UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Colorado Interstate Gas Company — Docket Nos. RP04-314-001 and RP04-314-002

ORDER ON REHEARING AND CLARIFICATION AND ACCEPTING COMPLIANCE FILING

(Issued May 10, 2005)

1. Colorado Interstate Gas Company (CIG) 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 CIG to maintain system balance and storage while providing revenue credits to CIG's customers under certain circumstances.[2] CIG also made a compliance filing in response to the June 25 Order.[3] Indicated Shippers also filed a request for clarification and rehearing that the Commission require CIG to institute an auction process for purchasing gas, credit revenue from operational gas sales to customers, require operational gas to be scheduled behind flow path secondary capacity service, 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 Order.

2. In this order we grant, in part, and deny in part, the requests for rehearing and clarification. Indicated Shippers' protest to the compliance filing is rejected. As explained below, the Commission will not require CIG to acquire operational gas through a bidding process. As clarified, our order of June 25, 2004 provides the necessary

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[1] Eighth Revised Sheet No. 225 and Fourth Revised Sheet No. 378 to FERC Gas Tariff, First Revised Volume No. 1.

[2] 107 FERC ¶ 61,312 (2004).

[3] Substitute Fourth Revised Sheet No. 378 to FERC Gas Tariff, First Revised Volume No. 1.

authorization for the purchase and sale of natural gas required for system operations by CIG consistent with the public interest.

Background

3. On May 28, 2004, CIG proposed to amend Article 37.1 of its General Terms and Conditions (GT&C) to provide CIG with the authority to buy or sell gas to the extent necessary for the following: (1) to maintain system pressure and line pack; (2) to manage system storage; (3) to balance fuel quantities; (4) to implement the-cash out of imbalances procedures contained in section 7.11 of its GT&C; (5) to implement the gas retention requirements of Rate Schedules NNT-1, NNT-2, FS-1, PAL-1, IS-1, HUB-1, SS-1, and APAL-1 contained in its tariff; (6) to maintain system balance due to plant shrinkage from liquids extraction; and (7) to perform other operational functions of CIG in connection with transportation, storage, and other similar services.

4. CIG stated that from time to time it is required to make operational purchases or sales of gas to maintain system operations. CIG maintained that it may buy or sell a shipper's imbalance through its cash-out procedures in section 7.11 of its GT&C. CIG also stated that the provisions of various rate schedules, including PAL-1 in its tariff, provide for CIG to confiscate gas from a shipper that is not nominated and removed when required. CIG further claimed that at certain times the applicable fuel retention percentages in its tariff may not match fuel consumption due to varying system conditions. Finally, CIG contended that it may be required to buy or sell gas due to plant shrinkage or gas loss from liquids extraction in order to maintain system balance, system pressure or to manage its system storage.

Commission Order of June 25, 2004

5. The Commission's order (1) required CIG to revise Article 37.1 of its GT&C to provide that it post the excess sales volumes for bid on its electronic bulletin board pursuant to the bidding procedures in Article 2 of its GT&C; (2) found that CIG's tariff provides for the operational purchase/sale of gas having a priority lower than firm service,[4] and therefore, Indicated Shippers' scheduling concern was satisfied; (3) noted that CIG filed for and provided sufficient detail as to the specific situations relating to an operational purchase or sale of gas: CIG's purchases and sales are limited to maintaining system pressure and line pack; for operations to manage system storage; to balance fuel quantities; to implement cash out of imbalances; to implement gas retention; and to

[4] Section 5.10(b)(ii) of CIG's GT&C, Substitute Thirteenth Sheet No. 283.

maintain system balance due to plant shrinkage from liquids extraction and as a result, no further change in the tariff was necessary; (4) required CIG to unbundle its operational sales from its transportation service to the maximum extent practicable, *e.g.*, excess storage sold off at the storage field and to charge the same transportation rate for operational purchases/sales that other shippers on its system pay; and (5) required CIG 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.

<u>CIG's Request for Clarification or Rehearing</u>

6. CIG asserts that the order should be clarified to (1) allow crediting of revenue from operational gas sales pursuant to existing tariff provisions; (2) limit conditions on such sales and purchases to those not included in existing tariff provisions; and (3) limit the posting of available excess gas for sale to those sales and purchases not covered by existing tariff provisions.

<u>Indicated Shippers' Protest and Request for Clarification and Rehearing</u>

7. Indicated Shippers argue that (1) CIG's compliance filing is flawed because it fails to abide by the Commission's order which Indicated Shippers claim requires CIG to purchase operational gas through an auction procedure; (2) CIG failed to establish a revenue crediting mechanism to credit all operational gas sales revenue; (3) CIG failed to include a tariff provision which would require it to justify each purchase and sale of operational gas; and (4) CIG improperly schedules operational gas above flow path secondary capacity deliveries.[5]

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

[5] *See* CIG Tariff, GT&C section 5.10 (b) (iii).

Discussion

A. Revenue Crediting

9. CIG argues that the order did not properly state the crediting requirement in *Dominion Transmission, Inc. (Dominion)*, 106 FERC ¶ 61,029 (2004) and as applied to CIG's proposed transactions. Rather, CIG asserts that the Commission simply required Dominion to file a report to ensure that it is not charging its customers for under-recovery of gas revenue, on the one hand, while realizing revenue generated from the sale of gas, on the other hand. CIG further asserts that the Commission did not make a finding to support its burden of proof under section 5 of the Natural Gas Act to require a change in CIG's existing tariff practices as to revenue crediting. Indicated Shippers argue that the order directs CIG to credit the revenue from the sale of operational gas and that the compliance filing fails to abide by the order, requiring crediting of gas sales.

10. In *Dominion*, the Commission required Dominion 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,[6] 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 incorporating a reporting mechanism for the sale of each category of excess gas.

11. The Commission has determined that to the extent the sale of excess gas is consistent with what's defined as confiscated gas in CIG's tariff (*e.g.*, cash out provision in section 7.11 of GT&C), the pipeline must follow the applicable terms and conditions of its tariff, which in effect require the flow through of revenues.[7] However, for non-confiscated gas sales, the Commission will accept CIG's proposal to file an annual report with a plan for disposition of costs and revenues.

[6] Incidental gas includes excess fuel retainage and excess gathering and products extraction gas.

[7] 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).

B. <u>Annual Report</u>

12. CIG 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 CIG's tariff. The June 25, 2004 Order recognized that existing provisions of its tariff already required 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. CIG states in the instant application that it also may have to buy gas due to plant shrinkage. Because CIG has tracking mechanisms in its tariff for fuel use (which includes plant shrinkage) and imbalance management through cash outs, the Commission will require CIG 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, CIG is required to revise its section 37.3 of the GT&C of its tariff to reflect this comprehensive annual report. For the reason discussed above, CIG's request for clarification is denied.

13. Indicated Shippers imply that the compliance filing failed to conform to the order by failing to specify that CIG 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.[8] The Commission agrees and will require, as part of CIG's detailed annual report, that for each transaction CIG explain the purpose of the purchase or sale and the source of the gas purchase. We grant rehearing as discussed above.

[8] The Commission has in place extensive rules of conduct to prevent affiliate abuse, specifically, 18 CFR section 358.2, entitled general principles, which state that a pipeline cannot operate its transmission system to benefit preferentially any affiliate. Our June 25 Order requires CIG 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).

C. Posting on the EBB

14. The Commission's order required CIG to provide that it will post the excess sales volumes for bid on its electronic bulletin board (EBB) pursuant to the bidding procedures in Article 2 of its GT&C. CIG asserts that since Article 2 governs capacity release, this is too broad a requirement. CIG requests a clarification that the bidding procedure be limited to the applicable sales posting procedures in Article 2, *e.g.*, bid conditions and time periods that would fit a gas sales transaction and which would be applicable to gas sales. We agree with CIG and clarify that the operational gas sales bidding procedure is subject only to the applicable provisions of Article 2 that would be consistent with a gas sales transaction. As we grant the requested clarifications for the reasons set forth above, we need not address the request for rehearing.

D. Bidding

15. Indicated Shippers assert that the Commission's order directed CIG to purchase operational gas through an auction or other post-bid process, or absent this, that safeguards are in place to ensure CIG does not overpay for gas it purchases from an affiliate. CIG disagrees and urges that the sale of operational gas is the only posting requirement. The order states:

> all parties will have an opportunity to bid on the sale of any excess gas incidental to the pipeline's operations and 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 CIG to revise Article 37.1 of its GT&C to provide that it will post the excess sales volumes for bid on its electronic bulletin board pursuant to the bidding procedures in Article 2 of its GT&C.[9]

We intended that the June 25 Order be limited to the posting of only excess gas for sale. Further, Indicated Shippers has incorrectly interpreted our decision in *Dominion*, where the Commission determined that the only requirement on the pipeline was to provide all parties with an opportunity to bid on excess gas.[10]

16. Indicated Shippers makes the argument that it is essential that gas purchases be conducted through an auction process to prevent affiliate abuse. CIG argues that

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[9] 107 FERC ¶ 61,312 at P 8.

[10] *Dominion*, 106 FERC ¶ 61,029 at P 17.

imposing an auction requirement on CIG's purchase of operational gas would be unnecessary and burdensome. The Commission has in place extensive rules of conduct to prevent affiliate abuse, as Indicated Shippers themselves concede.[11] The rules state that a pipeline cannot operate its transmission system to benefit preferentially any affiliate. Our June 25 Order requires CIG to identify all entities from which its purchases operational gas in its annual report. CIG is required to fully support costs and revenues in its various tracking filings (*e.g.*, fuel and cash outs). These provisions reasonably provide an opportunity to review issues of affiliate concerns raised by Indicated Shippers. For these reasons and because CIG's compliance filing is consistent with our order, we deny Indicated Shippers' protest to the compliance filing and their request for rehearing.

E. Scheduling

17. The Commission noted in its June 25 Order that section 5.10(b) of CIG's existing tariff provides for the scheduling of gas for operational purposes having a priority lower than firm service. The Commission found that scheduling below firm service satisfied Indicated Shippers' concern.

18. Indicated Shippers request rehearing of the Commission's finding and argue that this scheduling priority improperly places operational gas above secondary firm capacity. Indicated Shippers claim the rights of firm shippers would be unfairly restricted. CIG responds that moving operational gas to needed locations is critical to the operation of the pipeline system and if not in the right place at the time needed, all services could be jeopardized.

19. The Commission agrees with the Indicated Shippers that its 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.[12] 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.[13] Further, firm service with secondary

[11] Indicated Shippers Protest and Request at 4.

[12] 18 C.F.R. § 284.7(a)(3) (2004).

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

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 scheduling priority directly following primary firm service.[14] 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.

20. As a result, the Commission will reverse its decision set forth in the June 25 Order and will invoke its section 5 authority requiring CIG to revise section 5.10(b) of its effective tariff to remove operational gas from its currently 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) CIG's compliance filing and the tariff sheet listed in Footnote 3 above are accepted effective June 28, 2004, subject to CIG's 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.

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[14] *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."