

139 FERC ¶ 61,159
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Transcontinental Gas Pipe Line Company, LLC

Docket No. RP11-2371-001

ORDER ON REHEARING

(Issued May 25, 2012)

1. Indicated Shippers¹ requested rehearing of the Commission's "Letter Order on Revisions to Operational Balancing Agreement Provisions" issued on September 9, 2011 (September 9, 2011 Order).² In that Order, the Commission accepted, over the protest of Indicated Shippers, the tariff records filed by Transcontinental Gas Pipe Line Company, LLC (Transco) to modify certain tariff provisions related to resolving Operational Balancing Agreement (OBA) imbalances on its system. For the reasons, discussed below, the Commission grants Indicated Shippers' request for rehearing.

Background

2. An OBA is a contract between the pipeline and the operator of interconnecting facilities, such as another pipeline, specifying the procedures to be used in processing imbalances or differences in hourly flows of gas at the interconnection between the parties. An OBA at an interconnection ensures that once a shipper has scheduled gas at that location and had its gas confirmed by the pipeline, the shipper will be allocated its scheduled quantity at that location and will not be subjected to imbalances or any imbalance penalties resulting from differences between scheduled gas quantities and actual physical deliveries at that location. Rather, any difference between scheduled and measured quantities at points covered by an OBA belongs to the point operator at that point.

¹ Hess Corporation, ExxonMobil Gas & Power Marketing, a Division of Exxon Mobil Corporation, and Shell Offshore, Inc., collectively, are the Indicated Shippers.

² *Transcontinental Gas Pipe Line Company, LLC*, 136 FERC ¶ 61,169 (2011).

3. In Order No. 587-G, the Commission adopted section 284.12(b)(2)(i) of its regulations, requiring interstate pipelines to enter into OBAs at all interstate and intrastate pipeline interconnects.³ The Commission also encourages pipelines to negotiate OBAs with point operators at other interconnections. Consistent with this policy, Transco negotiates OBAs based on the model OBA adopted by the North American Standards Board (NAESB) and set forth in section 25.8 of its General Terms and Conditions (GT&C). Before its tariff filing in this proceeding, section 25.8 identified four imbalance resolution provisions that Transco would negotiate with OBA parties. In this proceeding, Transco proposed to revise section 25.8 to provide two additional types of OBA imbalance resolution provisions that Transco may negotiate with an OBA party. First, Transco proposed to add that Transco and the OBA party may agree to cash out OBA imbalances prior to the close of the Trading Period⁴ if the final resolution of imbalances is cashout only and the OBA does not provide for trading under its tariff. Second, Transco proposed to add that “for OBAs with interstate or intrastate pipelines subject to FERC’s Order No. 587-G... an alternate cash out methodology” may be negotiated different than the tiered methodology in sections 37.1(g) and (h) of its tariff. Transco also proposed conforming changes to its cashout provisions in section 37 of its tariff.

4. No party protested the first proposal. However, Indicated Shippers objected to the second proposal, permitting Transco to negotiate with other pipelines a method of cashing out imbalances different from that provided in section 37. Section 37 generally requires both OBA parties and transportation customers to cash out their monthly imbalances by paying Transco a specified index price for excess quantities they have taken from the system (the “Sell Price”) or by Transco paying them a specified index price for excess quantities they failed to take from the system (the “Buy Price”). If the net monthly imbalance exceeds a tolerance level of five percent, the Sell Price is increased to a level higher than 100 percent of the specified index price and the Buy Price is reduced to a level below 100 percent of the specified index price, thus penalizing the OBA party or the transportation customer for imbalances in excess of the tolerance level.

5. Indicated Shippers argued generally that Transco failed to explain or justify its proposal to negotiate alternate cashout provisions with pipeline OBA parties. In particular, Indicated Shippers was concerned about Transco’s explanation that it might

³ *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs. ¶ 31,062, at 30,676 (1998), *order on reh’g*, Order No. 587-I, FERC Stats. & Regs. ¶ 31,067 (1998).

⁴ Under section 25.1(e) of its tariff, Transco defines *Trading Period* as the period beginning on the 1st calendar day following the end of the immediately preceding month through the end of the 17th business day following the end of such preceding month.

use this authority to exempt pipeline OBA parties from the adjustments to the index price intended to penalize imbalances in excess of the tolerance level. Indicated Shippers argued that Transco's shippers and non-pipeline OBA parties who are not exempt could be disadvantaged in two ways. First, Indicated Shippers argued that shippers and non-pipeline OBA parties may pay higher cashout penalties than the exempted pipeline OBA parties who negotiated an alternate methodology. Second, Indicated Shippers argued that when Transco refunds cashout overcollections to OBA parties and shippers on a *pro rata* basis pursuant to section 15 of its tariff, Transco's proposal would give exempted pipeline OBA parties the same share in the overcollections even if their imbalances had been cashed out on the basis of a less onerous imbalance penalty schedule than applicable to all other shippers and OBA parties.

6. In its answer, Transco explained that OBA imbalances differ from the imbalances of transportation customers. According to Transco, OBA imbalances represent the difference between the quantities scheduled to flow at the interconnection subject to the OBA and actual flows at that point. Transco explained that a transportation shipper's imbalance represents the difference between the quantities the shipper placed on the system at its receipt point and took from the system at its delivery point. Transco stated that OBA imbalances at its interconnections with other pipelines are usually driven by operating conditions on the two pipelines. Transco asserted that, in order to address operating conditions that arise on their systems, interconnecting pipelines can work together to adjust the physical flow of gas at the interconnection to accommodate the operating conditions of either system without affecting the shippers transporting gas between the pipelines. However, such actions may result in an imbalances on the OBA, which could be subject to a penalty under section 37 even though the imbalance was incurred by the two pipelines working together to address operating conditions on the two systems. Transco argued that such a penalty was inappropriate.

7. The Commission accepted Transco's revised tariff records as proposed and denied Indicated Shippers' protest. The Commission noted that, in Order No. 587-G,⁵ we recognized that a standard *pro forma* OBA may not be suitable for all interconnects on a pipeline system and that interstate pipelines may have to negotiate non-standard OBAs with counterparties depending on their interconnect circumstances. The Commission stated that it has allowed pipelines to include language in tariffs that would allow the pipeline and a counterparty to mutually negotiate individual OBAs in a non-discriminatory manner.

⁵ *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs. ¶ 31,062, at 30,676 (1998), *order on reh'g*, Order No. 587-I, FERC Stats. & Regs. ¶ 31,067 (1998).

8. As an example, the Commission noted that, in *Transwestern Pipeline Co., LLC* (Transwestern),⁶ we accepted similar revisions to the OBA provisions of Transwestern's tariff. The Commission stated that although section 15.1 requires point operators to execute the *pro forma* OBA contained in Transwestern's tariff, it also carves out an exception for operators at interconnections with interstate or intrastate pipelines. The Commission further stated that this latter class of point operators is permitted to enter into OBAs in another mutually agreeable form. Similarly, in the instant proceeding, the Commission determined that Transco is authorized to negotiate (and has been negotiating) OBA imbalance resolution provisions on a non-discriminatory basis pursuant to the current provisions of section 25.8 of its tariff. In this case, Transco simply proposed to add two additional permissible categories of imbalance resolution provisions.

9. With regard to Indicated Shippers' concern that OBA parties with negotiated imbalance resolution methodologies may pay less for cashouts than other shippers but get the same *pro rata* share of the refunds, the Commission stated that, under section 15(b) of Transco's tariff, cashout refunds are paid out to all shippers and OBA parties *pro rata* based on total throughput volumes. Accordingly, the Commission determined that Transco's tariff does not differentiate refund amounts based on how much the parties actually paid for cashout imbalances. The Commission further stated that, while Order No. 587-G provides that pipelines do not have to file OBAs with the Commission, it also states that pipelines must make OBAs available upon request. Therefore, the Commission reasoned, if Indicated Shippers or any other party had concerns regarding an OBA that Transco negotiates with an interstate or intrastate pipeline, they may request a copy of the agreement for inspection.

Request for Rehearing

10. In their rehearing request, the Indicated Shippers no longer object to Transco being permitted to negotiate alternate cashout provisions with pipeline OBA parties than those applicable to other OBA parties and transportation shippers under section 37 of Transco's tariff. However, Indicated Shippers maintain that, while Transco may be justified in treating pipeline OBA parties differently for cashout purposes, Transco should not be permitted to exempt pipeline OBA parties from the cashout penalties under section 37 of its tariff while still allowing them to collect a share of Transco's cashout overrecoveries provided for in section 15 of Transco's tariff.

11. Indicated Shippers point out that in 2002, when the Commission approved Transco's proposal to subject all OBA parties to cashout penalties, it required Transco to

⁶ 132 FERC ¶ 61,052, at P 15 (2010).

permit the OBA parties to share in the refunds of any cashout surpluses.⁷ Indicated Shippers assert that the converse principle necessarily follows - if an OBA party is not subject to cashout penalties, its should not share in any refunds of cashout surpluses. Indicated Shippers emphasize that they do not seek to exclude any pipeline OBA party that remains subject to Transco's cashout method in section 37 of Transco's tariff from receipt of cashout overrecovery refunds.

Discussion

12. Upon reconsideration, the Commission grants Indicated Shippers' request for rehearing. For the reasons discussed below, the Commission finds that Transco's proposal to negotiate alternate cashout methods with pipeline OBA parties is only just and reasonable if Transco also modifies section 15 of its GT&C so that pipeline OBA parties not subject to the cashout penalties provided in GT&C section 37 will not share in refunds of any cashout surpluses attributable to the section 37 cash-out mechanism.

13. In 2002, Transco proposed to assess cashout penalties to all OBA parties, but prohibit them from sharing any refunds of Transco's cashout surpluses. The Commission approved the proposal to subject OBA parties to cashout penalties but rejected the proposal to exclude OBA parties from sharing in the refunds. The Commission explained that:

Since Transco is establishing cashout mechanisms for OBAs, OBA parties should be permitted to participate in the sharing of cashout surpluses related to the mechanism.⁸

However, if Transco negotiates an OBA with another pipeline which exempts that pipeline from cashout penalties, then the justification for requiring that pipeline OBA party to share in refunds of cashout surpluses is negated. Because the pipeline OBA party would not have paid any cashout penalties, it could not have contributed to the surplus and thus should not receive any share of that surplus. Therefore, allowing pipeline OBA parties who are not subject to cashout penalties to share in refunds of cashout surpluses is unjust and unreasonable.

14. Accordingly, in order to avoid an unjust and unreasonable result, the Commission must condition its acceptance of Transco's section 4 proposal to revise section 25.8 of its GT&C permitting it to negotiate an alternate cashout method with pipeline OBA parties. Specifically, the Commission requires Transco to modify section 15 of its GT&C to

⁷ *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,366, at 62,575 (2002).

⁸ *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,366 at 62,575.

exclude a pipeline OBA party from refunds of cashout surpluses attributable to the section 37 cashout mechanism, if Transco negotiates an OBA with that pipeline which does not subject it to the cashout penalties provided for in section 37.⁹

The Commission orders:

(A) Indicated Shippers' request for rehearing is granted.

(B) Within 21 days of the issuance of this order, Transco must modify its tariff consistent with the discussion above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ A pipeline OBA party would not be subject to the cashout penalties provided for in section 37, if its negotiated OBA exempts it altogether from cashout penalties or provides for penalties different from those in section 37.