140 FERC ¶ 61,256
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Ruby Pipeline, L.L.C. Docket No. RP12-1013-000

ORDER ON FUEL AND ELECTRIC POWER COST REIMBURSEMENT FILING

(Issued September 28, 2012)

1. On August 31, 2012 Ruby Pipeline, L.L.C. (Ruby) filed tariff records[1] to adjust its fuel and lost and unaccounted-for (FL&U) reimbursement percentages and its electric power cost (EPC) rate to be effective October 1, 2012. Ruby proposed that the combined FL&U percentages remain the same at 0.0 percent and that the total EPC rate remains the same at $0.025 per dekatherm (Dth). The Commission accepts and suspends the filed tariff records, subject to refund and conditions, effective October 1, 2012, as discussed below. The Commission also grants waiver of Ruby's tariff provision to allow Ruby to calculate its FL&U true-up amounts based upon one month's collection data, June 2012, as opposed to three months of collection data. Finally, pursuant to section 5 of the Natural Gas Act (NGA), the Commission directs Ruby to revise the cash-out mechanism in its FL&U tracker or show cause why it should not be required to do so.

I. Background

2. Sections 13 and 28 of the General Terms and Conditions (GT&C) of Ruby's tariff require Ruby to adjust its FL&U reimbursement percentages and its EPC rate at least once every three months. Ruby most recently filed to adjust these percentages and rates on June 29, 2012 (June Filing) with an effective date of July 1, 2012. On July 26, 2012, the Commission issued an order accepting Ruby's revised tariff records subject to conditions.[2] In the June Filing, Ruby explained that it had experienced significant

[1] Ruby Pipeline, L.L.C., FERC NGA Gas Tariff, Ruby Tariff, Part II: Stmt. of Rates, Section 1 - Service Rates, 4.0.0; Part II: Stmt. of Rates, Section 2 - Fuel and L&U Rates, 4.0.0.

[2] *Ruby Pipeline, L.L.C.* 140 FERC ¶ 61,075 (2012) (July Order). The July Order

(continued…)

declines in throughput over the past several months and that it had relied almost exclusively on its head station compression, which is electrically powered. Since gas-fired compression had been used sparingly, Ruby did not need to retain fuel gas quantities. At the time of the June Filing, Ruby had over-collected a significant amount of fuel gas that increased its linepack to the point of potentially causing operational issues. Therefore, Ruby proposed to decrease its then current Fuel Reimbursement percentage to 0.00 percent and to leave in place its current L&U reimbursement percentage of 0.00 percent. Additionally, Ruby proposed to reduce its EPC rate to $0.025/Dth. The July Order accepted Ruby's proposal to revise its FL&U reimbursement percentage to 0.0 percent and to reduce its EPC rate to $0.025/Dth.

II. Details of the Filing

3. Ruby states that there has been no significant change in the throughput or operating conditions on its pipeline since the June Filing and that it expects to continue relying exclusively on its electrically powered compression through the period the rates subject to this instant filing are in effect. Therefore, Ruby proposes to maintain both the Current Period Fuel Retention Percentage and the Prior Period Fuel Deficiency Percentage at 0.00 percent.[3] Similarly, Ruby proposes that the Current Period L&U Retention Percentage and the Prior Period L&U Deficiency Percentage remain at 0.0 percent given the current operating conditions.[4] Ruby also proposes that the Current Period EPC rate will decrease from $0.039/Dth to $0.025/Dth and the Prior Period EPC rate will increase from negative $0.014/Dth to $0.0/Dth, such that the total EPC rate will continue at $0.025/Dth.[5]

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conditioned the acceptance on Ruby providing additional detail concerning its operational purchases and sales, and directed that Ruby, consistent with *Southern Natural Gas Co.*, 133 FERC ¶ 61,183 (2010), post operational sales of gas for purchase by others for bidding, or explain why it should not be required to do so.

[3] Ruby's August 31, 2012 Filing, Appendix A, Schedule 1, page 1.

[4] *Id.* Appendix A, Schedule 3, page 1.

[5] *Id.* Appendix A, Schedule 5, page 1.

A. Current Period and Prior Period True-up FL&U Reimbursement Percentages

4. Ruby states that the Prior Period Fuel and L&U Deficiency Percentages are computed using collection data from June 2012. Ruby asserts that the data collection period used for the prior period true-up calculations in its June Filing was the three-month period ending May 31, 2012. Ruby further states that its tariff requires the true-up calculations to be based on information that is two calendar months prior to the date of the filing. Because April and May 2012 were previously utilized in the true-up calculations reflected in the June Filing, Ruby requests waiver of its tariff provision requiring three months of collection data to compute FL&U true-up quantities.

5. Ruby proposes to cash-out all over-collected fuel and L&U quantities for the month of June 2012. Ruby's filing shows that during the month of June, 2012, Ruby over-collected fuel by 24,844 Dth and over-collected L&U by 60,652 Dth.[6] Ruby states that, in its past three filings, it requested and was granted limited waivers of its tariff and Commission regulations to permit FL&U over or under-collections to be offset against the EPC over or under-collections. In this filing, however, Ruby is proposing to refund its over-collection of fuel valued at $56,444 and L&U valued at $137,801 to its shippers based on the shipper's receipts subject to FL&U during that month. Ruby states that its proposal to refund the over-collection of FL&U to its shippers prevents the Fuel and L&U percentages from being negative. Ruby further states that, as a result, the Prior Period Fuel and L&U Deficiency Retention Percentages will remain at 0.00 percent.

B. Current Period and Prior Period True-up EPC Rates

6. Ruby states that based on projected throughput for the period the EPC rates will be in effect and the EPC costs for the data collection period of June 2012, it is proposing a Current Period portion of the EPC rate of $0.025/Dth, which is lower than its current rate of $0.039. However, due to an under-collection of EPC costs for the month of June 2012, which is offset by a remaining over-collection from prior periods, Ruby is proposing to adjust the Prior Period EPC rate from a negative $0.014/Dth to $0.000/Dth. Ruby states that the net effect of summing the proposed Current Period EPC rate and the proposed Prior Period EPC rate results in no change to the total EPC rate of $0.025/Dth currently in effect ($0.039/Dth current period plus a negative $0.014/Dth true-up).

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[6] *Id.* Appendix A, Schedule 3, line 3, column (b).

C. Operational Purchases and Sales Report

7. Ruby states that, as required by the July Order, it is including with this filing its Operational Purchases and Sales report for the time period of August 2011 through June 2012. Ruby states that, because it had interpreted its tariff to require annual filings for the Operational Purchases and Sales Report, no reports have been filed since the pipeline went in service, with the exception of the report included in Ruby's August 27, 2012 compliance filing tendered in accordance with the July Order. Ruby states that, for this filing only, it is providing in Appendix D the operational purchases and sales information for periods prior to the data collection period used for the instant filing. Ruby further states that all future Operational Purchases and Sales Reports included with EPC rate filings will correspond with the data collection period utilized for the EPC rate adjustment.

III. Public Notice, Interventions and Protests

8. Public notice of Ruby's filing was issued on September 5, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed 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. The filing was protested by the Indicated Shippers.[7]

9. Indicated Shippers state that, under section 13.3 of the GT&C of Ruby's tariff, when a FL&U reimbursement percentage would otherwise be negative, Ruby is required to cash out the remaining FL&U over-recovery at the Cash Out Index Price for the month in which the fuel over-collection occurred. Indicated Shippers further state that section 1.7 of the GT&C of Ruby's tariff defines Cash Out Index Price to mean "the highest of the index prices described in Section 10.3, if Shipper owes balances to Transporter (including overrun Gas)," and "the lowest of the index prices described in Section 10.3 of the GT&C, if Transporter owes balances to Shipper." Indicated Shippers state that, under Ruby's current methodology of using the lowest index price to determine the value on a cash basis of any fuel over-recovery refund, Ruby will always come out ahead and shippers will always receive less value in their refunds than the amount Ruby receives for its operational sales.

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[7] Indicated Shippers consist of BP Energy Company, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, Occidental Energy Marketing, Inc., and Shell Energy North America (US), L.P. SWEPI, LP.

10. Indicated Shippers argue that Ruby's tariff cash-out provision as applied to its fuel adjustment is unjust and unreasonable because it allows Ruby to undervalue the refunds due to shippers in the event of a FL&U over-collection. They assert that Commission precedent requires that fuel tracker mechanisms be designed to keep the pipeline and its shippers whole.[8] They state that, under this precedent, pipelines should not be permitted to profit from a FL&U tracker mechanism. Indicated Shippers assert that the Commission should require Ruby to revise its tariff to refund shippers by valuing the gas according to Ruby's actual operational sales price (or the weighted average of multiple actual operational sales prices when there is more than one sale) for the production month in which a FL&U over-recovery occurred. They further state that, in the event no operational sales occurred in the production month, Ruby should use the highest "Cash Out Index Price" for the production month in which a FL&U over-recovery occurred to value the refund amount owed to shippers.

11. Indicated Shippers add that it is improper for Ruby to use the lowest Cash Out Index Price to value refunds of over-recovered FL&U because the Cash Out Index Price mechanism, which is set forth in the Shipper Imbalance Management section of Ruby's tariff, since this mechanism is designed to deter shippers from creating imbalances. However, because FL&U over-collections result not from shipper actions, but from an FL&U that was provided to the pipeline based on the tariff fuel rate and subsequently not needed for system operations, it is unjust and unreasonable to use this mechanism to cash-out fuel.

12. Indicated Shippers state that the difference between the index price Ruby proposes to use in the instant filing to value the over-recovered FL&U refund and Ruby's actual operational sales prices is $0.3730/Dth,[9] which results in $31,890 (or 16.4 percent) less to shippers (comparing $226,137, if the refunds were calculated using the actual $2.6450/Dth sales price for June 2012 with $194,247, which Ruby proposes to refund using the index price of $2.272/Dth). Indicated Shippers state that, if the highest index price were used (the five-day simple moving average of the daily mid-point prices for PG&E Malin as published in Platt's Gas Daily for the production month), the difference is even greater, resulting in a total refund of $226,222 using an index price of $0.2646/Dth (or $31,975 higher than Ruby's proposal). Thus, they argue, the current tariff mechanism ensures that Ruby's shippers are not kept whole.

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[8] Indicating Shippers Protest at 4 (citing *ANR Pipeline Co.*, 108 FERC ¶ 61,050, at PP 1, 17 (2004)).

[9] Indicated Shippers compared Appendix A, Schedules 2 and 4 (showing a Cash Out Index Price of $2.2720) with Appendix D, Schedule 4, page 2, lines 87 and 89, column (c) (showing an average unit sales price of $2.6450/Dth).

13. Indicated Shippers also claim that the information Ruby filed to support its filing is incomplete. Indicated Shippers assert that Commission precedent requires Ruby to include in its operational purchases and sales report the identity of the entity from which Ruby purchased and/or sold operational gas.[10] They state that the data Ruby provided in its operational purchases and sales report does not include the name of the counterparty for any of the purchases or sales of gas for operational reasons. Therefore, they argue the Commission should require Ruby to include this detail in its operational purchases and sales report to ensure that Ruby is not purchasing and selling gas under terms that unduly benefit its affiliates and/or discriminates among its shippers.

Discussion

14. The Commission grants waiver and accepts and suspends the filed tariff records, subject to refund and conditions. Pursuant to section 5 of the Natural Gas Act, the Commission also finds Ruby's provision for returning over-collections of fuel in its tracker to be unjust and unreasonable and directs Ruby to revise those provisions of its tariff or show cause why it should not be required to do so.

15. The Commission finds that although the application of the cash-out provisions of Ruby’s tariff does appear unreasonable when applied to fuel adjustments, which are not intended as a penalty, Ruby has appropriately followed the provisions of its existing tariff in calculating the refunds due to its shippers. Ruby’s tariff provides:

> Neither the Fuel nor L&U Reimbursement Percentage shall be less than zero. Should the calculation of the FL&U Reimbursement Percentages result in a negative quantity, such negative quantities will be cashed out using the Cash Out Index Price for the Month the fuel imbalance occurred and credited to Shippers. Transporter will submit to the Commission any workpapers supporting the cash out of negative quantities and will credit to Shippers the value of such quantities within 90 Days of FERC approval.[11]

Ruby’s tariff defines the “Cash Out Index Price” as:

> Cash Out Index Price" - shall mean the highest of the index prices described in Section 10.3, if Shipper owes balances to Transporter

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[10] Indicated Shippers Protest at 9 (citing *Entrega Gas Pipeline*, LLC, 114 FERC ¶ 61,326, at P 41 (2006) (*Entrega*); *Colorado Interstate Gas Co.*, 111 FERC ¶ 61,216, at P 16 (2005) (CIG)).

[11] Section 13.3 of Ruby’s GT&C.

(including overrun Gas). The "Cash Out Index Price" shall be the lowest of the index prices described in Section 10.3 of the GT&C, if Transporter owes balances to Shipper.[12]

16. In this proceeding, the calculation of the FL&U Reimbursement Percentages would have resulted in a negative quantity, and Ruby used its FL&U cash-out mechanism to credit its shippers the value of these quantities. Accordingly, we accept Ruby's proposed payment to its shippers as consistent with its existing tariff.

17. However, the Commission's policy is that neither the pipeline nor the shippers should gain or lose as a result of a fuel tracking mechanism.[13] The Commission finds that Ruby's FL&U cash-out mechanism is unjust and unreasonable because it allows Ruby to undervalue the refunds due to shippers in the event of a FL&U over-collection by requiring Ruby to cash out the over-collection at the lowest of the index prices described in section 10.3 of the GT&C. For example, in this proceeding, Appendix D, Schedule 4 page 2, lines 87 and 89 show that Ruby's average unit sales price was $2.645/Dth for June 2012. Appendix A, Schedules 2 and 4, lines 87 and 89 show that Ruby's cash out index price for June 2012 was $2.272/Dth. Therefore, the difference between the actual sales price and the cash out index price for June 2012 was $.373/Dth. Accordingly, Ruby gains and shippers lose $.373/Dth in the instant filing as a result of applying the tariff's imbalance cash-out process to the fuel provisions. Therefore, pursuant to section 5 of the Natural Gas Act, the Commission directs Ruby either to file revisions to its tariff's FL&U cash out provisions that ensure neither Ruby nor its shippers profit from its fuel adjustment filings or show cause why it should not be required to do so, within 30 days of the date this order issues.

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[12] Section 1.7 of Ruby's GT&C.

[13] *See ANR Pipeline Co.*, 110 FERC ¶ 61,069 at P 26 (Commission policy requires that tracking mechanisms contain true-up mechanisms to ensure the accuracy of tracked costs and prevent any over-or under-recoveries); *Colorado Interstate Gas Co.*, 128 FERC 61,117, at P 32 (2009) (It is well-established 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."). Although it may be appropriate for Ruby to design its cash-out prices to deter shippers from causing imbalances by withdrawing too much gas from the system or from placing too much gas on the system, (*Colorado Interstate Gas., Co.* 125 FERC ¶ 61,152, at P 14 (2008) (citations omitted)) a similar rationale is inapplicable in the context of a fuel tracker where the over-recoveries result from the pipeline's FL&U rate.

18. Additionally, Indicated Shippers ask the Commission to require Ruby to include in its operational purchases and sales report the identity of the entity from which Ruby purchased and/or sold operational gas. The Commission finds that it is appropriate to require Ruby to identify all entities, including affiliates, from which the pipeline purchases gas.[14] We therefore direct Ruby to identify each entity from which it purchases and/or sells operational gas, including affiliates. Ruby is further directed to provide this information for the instant filing within 30 days of the issuance date of this order.

19. The Commission grants waiver of section 13.4(a) of Ruby's tariff, as requested, so that Ruby may base its FL&U true-up on one-month of collection data, June 2012, as opposed to three-months of collection data. Section 13.4(a) of the GT&C of Ruby's tariff requires Ruby to use for the FL&U true-up filing collection data from the three month period ending two calendar months before the filing date of the FL&U true-up filing. Ruby requests waiver of the section 13.4(a) requirement, arguing that it would be inappropriate to use the collection data from April and May 2012 for true-up purposes since Ruby used those two months in its June Filing true-up calculations. No party opposes this waiver request. We find good cause to exclude the April and May 2012 data in this filing, and therefore grant the requested waiver of section 13.4(a).

20. 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.[15] 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.[16] The Commission finds that, in this circumstance, a minimal suspension is appropriate because this a tracker filing in which Ruby is following its existing tariff. Therefore, the Commission will accept and suspend the proposed tariff records to be effective October 1, 2012, subject to refund and the conditions of this order.

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[14] *Entrega*, 114 FERC ¶ 61,326 at P 41; *CIG*, 111 FERC ¶ 61,216 at P 16. Insofar as these data are to ensure that Ruby's fuel adjustments are accurate, Ruby should provide this information with each fuel adjustment filing.

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

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

<u>The Commission orders</u>:

(1) The Commission grants waiver of Ruby's tariff provision to allow Ruby to calculate its FL&U true-up quantities based upon one month's collection data, June 2012, as opposed to three months of collection data.

(2) The tariff records listed in footnote No. 1 are accepted and suspended, subject to refund and the conditions discussed above, to be effective October 1, 2012.

(3) Pursuant to section 5 of the Natural Gas Act, the Commission also finds Ruby's cash-out mechanism as applied to its FL&U tracker to be unjust and unreasonable and directs Ruby within 30 days to revise those provisions of its tariff or show cause why it should not be required to do so.

(4) Ruby is directed to provide information with its fuel tracker filings that identifies each entity from which it purchases and/or sells operational gas, including affiliates, as discussed above.

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.