

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

TransColorado Gas Transmission Company Docket No. RP05-216-000

ORDER ON FUEL ADJUSTMENT REPORT

(Issued May 10, 2005)

1. On March 1, 2005 TransColorado Gas Transmission Company (TransColorado) submitted its annual Fuel Gas Reimbursement Percentage (FGRP) report for the year ended December 31, 2004 (March 1 Filing), pursuant to section 12.9(b) of the General Terms and Conditions (GT&C) of its tariff. This report reflects proposed variance adjustments to be effective for the period April 1, 2005 through March 31, 2006, and includes work papers to support the adjustments to its Fuel Use and Loss (FL&U) percentages. As discussed below, the Commission accepts the report and permits the variance adjustments to become effective April 1, 2005. This order is in the public interest because it ensures that the proposed fuel reimbursement rates accurately reflect the actual FL&U costs incurred by TransColorado.

Background

2. TransColorado's Fuel Gas Reimbursement tariff provisions require an annual report to be filed on March 1 of each year to provide monthly information for the twelve months ended the prior December 31 and to establish a variance adjustment to be effective for the twelve months beginning April 1. In accordance with section 154.403 of the Commission's regulations,¹ TransColorado's tariff provides for in-kind fuel gas reimbursement for gas consumed in transmission system operations and for FL&U, through the use of FGRP.

3. In the March 1 Filing, TransColorado states that it determined in 2004 that, due to an accounting error, linepack purchases had been inadvertently accounted for as shipper deliveries. This error resulted in the understatement of actual FL&U quantities in calendar years 2001, 2002, and 2003, which in turn meant that the variance adjustments placed into effect on April 1, 2002, 2003 and 2004 did not reflect the proper amount of FL&U. TransColorado has corrected these accounting errors and adjusted its

¹ 18 C.F.R. § 154.403 (2004).

unamortized balance of FL&U in the period ending December 31, 2004. These adjusted FL&U amounts have been used to calculate the FGRP variance adjustment to be applicable during the period from April 1, 2005 through March 31, 2006.

Public Notice, Interventions and Protests

4. Public notice of TransColorado's filing was issued on March 8, 2005, with comments, protests, and interventions due on or before March 14, 2005. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure.² Any unopposed filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this Order are granted. Indicated Shippers³ protested the filing on March 14, 2005. On March 25, 2005, TransColorado filed an answer to Indicated Shipper's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise permitted by the decisional authority.⁴ Given that the issues presented here are clarified by the answer submitted by TransColorado, we shall accept TransColorado's answer for good cause shown.

5. Indicated Shippers protest TransColorado's accounting adjustments, and assert that such adjustments amount to a retroactive charge that is not permitted by the tariff. Indicated Shippers argue that TransColorado's tariff provision only permits so-called "variance" adjustments to true-up discrepancies between fuel costs and fuel recovery during the prior calendar year. Indicated Shippers also claim that TransColorado's accounting adjustments are a violation of the filed rate doctrine under section 4(e) of the Natural Gas Act (NGA), which prohibits retroactive rate making. Finally, Indicated Shippers assert that it would be inequitable for them to pay the adjusted FGRP because they are allegedly using the system more than they have in prior years.

Discussion

6. The Commission accepts TransColorado's filing with the proposed accounting adjustments because it finds that the tariff does not expressly bar such a recovery. Rather, the Commission interprets the tariff as granting the pipeline the authority to recover its FL&U costs and to adjust for inadvertent errors to ensure that the actual quantity of FL&U gas is recovered. Section 12.9 of TransColorado's tariff states:

² 18 C.F.R. § 385.214 (2004).

³ The Indicated Shippers are BP Energy Company, BP America Production Company and Chevron Texaco Natural Gas, a division of Chevron U.S.A., Inc.

⁴ 18 C.F.R. § 385.213(a)(2)(2004).

TransColorado shall have the right to adjust the FGRP to reflect the actual quantity of gas used by TransColorado so as not to create an imbalance on its system. The FGRP for Phase I and Phase II shippers will include two components: (1) lost or gained and unaccounted-for quantities, and (2) prior 12-months ending December 31 variance adjustment, that includes unamortized or over-amortized quantities from the preceding April 1 through March 31 12-month amortization period.⁵

7. As indicated above, TransColorado's tariff is intended to provide a true-up mechanism to reconcile actual gas used and lost so as not to over-recover or under-recover FL&U costs. The tariff is silent, however, on how to treat errors in prior years' measurement of fuel, or of lost or gained or unaccounted-for quantities. The Indicated Shippers focus on the component (2) language, and argue that no accounting or measurement correction is ever permissible, beyond the usual past year's "true-up" or variance adjustment. TransColorado stresses the language in the first sentence quoted above, and argues that it has "the right to adjust the FGRP to reflect the actual quantity of gas used."

8. In applying the tariff to the circumstances, the Commission finds that the tariff allows TransColorado to recover actual quantities of gas used and supports the accounting adjustments sought here. The Indicated Shippers do not dispute that linepack was inadvertently booked as deliveries of gas. Given this fact, if an adjustment were not permitted, TransColorado would not be recovering its actual FL&U. If the circumstances were reversed, and gas deliveries had been booked as linepack, so that in past years shippers overpaid their FL&U, the Commission would require the refund of such overcollections, as the pipeline has no right to recover more than the actual FL&U gas used.

9. Thus, TransColorado's tariff put shippers on notice that its fuel and lost and unaccounted-for gas costs were to be recovered. For that reason, when TransColorado discovered its accounting error in 2004, TransColorado corrected its FL&U account to properly reflect the quantities that should have been included as FL&U in the variance adjustments in 2001, 2002 and 2003 but were not. Corrections for accounting errors that are not part of the prior 12-month variance adjustment but relate to an earlier period, are reasonably booked during the relevant 12-month period in which they are discovered, in order to ensure that all FL&U is recovered as required by the tariff. Similarly, had the pipeline discovered it had misaccounted for deliveries in the past in its favor, the corrective adjustment to return those monies to shippers would ordinarily be made in the period in which the error was discovered.

⁵ General Terms and Conditions § 12.9, Original Sheet No. 247, to FERC Gas Tariff First, Revised Vol. No. 1.

10. Use of an adjustment to correct a past error that resulted in an under-recovery (or over-recovery) of FL&U is consistent with Commission precedent.⁶ The Commission has allowed pipelines to recover losses related to prior periods if the underlying tariff permits FL&U recovery, and if the pipeline establishes that the losses are the type of losses for which recovery was contemplated and demonstrates with reasonable accuracy the amount of the adjustment it seeks to recover.⁷ TransColorado has done this here. As stated above, TransColorado's tariff provides it with the authority to recover all FL&U costs, and no one questions the fact that these are recoverable FL&U costs. Accordingly, the Commission finds that no retroactive rate element bars TransColorado's proposed FL&U adjustments.

11. Furthermore, permitting TransColorado's proposed accounting adjustment would not be inequitable as Indicated Shippers assert, even if they are now using the system more than they have in prior years. TransColorado seeks only to apply its tariff to correct for an under-recovery of FL&U, and a shipper generally takes the pipeline's tariff structure and charges thereunder as it finds them.⁸ Moreover, any alleged intergenerational equities are *de minimis* on a per dekatherm basis.⁹

12. Therefore, the Commission accepts TransColorado's fuel adjustment report, and permits the adjustments to become effective April 1, 2005.

⁶ See, e.g., *Northern Natural Gas Co.*, 110 FERC ¶ 61,253 (2005) (permitting Northern Natural Gas Company to make a 1.3 Bcf adjustment that resulted from a calibration error).

⁷ See *Miss. River Transmission Corp.*, 96 FERC ¶ 61,185 at 61,817 (2000).

⁸ There may be special circumstances, or factual disputes that warrant examination of whether this general policy should be applied in a particular case. See *Dominion Cove Point LNG, LP*, 110 FERC ¶ 61,366 (2005). Such circumstances, however, are not present here, where intergenerational inequities, if any, are *de minimis*, and there is no question that absent the corrections, all FL&U used would not be recovered.

⁹ The impact of the prior period adjustment is not five cent per Dth as alleged by Indicated Shippers but less than one-half of one cent per Dth, according to TransColorado. See TransColorado's Answer at 12.

The Commission orders:

TransColorado's March 1 Filing is accepted, effective April 1, 2005.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.