UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Wyoming Interstate Company, Ltd. Docket Nos. RP04-313-001 and RP04-313-002

ORDER ON REHEARING AND CLARIFICATION AND ACCEPTING COMPLIANCE FILING

(Issued May 10, 2005)

1. Wyoming Interstate Company, Ltd. (WIC) requests clarification or rehearing of the Commission's order of June 25, 2004 which accepted tariff sheets,[1] subject to conditions, authorizing purchases and sales of gas necessary for system operations.[2] WIC made a compliance filing in response to the June 25 Order.

2. WIC requests that the Commission clarify that WIC is not required to credit gas sales revenues to its customers; that the required annual report of operational purchases and sales is limited to those not already covered by existing tariff provisions; and, that WIC may offer gas for sale through applicable bidding procedures rather than the capacity release provisions. In the alternative, WIC seeks rehearing. Indicated Shippers filed a request for clarification and/or rehearing that the Commission require WIC to use an open, transparent process that allows any interested party to compete to sell operational gas to WIC; credit revenue from operational gas sales to customers; schedule operational gas behind secondary capacity service; and, file an annual report which justifies each operational gas purchase and sale. Indicated Shippers also protested the compliance filing as failing to comply with the June 25, 2004 Order.

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[1] Ninth Revised Sheet No. 35 and Second Revised Sheet No. 85A to FERC Gas Tariff, Second Revised Volume No. 2.

[2] *Wyoming Interstate Company, Ltd.*, 107 FERC ¶ 61,315 (2004) (June 25 Order).

3. This order grants the clarifications requested by WIC as to bidding procedures. The request for rehearing by Indicated Shippers regarding scheduling is granted. The requests for rehearing regarding crediting and the annual report are granted. As clarified, the June 25 Order provides the necessary authorization for the purchase and sale of natural gas required for system operations by WIC consistent with the public interest. Indicated Shippers' protest to the compliance filing is rejected.

Background

4. On May 28, 2004, WIC proposed to add a new Article 33 to its tariff in order to clarify WIC's authority to buy and/or sell gas in order to maintain system pressure and linepack; balance fuel quantities; implement the cash out of imbalances procedures contained in section 2.4 of the GTC; and, perform other operational functions in connection with transportation and other similar services. WIC stated that from time to time it is required to make operational purchases or sales of gas to maintain system operations, balance, pressure, and linepack.

Commission Order of June 25

5. The June 25 Order required WIC to revise article 33 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff to provide that it will post the excess sales volumes for bid on its electronic bulletin board pursuant to the bidding procedures in its tariff. WIC was further required to modify article 33 to make it clear that WIC's proposed operational purchase/sale will have a lower priority than firm service. The Commission found that WIC had filed for and provided sufficient detail as to the specific situations relating to an operational purchase or sale of gas. WIC's purchases and sales pursuant to proposed article 33 are for limited purposes: to maintain system pressure and linepack; to balance fuel quantities; and to implement cash out of imbalances.

6. While WIC's proposal to make operational sales of gas is not the type of sales service envisioned in Order No. 636, the Commission required WIC to unbundle its operational sales from its transportation service to the maximum extent practicable, *e.g.*, excess storage sold off at the storage field. In addition, the Commission required WIC to charge the same transportation rate for operational purchases/sales that other shippers on its system pay.

7. The June 25 Order required WIC to file to revise its tariff to provide for the filing of an annual report on operational purchases and sales along with a revenue crediting plan. The report should indicate the source of the gas, date of the purchase/sale, volumes, purchase/sale price, costs and revenues from the purchase/sale, and the disposition of the costs and revenues.

WIC's Request for Clarification or Rehearing

8. WIC requests that the June 25 Order be clarified so that (1) WIC is not required to credit revenue from operational gas sales beyond the crediting currently required by its tariff, (2) the conditions requiring that WIC post excess sales apply only to operational sales not addressed elsewhere in WIC's tariff, and (3) the annual report on operational purchases and sales applies only to operational purchases and sales not addressed elsewhere in WIC's tariff.

Indicated Shippers' Protest and Request for Clarification and Rehearing

9. Indicated Shippers argue that WIC's compliance filing is flawed because WIC fails to abide by the Commission's directives in the June 25 Order that require WIC to (1) use an open, transparent process that allows any interested party to compete to sell operational gas to WIC, (2) give operational sales and purchases a lower scheduling priority than primary and secondary firm service, (3) credit revenue from operational gas sales, and (4) file an annual report that justifies each operational gas purchase and sale.

10. WIC filed an answer asserting that its compliance filing conforms to the June 25 Order and WIC remains at risk for under-recoveries outside of tariff-specified mechanisms and should not be required to credit revenues. WIC asserts that the tariff properly sets the priority of operational gas below firm primary service but above flow path secondary capacity service, and the annual report required should be limited only to those operational activities outside tariff-specific mechanisms. Answers to protests or rehearing requests are generally not permitted. However, for good cause shown, we have considered WIC's answer as it assists in providing a fuller understanding of the issues in dispute.

Discussion

A. Revenue Crediting

11. The June 25 Order stated:

> In *Dominion*, the Commission required the pipeline to revise its tariff to provide that revenues derived from the sale of gas will be credited to the pipeline's shippers. Accordingly, WIC is required to file to revise its tariff

to provide for the filing of an annual report on operational purchases and sales along with a revenue crediting plan.[3]

12. WIC requests clarification that it is not required to actually credit revenues from operational sales of gas (beyond the crediting currently required by WIC's tariff) unless and until the Commission makes the findings pursuant to section 5 of the NGA that such crediting is just and reasonable. In its compliance filing, WIC does not propose to change its current revenue crediting plan regarding operational purchases and sales. WIC states that currently its tariff provides, in certain circumstances, for crediting revenues and WIC will continue to credit revenues in those circumstances. However, in other circumstances, WIC remains at risk for operational purchases and sales.

13. WIC states that, in *Dominion*, the Commission did not require any such crediting; rather, the Commission simply required a report to be filed to ensure that Dominion is not charging its customers for the under-recovery of gas on the one hand while realizing revenue generated from the sale of gas for the over-recovery on the other. Further WIC asserts that the Commission has made no findings that would support its burden under NGA section 5 to require a change in WIC's tariff and practice as to such crediting. WIC argues that it is error to require WIC to credit revenues without taking into account that WIC is at risk for under-recoveries or providing a basis for such a requirement. Therefore, WIC concludes, all that should be required of WIC is the filing an annual report.

14. Indicated Shippers state that WIC must be required to credit all operational sales revenue. Indicated Shippers reason that the gas that WIC will be selling could be a portion of linepack if there are excess pressures on WIC's system; and, such gas is capitalized as part of WIC's rate base. Hence, Indicated Shippers state, WIC earns a return on line pack in its rates. Indicated Shippers state that because shippers incur costs associated with the system gas that WIC will sell, shippers deserve to get the revenue from the sale of operational gas. WIC responds that while it is true that WIC earns its authorized rate of return on a representative level of linepack as established during its most recent rate case, that fact does not entitle shippers to receive the revenues from linepack sales. WIC argues that WIC, not its shippers, pays all of the acquisition cost of linepack. And, because WIC cannot recover those costs from its shippers, it is at risk for such costs, should the cost of additions to linepack fail to cover the revenues from any sales of linepack.

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[3] *Wyoming Interstate Company, Ltd.*, 107 FERC ¶ 61,315 at P16, *citing Dominion Transmisstion, Inc.*, 106 FERC ¶ 61,029 (2004).

15. In *Dominion*, the Commission required the pipeline to reference the appropriate revenue crediting sections of its tariff for the sale of confiscated gas. With regard to Dominion retaining revenues for gas incidental to its operations, the Commission stated its concern that Dominion may charge its customers for the under-recovery of gas on its system while realizing revenue generated from the sale of gas from the over-recovery of gas. As a result, the Commission required Dominion to revise its tariff to include a reporting mechanism for the sale of each category of excess gas.

16. The Commission has determined that to the extent the sale of excess gas is consistent with WIC tariff provisions concerning imbalance cash out penalties (section 2.4 of the GTC), the pipeline must follow the applicable terms and conditions of its tariff, which in effect require the flow through of revenues.[4] However, for all other excess gas sales, the Commission will accept WIC's proposal to file a report with a plan for disposition of costs and revenues.

B. Annual Report

17. The June 25 Order required WIC to file to revise its tariff to provide for the filing of an annual report on operational purchases and sales along with a revenue crediting plan. The report must indicate the source of the gas, date of the purchase/sale, volumes, purchase/sale price, costs and revenues from the purchase/sale, and the disposition of the costs and revenues. In its compliance filing, WIC says that it will file an annual report that discloses the source of the operational gas purchase/sold, the date of such purchases/sales, volumes, the purchase/sale price, the costs and revenues from such purchases/sales and the disposition of the associated costs and revenues for all types of operational purchases and sales.

18. WIC requests clarification that the annual report on operational gas purchases and sales, which is to include a revenue crediting plan, is limited to those transactions not addressed elsewhere in WIC's tariff. As stated above, WIC's tariff has existing requirements applicable to the treatment of fuel, lost and unaccounted for and other fuel gas and imbalance cash out penalty crediting. WIC continues that these types of operational sales and purchases are already appropriately reported and examined. WIC interprets the June 25 Order to require that the annual report and required revenue

[4] The Commission determined in Order No. 637 that imbalances such as cash out of confiscated gas are a type of imbalance penalty and therefore requires the crediting of revenues in excess of transporter's gas costs (FERC Stats. & Regs. ¶ 31,091 at 31,308, Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services).

crediting proposal include only those items that are not otherwise covered by other tariff requirements.

19. Existing provisions of WIC's tariff already require various forms of reporting and filing with the Commission, such as fuel and lost and unaccounted for gas. These provisions have their own reporting requirements, but appear to overlap. WIC states in the instant application that it also may have to buy gas due to fuel use and imbalance management. Because WIC has tracking mechanisms in its tariff for fuel use and imbalance management through cash outs, the Commission will require WIC to file a comprehensive annual report which includes all gas purchases and sales, and reconciles and accounts for lost-and-unaccounted-for, fuel usage, shrinkage, cash outs, etc. As a result, WIC is required to revise section 2.4 of the GT&C of its tariff to reflect this comprehensive annual report. For the reason discussed above, WIC's request for clarification is denied.

20. Indicated Shippers imply that the compliance filing failed to conform to the order by failing to specify that WIC will justify each operational gas purchase and sale. Indicated Shippers assert that this justification is needed so that the shippers can fully understand and analyze each transaction, particularly those with affiliates.[5] The Commission agrees and will require, as part of WIC's detailed annual report, that for each transaction, WIC explain the purpose of the purchase or sale and the source of the gas purchase. We grant rehearing as discussed above.

C. <u>**Posting on the EBB**</u>

21. WIC requests clarification that the requirement to post excess sales on its electronic bulletin board (EBB) applies only to operational purchases and sales not addressed elsewhere in WIC's tariff.

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[5] The Commission has in place extensive rules of conduct to prevent affiliate abuse, specifically, 18 CFR section 358.2, General Principles, which states that a pipeline cannot operate its transmission system to benefit preferentially any affiliate. The June 25 Order requires WIC to identify all entities from which it purchases operational gas in its annual report. These provisions reasonably satisfy all affiliate concerns of Indicated Shippers. *See also*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 30 (2003), *order on reh'g,* ¶ 31,161 (2004).

22. WIC avers that the bidding procedures referred to in the July 15th Order are those governing capacity release transactions. Since there are a number of these provisions that do not fit a gas sales transaction (such as the provisions regarding prearranged releases of capacity; recall rights; etc.), WIC interprets the July 15th Order as requiring the posting of excess sales volumes in accordance with all applicable capacity release bidding procedures (*e.g.*, acceptable bid conditions; time period for bidding; etc.).

23. Further, WIC posits that there is no reason for the Commission to require WIC to include operational purchases in the post and bid procedure. WIC argues that, even if it were to pay excessive prices (to an affiliate or otherwise) for operational purchases, WIC has no means to recover those costs from its shippers.

24. WIC states that its situation is clearly distinguishable from Dominion's because, in Dominion's case, the Commission was concerned that Dominion may charge its customers for the underrecovery of gas on its system while realizing revenue generated from the sale of gas from the overrecovery of gas. In contrast, WIC states that it has no means to charge its customers for the underrecovery of gas on its system while realizing revenue generated from the sale of gas from the overrecovery of gas.

25. We agree with WIC and clarify that the operational gas sales bidding procedure is subject to the tariff provisions consistent with gas sales transactions not addressed elsewhere in WIC's tariff.

D. <u>Bidding</u>

26. WIC proposes to post for bidding its operational sales of gas but not use the post-bid process for the pipeline's purchases of operational gas. Indicated Shippers request that WIC be required to adopt tariff language that provides for use of the post-bid process for operational gas purchases.

27. Indicated Shippers state that use of a post-bid process by WIC to purchase operational gas will ensure that there is intense competition among gas suppliers to sell operational gas to WIC and keep operational gas costs as low as possible. Further, Indicated Shippers state that there is a risk that WIC might favor an affiliate when WIC buys operational gas. Indicated Shippers state that a requirement that WIC use a post-bid process to purchase operational gas minimizes the risk of affiliate abuse, and is a far more effective way to prevent abuse than an after-the-fact investigation or complaint proceeding. Absent a post-bid process, Indicated Shippers state that there should at the very least be safeguards to ensure that WIC does not overpay for gas that it purchases from an affiliate, such as a cap on the price at which WIC buys gas from affiliates.

28. The June 25 Order stated:

> In *Dominion*, the Commission required the use of bidding procedures for the purchase and sale of gas for operational purposes. The Commission found that all parties will have an opportunity to bid on the sale of any excess gas incidental to the pipeline's operations. The Commission also found that posting the gas for sale will provide shippers with the opportunity to compete for those volumes. For these same reasons, the Commission will require WIC to revise article 33 to provide that it will post the excess sales volumes for bid on its electronic bulletin board pursuant to the bidding procedures in its tariff. As a result of the open and transparent manner in which bidding procedures will be conducted, Indicated Shippers' alternative request to impose restrictions on affiliate transactions such as a price floor is unnecessary. [6]

29. In *Dominion*, the Commission determined that the only requirement on the pipeline was to provide all parties with an opportunity to bid on excess gas. Similarly, we intended that WIC be required only to post excess gas for sale.

30. The Commission has in place extensive rules of conduct to prevent affiliate abuse.[7] The rules state that a pipeline cannot operate its transmission system to benefit preferentially any affiliate. The June 25 Order requires WIC to identify all entities from which its purchases operational gas in its annual report. These provisions reasonably satisfy all affiliate concerns of Indicated Shippers. For these reasons and because WIC's compliance filing is consistent with our order, we deny Indicated Shippers' request for rehearing.

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[6] 107 FERC ¶ 61,315 at P 9.

[7] *See* 18 CFR section 358.2, General Principles, which states that a pipeline cannot operate its transmission system to benefit preferentially any affiliate. The June 25 Order requires WIC to identify all entities from which its purchases operational gas in its annual report. These provisions reasonably satisfy all affiliate concerns of Indicated Shippers. *See also,* Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 30 (2003), *order on reh'g,* ¶ 31,161 (2004).

E. **Scheduling**

31. WIC's tariff provides that operational purchases/sales have a lower priority than primary firm service but a higher priority than secondary firm service. Indicated Shippers argue that an operational purchase/sale should have a lower priority than both primary and secondary firm service.

32. Indicated Shippers complain that shippers rely on secondary firm transportation as well as primary firm transportation, and that scheduling operational gas ahead of secondary firm may disrupt gas markets. Indicated Shippers further argue that firm shippers pay a reservation charge to reserve capacity on WIC and rely on this capacity for both primary and secondary service, thus, if operational purchase/sales have a higher priority than secondary service, the rights of firm shippers would be unfairly restricted. Finally, Indicated Shippers assert that relegating secondary service to a lower priority than operational sales and purchases would impair use of the Cheyenne Hub.

33. WIC states that moving operational gas to locations where it is needed (*e.g.*, for compressor fuel or linepack) is critical to the operation of a pipeline system, particularly one like WIC's which does not have the flexibility of storage. WIC states that if gas that is needed to operate the system is not in the right place at the right time, all services could be jeopardized. WIC also asserts that as long as the priority of operational gas is below the primary firm service priority, shippers paying for firm service will receive the unrestricted use of the principal capacity they have paid for and all shippers will be less likely to suffer interruptions of other services.

34. The Commission agrees with the Indicated Shippers that their concerns have not been previously addressed. Further, the Commission finds that the scheduling of operational gas with a priority higher than any firm service is inconsistent with the Commission's regulations and policy. Section 284.7(a)(3) of the Commission's regulations provides that a pipeline may not sell or contract for firm service capacity that is subject to a prior claim.[8] Therefore, it is not appropriate to curtail firm capacity to facilitate capacity used to manage normal operations because that capacity should not be available for firm sales in the first place.[9] Further, firm service with secondary scheduling rights is still firm service and requires payment of a reservation charge under a firm contract with the pipeline to reserve capacity, and therefore, should have a

[8] 18 C.F.R. § 284.7(a)(3) (2004).

[9] *See El Paso Natural Gas Company*, 104 FERC ¶ 61,045 at 61,164 (2003).

scheduling priority directly following primary firm service.[10] The lower scheduling priority stems from the shipper's use of alternate receipt/delivery points, and not the transportation capacity. A shipper with secondary priority for scheduling firm service should not be required to forfeit service or payment of reservation charges as a result of normal operational needs of the pipeline.

35. As a result, the Commission will reverse its decision set forth in the June 25 Order and will invoke its section 5 authority requiringWIC to revise its currently effective tariff to remove operational gas from its assigned scheduling priority and to provide that secondary firm service will be scheduled immediately after primary firm service. Accordingly, Indicated Shippers' request for rehearing on this issue is granted.

<u>The Commission orders</u>:

(A) WIC's compliance filing and the tariff sheets listed in Footnote 1 above are accepted effective June 28, 2004, subject to WIC filing revised tariff sheets, within 15 days of the date this order issues, incorporating the changes required by this order.

(B) The requests for rehearing and clarification are granted in part, and denied in part. Indicated Shippers' protest to the compliance filing is rejected.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

[10] *See Panhandle Eastern Pipe Line Company*, 78 FERC ¶ 61,202 at 61,872 (1997). "Contrary to the contention that firm service at secondary points is interruptible service, firm service is still firm service, even if it is conditional service. As a firm service, it is only interruptible to the extent it may be scheduled at a lower priority than another firm shipper who is seeking to use its primary point."