¶ 61,195 at P 23.

³⁰ See Cheyenne Plains, June 29, 2009 Supplemental Filing at 6 (citing Colorado Interstate Gas Co., December 5, 2008 Initial Comments, Docket No. RP08-600-000 at Att. A; Wyoming Interstate Co., Ltd., February 13, 2009 Initial Comments, Docket No. RP09-47-000 at Att. A; El Paso Natural Gas Co., March 12, 2009 Filing, Docket No. RP09-117-000 at Tab D).

³¹ *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) (Order No. 581).

difference realized by cash purchases and sales, consistent with similar offers made by Cheyenne Plains' affiliates in similar proceedings.³²

25. Cheyenne Plains responds to BP's argument that the cost/revenue true-up would include millions of dollars of costs never actually incurred by Cheyenne Plains by arguing that BP misinterprets the data filed in this proceeding. Although Cheyenne Plains acknowledges that it made no operational purchases and sales with third parties during the relevant period, it explains that the proposed recovery of amounts questioned by BP (i.e., approximately \$3.4 million of accrued/imputed operational sales and approximately \$2.3 million of accrued/imputed operational purchases) is appropriate given that such amounts are derived from the allocation process used to attribute costs of balancing the system between shipper and OBA activities and fuel activities to maintain a gas balance.

2. Responsive Comments

26. BP states that Cheyenne Plains' supplemental filing does not provide enough sufficiently transparent information to permit adequate review of the filing. Therefore, BP requests that the Commission either deny the proposed fuel percentages or require Cheyenne Plains to file electronic spreadsheets with formulas and linkages intact. BP also reiterates its objection to Cheyenne Plains' method of allocating operational purchases and sales between shipper-related activity and fuel-related activity, and imputing costs therefrom.

27. BP argues that Cheyenne Plains' explanation of the methodology confirms that it is not separately tracking purchases and sales but is instead merely treating fuel as another component of its overall system balancing equation. BP alleges that because the allocation methodology could result in shipper-related imbalances being counted as fuel, it does not comply with the Commission's requirement that only actual purchases and sales for system balancing be recovered through the cash-out mechanism. BP also reiterates its argument that Cheyenne Plains should not be permitted to collect accrued or imputed costs in its fuel tracker mechanism.

3. Commission Determination

28. In the time since the parties submitted comments in response to the May 29 Order, the Commission has issued three orders addressing cost/revenue true-up mechanisms of

³² See Cheyenne Plains, June 29, 2009 Supplemental Filing at 7-8 (referencing proceedings in which Colorado Interstate Gas Company (CIG) (Docket No. RP08-600-000) and Wyoming Interstate Company, Ltd. (WIC) (Docket No. RP09-47-000) made annual filings that included similar cost/revenue true-up mechanisms).

Cheyenne Plains' affiliates that are nearly identical to mechanism at issue here.³³ In two of these orders, *CIG* and *WIC*, the Commission granted rehearing of earlier decisions that accepted similar cost/revenue true-ups. The Commission ultimately rejected these cost/revenue true-up mechanisms due in part to numerous implementation problems revealed during annual fuel filings, including their recovery of "deemed costs" (i.e., costs that do not result from actual cash transactions but are instead valuations of gas quantities at the cash-out index price) as well as an unworkable lack of transparency.³⁴ The Commission echoed these concerns in *El Paso*, finding that the pipeline's cost/revenue true-up mechanism to be unjust and unreasonable.³⁵ Because *El Paso*'s cost/revenue true-up mechanism had already been in effect, the Commission acted pursuant to section 5 of the Natural Gas Act (NGA) and directed *El Paso* to remove the non-fuel costs from its fuel tracking mechanism.³⁶

29. As indicated above, Cheyenne Plains acknowledges that its cost/revenue true-up mechanism is consistent with the cost/revenue true-up mechanisms employed by its *El Paso*, *CIG*, and *WIC* affiliates³⁷ that have since been rejected by the Commission. The comments filed in response to the May 29 Order raise essentially the same issues addressed by the Commission in the other proceedings involving Cheyenne Plains' affiliates. Specifically, Cheyenne Plains' mechanism contains numerous cost estimates (i.e., valuations of gas quantities at the cash-out index price) or "deemed" costs, which diminish the ability of its tracking mechanism to accurately track actual costs.³⁸ The Commission prohibits the use of such "deemed" costs and revenues as inputs used to

³³ *El Paso*, 129 FERC ¶ 61,006. See also *CIG*, 128 FERC ¶ 61,117; *WIC*, 129 FERC ¶ 61,001.

³⁴ *CIG*, 128 FERC ¶ 61,117 at P 33-35; *WIC*, 129 FERC ¶ 61,001 at P 31-32.

³⁵ *El Paso*, 129 FERC ¶ 61,006 at P 38-39.

³⁶ *Id.*

³⁷ See Cheyenne Plains, June 29, 2009 Supplemental Filing at 2.

³⁸ See *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 26 (2005) (explaining that when a pipeline is permitted to "track changes in a particular cost item without regard to changes in other cost items . . . there should be a guarantee that changes in that cost item are tracked accurately").

determine the FL&U percentage to be collected from shippers.³⁹ “[A]ny tracking mechanism designed to recover fuel and L&U may not include costs or revenues that may only have been recorded on the company’s books pursuant to its accounting methodologies, but which have not yet been expended or realized through an arms-length cash transaction with a third party.”⁴⁰

30. Furthermore, the methodology set forth by Cheyenne Plains to allocate operational purchases and sales of gas between shipper-related and fuel-related imbalances relies inextricably on the use of these deemed costs. We therefore are unable to verify from Cheyenne Plains’ filing whether only fuel-related costs would be recovered through the tracking mechanism, consistent with the requirement set forth in the Commission’s order accepting the mechanism.⁴¹ Furthermore, the lack of transparency and complexity that emerge when multiple estimates and accounts are combined together creates a process that is effectively unverifiable.⁴²

31. Accordingly, Cheyenne Plains’ cost/revenue true-up suffers from the same infirmities as similar mechanisms of its affiliates, and we therefore find that Cheyenne Plains’ cost/revenue true-up mechanism has become unjust and unreasonable. Pursuant to section 5 of the NGA, we direct Cheyenne Plains to make a compliance filing to (1) remove the cost/revenue true-up from its fuel tracking mechanism, consistent with the directives in this order, and (2) revise its reimbursement percentages to reflect the removal of the cost/revenue true-up. The revised mechanism and related reimbursement percentages will be effective the date this order issues. To the extent that transitional adjustments are needed due to implementation of the revised mechanism and reimbursement percentages between the effective date of this order and the effective date of Cheyenne Plains’ next annual fuel adjustment, we direct Cheyenne Plains to propose a

³⁹ *WIC*, 129 FERC ¶ 61,001 at P 31 (citing *CIG*, 128 FERC ¶ 61,117 at P 33-34). Although we object to the use of certain deemed costs and revenues in Cheyenne Plains’ FL&U tracking mechanism, we do not make any finding with respect to Cheyenne Plains’ accounting practices or its compliance with Order No. 581.

⁴⁰ *El Paso*, 129 FERC ¶ 61,006 at P 19 (citing *CIG*, 128 FERC ¶ 61,117 at P 34).

⁴¹ *Cheyenne Plains Gas Pipeline Co., LLC*, 123 FERC ¶ 61,227, at P 14 n.11 (2008).

⁴² *El Paso*, 129 FERC ¶ 61,006 at PP 21, 32.

method for dealing with such transition issues, similar to the transition mechanism and protections implemented in *El Paso*.⁴³

The Commission orders:

(A) The tariff sheet listed in footnote 2 is accepted, to be effective June 1, 2009.

(B) Cheyenne Plains is directed to file revised tariff sheets within thirty (30) days of the date of this order to modify its fuel tracking mechanism and fuel reimbursement percentages as discussed above, to be effective the date this order issues, and is directed to minimize any disruption or penalty to shippers arising from the transition, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴³ See *El Paso*, 129 FERC ¶ 61,006, *order on reh'g*, 129 FERC ¶ 61,170, at P 18, 23-27 (accepting a proposal whereby El Paso would treat the difference between the amounts of the fuel assessed under the old mechanism and the amount of fuel assessed under the revised mechanism as a fuel imbalance, while working to ensure that no shipper suffers and disruption or penalty on account of the transition to the revised fuel mechanism).