UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company Docket No. RP02-334-004

ORDER ON COMPLIANCE FILING

(Issued March 7, 2005)

1. On November 12, 2002, Northern Natural Gas Company (Northern) filed additional information and explanations (November 12 Filing) to comply with an order issued on October 10, 2002 in Docket Nos. RP02-334-002 and RP02-334-003 (October 10 Order)[1] supporting its inclusion of a 1.3 Bcf adjustment in its annual periodic rate adjustment (PRA) filing.[2] This order accepts the November 12 Filing as complying with the October 10 Order and finds that Northern adequately explained the 1.3 Bcf adjustment to Northern's 2002 PRA annual filing. Therefore, we will not order refunds and will remove all the conditions attached to the tariff sheets approved in our October 10 Order. This decision benefits the public because it ensures that the proposed fuel reimbursement rates accurately reflect the gas volumes lost and actual fuel costs incurred by Northern.

Background

2. Section 53 of Northern's GT&C provides a PRAmechanism under which Northern makes annual filings each May 1 to adjust the fuel retention percentages that recover its fuel use and unaccounted for (UAF) gas. Northern calculates the fuel retention

[1] *Northern Natural Gas Company*, 101 FERC ¶ 61,024 (2002).

[2] Docket No. RP02-334-000 filed May 1, 2002, pursuant to section 53 of the General Terms and Conditions (GT&C) of Northern's tariff in order to establish its annual fuel-use (fuel) and unaccounted-for (UAF) percentages, to be effective June 1, 2002 (May 1, 2002 PRA filing).

percentages based on actual operating experience for the 12 months ending the preceding March 31. The mechanism also provides for a true-up of under and overrecoveries from previous periods. Northern established the existing PRA mechanism pursuant to a settlement approved by the Commission in 1998 (1998 Settlement).[3]

3. The UAF fuel retention percentage Northern proposed in its May 1, 2002 PRA filing reflected a 1.3 Bcf one-time adjustment relating to a calibration error on Northern's measurement equipment. That error was discovered during an arbitration proceeding in May 2001 between Northern and Oneok Bushton Processing, Inc. (Oneok). Northern determines the quantity of its unaccounted for gas by subtracting the amount of system deliveries from the amount of system receipts. The difference is considered to have been lost. Thus, the fewer deliveries Northern makes in comparison to its receipts, the greater its level of UAF gas. In its May 2002 PRA filing, Northern stated that the calibration error led it to believe that during 1999 to 2001 it delivered 1.3 Bcf more gas to Oneok's processing plant than it actually delivered, and this error was reflected in its 1999-2001 PRA filings. Correcting this error reduced its deliveries for that period by 1.3 Bcf and accordingly increased its UAF by the same amount.

4. On May 31, 2002, the Commission conditionally accepted and suspended Northern's PRA filing.[4] As here relevant, over the protests of several parties,[5] the Commission found that the 1.3 Bcf adjustment was consistent with Northern's tariff and accordingly approved that adjustment. The Northern Municipal Distributors Group and the Midwest Region Gas task Force Association (NMDG/MRGTF) and the Indicated Shippers requested rehearing of the ruling with respect to the 1.3 Bcf adjustment.

5. On rehearing, the Commission reconsidered its acceptance of the 1.3 Bcf adjustment, and determined that it needed more information before rendering a final decision on this issue. Therefore, the Commission directed Northern to provide full support for its claim, demonstrating how the metering error led to understating the UAF

[3] *Northern Natural Gas Company*, 82 FERC ¶ 61,270 (1998).

[4] *Northern Natural Gas Company*, 99 FERC ¶ 61,230 (2002).

[5] Because the 1.3 Bcf adjustment to Northern's UAF calculation was the result of an arbitration decision concerning a manufacturer's calibration error, which the parties were not a part of or privy to, they requested the Commission to remove the 1.3 Bcf adjustment from the calculation of Northern's UAF percentage.

rate during past periods, thereby requiring the offsetting increase in the current period.[6] The Commission also directed Northern to provide copies of the arbitration decision and to: (1) explain how, when and why the discrepancy occurred; (2) tell when Northern first discovered the discrepancy and (3) provide details concerning the nature of the calibration error or what "measurement equipment" was involved.[7]

Compliance Filing

6. In its filing to comply with the rehearing order, Northern provides additional information, including a description of the underlying dispute between it and Oneok, the arbitration decision, how the measurement error occurred, and its effect on Northern's PRA filings.

A. Underlying Measurement Issue between Northern and Oneok

7. Northern explains that it delivers gas through two separate lines (the "lean" inlet line and the "rich" inlet line) to Oneok's processing plant. The gas is then redelivered to Northern through two outlet lines. A March 31, 1997 Measurement Agreement between Northern and Oneok governs how gas delivered to the inlet of the plant, received at the outlet of the plant and the associated Btus consumed or extracted at the plant (plant loss) are measured. Plant loss includes shrinkage, fuel, and losses that occur at the plant.

[6] We directed Northern to demonstrate exactly how and why the overstatement of deliveries to the Oneok plant due to the calibration error resulted in the understated UAF gas and provide data correlating the 1.3 Bcf to the UAF rates in 1999, 2000, and 2001. We also directed Northern to quantify the extent to which the UAF rates for those years would have been higher absent the calibration error. 101 FERC ¶61,024 at 61,068.

[7] Further, we directed Northern to explain: (1) whether the series of events leading up to the arbitration dispute had anything to do with its other shippers and/or the UAF; and (2) whether the dispute pertains to the amount of gas delivered or whether it may not have anything to do with unaccounted-for fuel. Northern was also directed to explain whether: (1) the arbitration was only between Northern and Oneok and not between the manufacturer and Northern; (2) Northern sought recompense from the manufacturing company that sold it the measuring equipment used at the Oneok plant; (3) Northern received any insurance payments for its "losses"; and (4) Northern received reimbursement through a warranty. *Id.*

Under the Measurement Agreement, Northern is compensated for plant loss. Any disputes between the parties concerning the operation of the plant and measurement of plant volumes are resolved through arbitration.[8]

8. Prior to July 1, 1998, Northern and Oneok agreed to measure plant loss by using Oneok's plant thermal reduction (PTR) formula whenever there was a discrepancy greater than one-half of one percent between Northern's single-path meters and Oneok's PTR formula. However, as provided for in the Measurement Agreement, in the spring of 1998, Northern replaced the single-path ultrasonic flow meters installed at the inlet and outlet of the plant with four multi-path ultrasonic meters manufactured by Instromet, Inc. (Instromet), one on each inlet line and one on each outlet line. Northern placed the new meters into service July 1, 1998, and used them exclusively to measure plant loss, except for Btu error periods.[9]

9. In February 2001, Northern requested arbitration of a dispute concerning the correct interpretation of the Measurement Agreement. An arbitration hearing took place in May 2001. According to Northern, the arbitration issue was "whether Northern's ultrasonic meters or Oneok's PTR formula should be used to measure plant loss during periods when there was a discrepancy between Northern's and Oneok's measurement of plant loss." At some point during the arbitration hearing, a measurement error was revealed relating to the lean inlet meter. The evidence established that a measurement error of 0.48% occurred as a result of an incorrect meter factor loaded into the processing board that Northern replaced in the lean inlet meter in April 1998, prior to the meter's in service date (meter factor error).[10]

10. According to Northern, before installing the new ultrasonic meters in the spring of 1998, Northern sent them to Holland for flow calibration at a test facility operated by the Netherlands Measurement Institute (NMI). The calibration process at NMI attached a meter factor to each meter so that each meter would agree with certain reference standards established during the calibration process. NMI loaded each meter's assigned meter factor into its processor board and noted the factor on the NMI flow calibration certificate for that meter.[11]

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[8] November 12 Filing at 6.

[9] *Id.* at 7.

[10] *Id.*

[11] *See id*. at 7-8.

11. At the arbitration hearing, Oneok's expert testified that Northern's documents relating to the above process revealed that the meter factor in the processor board on the lean inlet meter did not match the meter factor previously assigned to that meter by NMI.[12] After Northern installed the NMI calibrated lean inlet meter, the main processor board in that meter failed. Instromet then sent a new processor board to Northern, along with a backup disk to load the lean inlet meter's configuration into the new processing board. Northern assumed the meter factor on the backup disk had been validated as the same 0.9937 meter factor previously assigned to the lean inlet meter in the Netherlands. However, in fact, the disk contained a dry calculation factor of 0.9985, which was a default meter factor assigned to the lean inlet meter by Instromet. The use of a meter factor that was 0.48 percent too high caused an over-registration of flow through the lean inlet meter from the date the meter went into service in July 1998. Thus, during that period Northern believed its deliveries to Oneok's processing plant were greater than they actually were. Northern did not become aware of this error until May 9, 2001, during the arbitration hearing. After discovering the problem, Northern adjusted the lean inlet meter factor to the NMI factor on May 17, 2001.[13]

B. Arbitrator's June 29, 2001 Decision

12. The Arbitration Panel held a hearing on May 9-11 and May 16-18, 2001, and issued its decision on June 29, 2001. Northern prevailed on the issue of the method to be used to measure plant loss. The Arbitration Panel determined that Northern's ultrasonic meters were to be used to measure plant loss volumes, not Oneok's PTR method. As a result of that ruling, Oneok owed Northern $2,287,408 plus interest with respect to the original disputed issue concerning the level of plant loss.

13. However, the Arbitrators found that Northern owed damages to Oneok because of the meter factor error. The Arbitrators rejected Northern's argument that the meter factor error should be limited to a six-month correction period as specified in the

[12] Specifically, the evidence revealed that the NMI flow calibration certificate indicated that the lean inlet meter's factor was 0.9937; while Northern's monthly testing reports indicated that the meter factor was 0.9985. November 12 Filing at 8.

[13] *See id.* at 8-9. Thus, it appears that the only measurement equipment involved with respect to the measurement error was the lean inlet meter.

Measurement Agreement.[14] The Arbitrators found that Northern breached its duty under paragraph 2(d) of the Measurement Agreement to inform Oneok of the replacement of the processing board for the lean inlet meter and the resulting re-calibration of the measuring equipment.[15] The Arbitrators concluded that the meter factor error should be corrected from July 1, 1998. That correction decreased volumes measured by the lean inlet meter from July 1, 1998 through March 31, 2001 by 1.25 Bcf.[16] The Arbitrators also added a 0.094 Bcf chromatograph adjustment amount, resulting in a total adjustment of 1.3 Bcf.[17] The decrease in volumes delivered to the plant reduced the total volume of plant loss at Oneok's processing plant, reducing the dollar amount Oneok owed to Northern for plant losses by $3,480,266. As a result of offsetting the two monetary awards, Northern owed Oneok $1,192,858.[18]

C. Effect on PRA Filings

14. Northern states that the meter error caused its PRA filings for 1999, 2000 and 2001 to understate its UAF. The UAF fuel retention percentages established by the 1999, 2000 and 2001 PRA filings were based on Northern's UAF during the periods April 1998 through March 1999, April 1999 through March 2000, and April 2000 through March 2001, respectively. For each of those annual periods, the meter error caused Northern to believe its deliveries were higher than they actually were, causing Northern to calculate a lower UAF quantity than the actual UAF during those periods. Consequently, the UAF

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[14] Paragraph 2(c) of the Measurement Agreement appears to limit any retroactive correction based on a measurement error. It states in pertinent part: "[i]n no event shall any adjustment extend back beyond six (6) months from the date the error was first made known from one party to the other . . . ."

[15] *See* Final Award at 16-18.

[16] November 12 Filing at 10 (*citing* Exhibit A, page 1).

[17] *Id.* Northern explains the chromatograph adjustment amount was made pursuant to the agreement between the parties. *Id.* at n. 4. A chromatograph measures the composition of the gas.

[18] This amount reflects, the difference between the amount owed to Northern based on the resolution of the original dispute referred to the arbitrators ($2,287,408) and the amount owed to Oneok as a result of the meter factor error ($3,480, 266), plus prejudgment interest at the rate of 6percent simple interest per year. *See id.* (*citing* Final Award at 18).

fuel retention percentages established by the 1999, 2000 and 2001 PRA filings were lower than they should have been. If the correct UAF figures had been used, the 1999 UAF fuel retention percentage would have increased from 0.19 percent to 0.24 percent, the 2000 UAF fuel retention percentage would have increased from 0.15 percent to 0.25 percent, and the 2001 UAF fuel retention percentage would have increased from 0.24 percent to 0.31 percent.[19]

15. In July 2001, immediately after the Arbitration Panel issued its decision, Northern booked the 1.3 Bcf adjustment to its PRA. Accordingly, Northern reflected that adjustment in the April 2001- March 2002 data that was used to determine the UAF fuel retention percentage in Northern's 2002 PRA filing. Northern argues its proposed 1.3 Bcf adjustment is appropriately included in its 2002 PRA filing. Northern asserts that the 1998 Settlement establishing its PRA provided that Northern must be kept whole for its actual fuel use and UAF gas, and accordingly the PRA mechanism includes a true-up mechanism for that purpose.[20]

16. Northern admits human error caused the improper calibration of the lean inlet meter when its employees re-installed the processing board.[21] However, it states that, thereafter, it properly inspected and tested the meter on a monthly basis, with Oneok personnel available as witnesses. Northern asserts that the monthly testing could not reveal the measurement error discovered during the arbitration hearing, because that error could only have been discovered by comparing the meter factor on the NMI flow calibration certificate with the meter factor in the information received with the new processor board in April 1998. Therefore, Northern contends that it was not negligent in failing to discover the error sooner. Northern also contends that Commission precedent supports inclusion of the 1.3 Bcf adjustment. It contends the Commission allowed a

[19] *Id.* at 10.

[20] *Id.* at 5.

[21] *Id.* In response to the Commission's request for an explanation of how, when and why the measurement error occurred, Northern attached the arbitration decision (Final Award) as Exhibit B. Northern admits it did not have a claim for a loss against the manufacturer or Northern's insurer because the error was not caused by a defect in the measurement equipment. *Id.* at 11-12.

similar adjustment in *Transcontinental Gas Pipe Line Corporation (Transco),*[22] where the pipeline's fuel recovery mechanism was also established pursuant to a settlement containing a provision for the pipeline to be kept whole for its fuel and UAF costs.

D. Comments on Compliance Filing

17. NMDG/MRGTF, the Indicated Shippers and the Large LDC Coalition[23] filed comments on Northern's compliance filing. The parties argue that the Commission should either deny the 1.3 Bcf adjustment or require its recovery through a method other than as provided for in Northern's tariff. Northern filed an Answer in response to the arguments of the parties. In its Answer, Northern states that its customers received the benefit of reduced UAF percentages during the PRA periods of 1999, 2000 and 2001 as a result of the measurement error. Northern argues that the 1.3 Bcf true-up adjustment in the 2002 filing keeps all parties whole and its recovery is supported by the existing PRA mechanism adopted when the Commission approved the 1998 Settlement.[24] Pursuant to Rule 213 of the Commission's regulations, we will accept Northern's Answer because it will aid in resolving the issues, which are discussed below.

Discussion

18. As more fully discussed below, the Commission will permit Northern's 1.3 Bcf prior period adjustments in its fuel tracker because its tariff permits such a recovery, *i.e.*, the losses occurred during the periods covered by the tariff. In addition, Northern established that the losses are the type for which recovery was contemplated and demonstrated with reasonable accuracy the amount of the adjustment it seeks to recover. Further, we find that Northern provided sufficient information to support including the 1.3 Bcf adjustment in its 2002 PRA filing.

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[22] *Transcontinental Gas Pipe Line Corporation*, 95 FERC ¶ 61,299 at 61,020 and 61,022.

[23] Aquila, Inc. d.b.a. Aquila Networks, Northern States Power Company, Northern States Power Company (Wisconsin), and CenterPoint Energy Minnegasco, a Division of CenterPoint Energy Resources Corp.

[24] *Northern Natural Gas Co.*, 82 FERC ¶ 61,270 (1998). Filed on December 10, 1997, the PRA Settlement was approved on March 16, 1998 in Docket Nos. RP97-275-002, *et al.*

A. Does Northern's Tariff Allow Out-of-Period Adjustments?

1. Arguments of the Parties

19. Indicated Shippers argue that Northern's tariff does not permit it to include the 1.3 Bcf adjustment in its May 1, 2002 PRA filing. They argue that Northern's tariff only permits the use of data for the April-March annual period immediately prior to the filing, in this case April 2001 to March 2002, but the 1.3 Bcf adjustment relates to the earlier period July 1, 1998 through March 31, 2001. Indicated Shippers point out that section 53A(3)(iv) of Northern's GT&C provides for the UAF fuel retention percentage in a PRA filing to be "calculated by dividing the twelve month actual unaccounted-for gas for the respective twelve–month period ending March 31, by the throughput for the same twelve month period." Also, section 53A(5)(iv) concerning the true-up aspect of the PRA mechanism provides that "Northern shall annually compare the volume of Unaccounted for retained for the most recent twelve (12) months ended March 31 with the volume of actual Unaccounted for for the same period to determine the Unaccounted-for Adjustment Amount. The Unaccounted-for Adjustment Amount will be divided by the applicable throughput to determine the Unaccounted-for Adjustment Percent to be added to the Unaccounted-for retention percentage for the period beginning the subsequent June 1."[25]

20. Indicated Shippers argue that Northern's reliance on *Transco* supporting this retroactive recovery is misplaced because neither the settlement in *Transco* nor Transco's tariff addressed the retroactivity issue. Moreover, they state the Commission only permitted retroactive recovery of "any reasonable past accounting or gas measurement errors."[26] Indicated Shippers also argue that Northern fails to acknowledge the Commission's rejection of retroactive adjustments in other fuel cases. They cite to the *Williams Gas Pipeline Central, Inc*., line of cases, where the Commission held that Williams's tariff, which Indicated Shippers contend is similar to Northern's, did not permit the pipeline to include in its fuel reimbursement filing an error it discovered in the previous fuel reimbursement filing.[27]

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[25] Indicated Shippers Comment at 9 (*citing* Rev. Sheet No. 301C, Sec. 5 (iv)).

[26] *Id.* at 9-10 (*citing Transcontinental Gas Pipe Line Corp.*, 95 FERC ¶ 61,299 at 62,020 and 62,021).

[27] *Id.* at 10-11 (*citing Williams Gas Pipeline Central, Inc.*, at 91 FERC ¶ 61,015 at 61,057 (2000) and section 13.1 of Williams' General Terms and Conditions).

21. Further, Indicated Shippers state that in the *Mississippi River Transmission Corp.*, line of cases, the Commission established two factors to determine whether a pipeline may make prior period adjustments in its fuel tracker. First, the Commission only permits the pipeline to recover losses related to prior periods if the underlying tariff permits such recovery, i.e., the losses occurred during periods covered by the tariff. Second, if the tariff permits such a recovery, the pipeline must establish that the losses it alleges are the type of losses for which recovery was contemplated and must demonstrate with reasonable accuracy the amount of the adjustment it seeks to recover.[28] Indicated Shippers argue that under both of these factors, the Commission should prohibit Northern from recovering the 1.3 Bcf because Northern's tariff does not permit prior period recovery and the losses are not the type for which recovery was contemplated (the 1.3 Bcf is neither lost volume nor unaccounted for volume) but rather relate to dollar damages owed by Northern to Oneok for beach of its contractual duty to Oneok.

22. Northern responds that Indicated Shippers' most recent 12-month argument fails to recognize that it properly included the 1.3 Bcf adjustment in its current PRA filing because the arbitration decision, which is final and non-appealable, was issued in June 2001. Thus, since Northern's May 1, 2002 PRA filing establishes UAF percentages based on data for the 12-month period from April 1, 2001 through March 31, 2002, the adjustment booked in July 2001 falls squarely within the period covered by the 2002 PRA filing and, therefore, was properly included.[29]

23. Northern states that its PRA mechanism requires customers to reimburse Northern for the actual costs of fuel and UAF, i.e., the fuel and UAF rates are trued up so that customers receive reimbursement for overcollections and Northern is reimbursed for undercollections. Northern argues that under its two-way tracker, it is not at risk for recovery of fuel and UAF costs because the PRA mechanism set forth in its tariff provides for a true-up of costs. Northern states that PRA Settlement explicitly provides that Northern shall be kept whole under the true-up mechanism, which the parties also recognized in the 1998 Settlement.[30]

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[28] *Id.* at 11-13 (*citing Mississippi River Transmission Corp.*, 95 FERC ¶ 61,323 at 62,143 (2001), *citing* section 22 of MRT's General Terms and Conditions).

[29] Northern Answer at 7.

[30] *Id.* at 7-8. Northern also argues that just as in *Transco*, Northern did not deliberately create the undercollections, was not grossly negligent in the management of its system and did not wait an inordinate amount of time to seek recovery once the error was discovered.

2. Commission Decision

24. The Commission finds Northern's tariff permits it to include the 1.3 Bcf adjustment in the true-up component of its UAF fuel retention percentage calculations. Section 53A(5)(iv) of Northern's GT&C provides for Northern to true up prior over and undercollections of UAF by comparing "the volume of Unaccounted for retained for the most recent twelve (12) months ended March 31 *with the volume of actual Unaccounted for for the same period*." Here, the relevant 12-month period is April 1, 2001 through March 31, 2002. Northern booked the 1.3 adjustment to its accounts in July 2001, during this annual period. However, the adjustment corrected UAF that occurred during July 1998 through March 2001. Thus, the issue is whether "the volume of actual Unaccounted for" used in the comparison described above may include prior period adjustments booked during the relevant 12-month period, but making corrections relating to an earlier period.

25. The Commission interprets this tariff provision in light of Northern's 1998 Settlement establishing its current PRA mechanism, including the true-up provisions in section 53A(5) of Northern's GT&C. Article IV, section 4, of that settlement provided, "In any event, *Northern shall be kept whole, i.e., Northern shall recover the total actual amount of UAF*, Mainline fuel, Field fuel and Storage fuel (as more fully described in Article V below." (Emphasis supplied.) The parties' comments on the 1998 Settlement also reflected their understanding that the true-up provision would keep Northern whole for its fuel and UAF costs, while preventing it from overrecovering those costs. Thus, Staff's initial comments,[31] stated "Section 4 of Article IV provides the parties agree Northern shall be kept whole. . ." NDG commented[32] that the filed fuel and UAF percentages "will be subject to true-up with actual costs incurred by Northern."

26. The Commission finds that Article IV of Northern's 1998 Settlement shows the parties' intent that Northern's tariff precisely track its fuel and UAF costs. This can only be accomplished if prior period adjustments are taken into account, both those that are in Northern's favor as here and those that are in its customers' favor. In very similar circumstances in *Transco*,[33] the Commission relied on almost identical settlement provisions to interpret Transco's tariff as providing for prior period adjustment to be

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[31] *Id.* at 6.

[32] *Id.* at 2.

[33] *Transcontinental Gas Pipe Line Corporation,* 95 FERC ¶ 61,299 at 61,020 and 61,022.

reflected in its true-up of fuel costs, despite the lack of any express provision in Transco's tariff for such prior period adjustments to be included in the 12 months of actual data used for true-up purposes.

27. The *Williams Gas Pipeline Central, Inc.*, line of cases, relied on by Indicated Shippers, is distinguishable, since in that case there had been no settlement showing the parties' intent that the true-up permit the pipeline to be kept whole in all circumstances. However, as the Commission stated in *Transco*, the ability of a pipeline to be kept whole in a tracking mechanism is limited where the pipeline (1) deliberately creates the undercollections, (2) had been grossly negligent in the management of its system and thereby caused the fuel use differential, or (3) had waited an inordinate amount of time after discovery of the errors to seek recovery.[34] As more fully discussed below, we do not find any of these grounds preclude or limit Northern's recovery of the 1.3 Bcf since Northern's tariff permits it to recover this type of adjustment and Northern demonstrated with reasonable accuracy the amount of the adjustment it seeks to recover.

B. Is the 1.3 Bcf Adjustment a UAF Cost?

1. Arguments of the Parties

28. Indicated Shippers contend that Northern improperly seeks to recover the damages awarded by the Arbitration Panel through its PRA mechanism. Indicated Shippers argue that the 1.3 Bcf is not the type of system-wide loss associated with measurement errors or meter errors that a pipeline may typically include in UAF volumes, i.e., the 1.3 Bcf is neither "lost" volume nor "unaccounted for" volume. Rather, it relates to dollar damages owed by Northern to Oneok for breach of its contractual duty to Oneok. Indicated Shippers state that Northern apparently converted the $1,192,857.73 net award to volumes of 1.25 Bcf, which was then augmented by an additional unexplained 0.094 Bcf chromatograph adjustment pursuant to the agreement between the parties. Indicated Shippers contend there is no explanation of this chromatograph adjustment or how it was made pursuant to the agreement between the parties. Regardless, Indicated Shippers submit all such dollars are beyond the scope of Northern's PRA mechanism.[35] Therefore, they request the Commission to remove the 1.3 Bcf adjustment from the calculation of Northern's UAF percentage.[36]

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[34] *Id.* at 61,021.

[35] *See* Indicated Shippers Comments at 8-10.

[36] *Id.* at 3.

29. Northern responds that Indicated Shippers offer no support for their restrictive definition of what is allowed as a true-up under Northern's tariff. Northern states that the true-up adjustment only involves a correction that is necessary because a measurement error caused an overstatement of volumes to Oneok and, as a result, an understatement of UAF volumes for 1999, 2000 and 2001. Northern argues the arbitration award involved compensation to Oneok for volumes that were erroneously measured as delivered but were not in fact delivered. Northern states that, even though Oneok was paid a dollar amount to correct the volume shortfall does not change the reality that volumes to Oneok were erroneously overstated and, as a result, UAF volumes were understated.[37]

30. Northern explains that it is not unusual for parties to resolve a volume shortfall through a cash payment rather than through an in-kind resolution. Northern states that the cash settlement terms of the Operational Balancing Agreement with Oneok reflect the general industry standard of resolving operational imbalances through cash settlements. Northern, therefore, argues that resolving volume imbalances through a cash-out payment rather than an in-kind delivery of gas does not change the fact that the fundamental issue is correcting the accounting for volumes, not damages.[38]

2. Commission Decision

31. The Commission finds that the 1.3 Bcf adjustment which Northern proposes to include in the true-up component of its PRA filing is not for the purpose of recovering damages awarded by the arbitration panel. Rather, it appropriately allows Northern to recover its UAF costs, consistent with the purpose of the PRA mechanism. The proceedings before the Arbitration Panel uncovered an error in Northern's measurement of its deliveries to Oneok, with the result that those deliveries had been erroneously overstated during 1999, 2000 and 2001. That error affected both (1) the calculation of UAF that occurred on Northern's system before the gas reached the Oneok processing plant and (2) the separate calculation of the shrinkage that occurred as the gas flowed through Oneok's processing plant. As discussed above, Northern's tariff as implemented pursuant to the 1998 Settlement requires shippers to keep Northern whole for any UAF gas volumes that occur on Northern's system. Northern's contract with Oneok requires Oneok to compensate Northern for any shrinkage that occurs while the gas moves through the processing plant.

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[37] Northern Answer at 5.

[38] *Id.* at 5-6.

32. The Arbitration Panel dealt with the issue of what compensation Oneok owed Northern for shrinkage that occurred at the plant. That shrinkage is determined based on the difference between the amount of gas Northern delivers to Oneok at the inlet of the plant and the amount that Oneok returns to Northern at the outlet of the plant. Therefore, the overstatement of Northern's deliveries to Oneok at the inlet of the plant caused an overstatement of the shrinkage that occurred at the plant, causing Oneok to pay more for shrinkage than it should have paid. Northern's payments to Oneok pursuant to the Arbitration Panel's decision compensated Oneok for its overpayment for shrinkage.

33. The amount of UAF gas occurring on Northern's system is determined based on the difference between receipts only into Northern's system and deliveries out of Northern's system. Therefore, the overstatement of deliveries to Oneok at the inlet of its plant caused an understatement of the UAF that had occurred on Northern's system before the gas reached the Oneok plant. The 1.3 Bcf adjustment is for the purpose of correcting this error. As a result, it requires shippers on Northern's system to fully compensate Northern for the UAF gas that actually occurred on its system during the period 1999-2001, consistent with Northern's tariff. The adjustment therefore does not require Northern's shippers to compensate it for the damages Northern had to pay to Oneok.

C. Does Northern's Negligence Preclude Recovery?

1. Arguments of the Parties

34. Several parties contend that the 1.3 Bcf adjustment is the result of various negligent or imprudent actions of Northern and, for that reason, the Commission should reject the adjustment. Indicated Shippers state the loss Northern attempts to recover results from Northern negligently failing to verify the proper setting of the measurement device and relates to a dispute solely between Northern and Oneok, under which the Arbitrators found Northern liable.[39] NMDG/MRGTF argues that if Northern had not breached its duty under the measurement agreement to notify Oneok of Northern's action to correct this error, compensation to Oneok would have been limited.[40]

[39] Indicated Shippers Comments at 2.

[40] NMDG/MRGTF Comments at 4

35. NMDG/MRGTF assert that the 1.3 Bcf is not reasonable and should not be included in the UAF calculation in light of the Commission's policy in *Transco* which places limitations on the conclusion that a pipeline has to be kept whole in a tracking mechanism like the PRA, even where that mechanism is the result of a settlement. NMDG/MRGTF contend there is ample evidence of Northern's gross negligence in the management of its system in general, and in its failure to calibrate Oneok's meters correctly, to notify Oneok of the recalibration as required by the Measurement Agreement and to keep the measurement issue out of the arbitration proceedings in particular, which justifies removal of the 1.3 Bcf from the UAF calculation.[41] Because Northern failed to verify or notify Oneok of the replacement of the equipment as required by the Measurement Agreement and thereby limit its loss, NMDG/MRGTF argues the Commission should not allow an adjustment to the UAF calculation.

36. Northern responds that none of these arguments change the fact that the true-up corrects a measurement error that resulted in incorrect UAF percentages. Northern states that the meter to the Oneok plant incorrectly overstated the amount of gas delivered in 1999, 2000 and 2001 and, therefore the amount of UAF in such years was understated. Absent the error, Northern states that its UAF percentages would have increased from 0.19% to 0.24% in 1999, from 0.15% to 0.25% in 2000, and from 0.24% to 0.31% in 2001.[42] Northern argues that none of the parties challenge these figures and asserts that its proposed adjustment in this proceeding simply ensures that all parties (both Northern and its shippers) are kept whole under the PRA mechanism, consistent with the intent of the 1998 Settlement.

37. Northern contends that the arguments for disallowing a true-up because Northern was at fault, negligent, imprudent and breached its duty under its contract with Oneok are overly broad and not supported by the PRA Settlement and Northern's tariff. Northern explains that the true-up was specifically established because it was recognized that errors are unavoidable and should be corrected so that Northern would be "kept whole" and "recover the total actual amount of UAF." Northern states that the 1998 Settlement and its tariff, rather than precluding the correction of errors when made by Northern, expressly contemplate the correction of errors through a true-up, regardless of whether they were caused by Northern or otherwise. Northern believes that the error in the parties' argument is demonstrated by the fact that Northern would correct any errors

[41] *Id.* at 12-18.

[42] Northern Answer at 5-6 (citing Exhibit A, page 2 of November 12 Filing).

detrimental to shippers through the true-up even if Northern was at fault, negligent, imprudent, or breached its duty to a shipper. Northern argues that the same is true if any errors made by Northern are beneficial to shippers because the true-up is even-handed, not one-way.[43]

2. Commission Decision

38. The Commission finds that Northern may make the 1.3 Bcf adjustment, regardless of any imprudence or negligence that may be attributed to Northern failing to properly calibrate the lean inlet meter when it replaced the processing board or in its management of the proceedings before the Arbitration Panel. In the first place, this is not a situation where a pipeline's imprudent acts caused the pipeline to incur a cost it would not otherwise have incurred. If Northern had properly recalibrated the lean inlet meter, deliveries from its system would have been properly measured during 1999-2001, and its PRA filings for those years would have included higher UAF retention percentages than they did. In short, the measurement error caused the shippers to give Northern less compensation for UAF during 1999-2001 than they should have, and correcting that error in 2002 simply requires the shippers to give Northern the same overall compensation for UAF that they would have been required to give if Northern had never made the error.

39. Second, in *Transco*, the Commission held that a pipeline may correct measurement errors of the type that occurred here through a true-up mechanism, unless the pipeline (1) had been grossly negligent in the management of its system and thereby caused the fuel use differential, (2) deliberately created the undercollections, or (3) had waited an inordinate amount of time after discovery of the errors to seek recovery.[44] While Northern's failure initially to verify the meter factor at issue in this case may be considered negligent, we do not find that it rises to the level of gross negligence. Gross negligence is a willful act or omission in reckless disregard of a legal duty and of the consequences to another party. There is no evidence here to show that the failure to recalibrate the lean inlet meter when the processing board was replaced was anything

[43] *Id.* at 4-5.

[44] 95 FERC ¶ 61,299 at 61,021.

other than an honest mistake.[45] Northern corrected the mistake as soon as it discovered it. And there is certainly no evidence that Northern failed to verify the meter factor in order to deliberately create the undercollections.

40. Northern's actions during the proceedings before the Arbitration Panel, such as its failure to raise procedural objections that might have kept the measurement issue out of the arbitration proceeding, are not relevant to the issue whether it should be permitted to make the 1.3 Bcf adjustment in its 2002 PRA filing. While Northern might have been able to lessen the damages owed to Oneok, Northern is not seeking to recover those damages from its shippers. Rather, the 1.3 Bcf adjustment is for the separate purpose of making Northern whole for its UAF costs. Those UAF costs exist regardless of the level of damages Northern may have been required to pay Oneok. The parties agreed in the 1998 Settlement that Northern's PRA mechanism should keep Northern whole for its UAF costs. Therefore, inclusion of the 1.3 Bcf adjustment in the 2002 PRA simply carries out that purpose. Finally, since Northern's tariff permits prior period recoveries, there is no violation of the filed rate doctrine or the rule against retroactive ratemaking.[46] Northern's shippers are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service. [47]

D. Method of Recovery

1. Arguments of the Parties

41. Unlike the other parties, the Coalition states that Northern is entitled to recover its monetary loss because Northern's measurement error caused an understatement of its UAF for the period involved at Oneok's expense, which Northern eventually repaid. Therefore, the Coalition argues that Northern is entitled to recover that payment to Oneok from its shippers but the Commission should not allow Northern to recover a windfall.[48]

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[45] *See* Henry Campbell Black, Black's Law Dictionary 5th Edition (1979). *See also Glaab v. Caudill*, 236 So.2d 180, 185 (Fla. 2d DCA 1970) and *Claunch v. Bennett*, 395 S.W.2d 719 (Tx. Civ. App. 1965).

[46] *Mississippi River Transmission Corp.*, 95 FERC ¶ 61,323 at 62,146 (*citing Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992)).

[47] *Id.* (*citing Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791,797 (D.C. Cir. 1990)). *See also Northern Natural Gas Company*, FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Fourth Revised Sheet No. 300, Section 53A (3)(a).

[48] Coalition Comments at 3.

The Coalition argues that the Commission should not permit Northern to increase its UAF percentages to recover 1.3 Bcf of gas because this will result in a windfall to Northern at the expense of its shippers.

42. The Coalition estimates that shippers' cost of approximately $5.1 million to provide Northern the additional 1.3 Bcf of gas over the recovery period at issue owed to Oneok. They believe Northern's proposal would result in a $1.4 million windfall for Northern. The Coalition states its understanding that normal year-to-year adjustments may be necessary to account for variances between actual fuel usage versus fuel retained. However, it states the one-time 1.3 Bcf adjustment should be distinguished from normal fuel adjustments, not only because it happened over a three-year period, but because Northern's exposure was fixed at the cost of gas when the measurement occurred because Northern was charging the 1.3 Bcf of gas as sales to Oneok. The Coalition argues that allowing a pipeline to gain from this type of transaction opens up a fuel tracker to potential speculative manipulation by the pipeline or, at a minimum, exposes shippers to excessive gas-price fluctuation risks over a multi-year period not anticipated in a tracking mechanism that is intended to operate on a year-to-year basis.[49]

43. The Coalition argues that recovery of the arbitration award should not be through Northern's PRA mechanism because Northern is not recovering lost gas but is seeking compensation to cover a monetary payment to Oneok. The Coalition believes Northern's recovery should be made through an increase to Northern's principal balance in its System Levelization Account (SLA). The Coalition states that the SLA is established to track the costs of balancing Northern's system. The Coalition explains that, at the time Northern overstated Oneok's sales (1999, 2000 and 2001), any differences between actual sales and Northern's measurement were physically reflected in gas shortages on the system that necessitated use of operational storage gas.[50]

44. Alternatively, the Coalition suggests that the Commission require Northern to recover the adjustment through a transportation surcharge over a three-year period (mirroring the three-year adjustment time frame). They argue that this approach follows the approach adopted by the Commission in *Transco* where the Commission required the pipeline to recover a measurement error over a seven-year period – the same period of time over which the error occurred. The Coalition states that the Commission has determined in other proceedings that neither a pipeline, nor its shippers should gain or lose as a result of fuel trackers such as Northern's PRA mechanism. They point out that

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[49] *Id.* at 3-4.

[50] *Id.* at 4-5.

in *Transco*, the Commission held that "no party should gain or lose on the actual difference between fuel retained and fuel burned." They explain that, although the issue in *Transco* was that the shippers would gain, not the pipeline, they argue the principle is the same - - neither should benefit.[51]

45. Northern argues that the Coalition's proposals are contrary to the provisions of the 1998 Settlement and Northern's tariff with respect to a true-up for UAF. Northern contends that an adjustment to UAF percentages is the agreed-upon method for a true-up and the parties should abide by their commitment to such a method.

46. Northern argues there is no merit to the Coalition's allegation that a true-up adjustment to the UAF percentage would result in a $1.4 million windfall for Northern. Northern states that it would have to go out into the marketplace and sell UAF volumes retained through the UAF percentage at the prices suggested by the Coalition. Northern asserts that it does not sell UAF volumes retained through the UAF percentage. Northern explains that the UAF tracker mechanism is a volumetric tracker, meaning that actual UAF volumes on Northern's system are compared to actual volumes retained through the UAF percentage and any difference in volume is trued-up through an adjustment to the UAF percentage in future periods. Because Northern does not take UAF volumes retained through the UAF percentage and then go into the market and sell those volumes, Northern submits there are no sales revenues resulting from retaining UAF volumes and, therefore, there can be no windfall for Northern of any kind, $1.4 million or otherwise.

47. Further, Northern submits that in *Transco*, the Commission permitted Transco to correct two accounting and measurement volumetric errors in order "to ensure that Transco's customers neither overpay nor underpay for the service they receive."[52] Similarly, Northern states that its tariff and 1998 Settlement require a volumetric true-up adjustment, not a dollar true-up.

2. Commission Decision

48. The Coalition's proposal to recover the 1.3 adjustment through a transportation surcharge over a three-year period is contrary to the provisions of the 1998 Settlement and Northern's tariff with respect to a true-up for UAF and would be an administrative burden. Further, the circumstances here are different from the circumstances in *Transco*. In that case, the Commission accepted Transco's proposal to recover approximately 8 Bcf

[51] *Id.* at 5.

[52] Northern Answer at 12 (*citing* 95 FERC at 62,020).

of gas valued in excess of $13.7 million resulting from an accounting error through a 7-year surcharge rather than being included as an adjustment in its annual fuel retention percentage (FRP) revision filing. We permitted the alternate surcharge recovery mechanism because we found that this mechanism substantially cured the harmful effects that would have occurred with Transco's original proposal, i.e., the proposed adjustment was substantial in nature, exceptionally disruptive to price signals, and caused significant FRP price increases to its customers.

49. Here, the measurement error results in only a 1.3 Bcf adjustment which would not cause the problems identified in Transco's case. Further, the 1.3 Bcf adjustment was reflected in the UAF retention percentages that became effective June 1, 2002, and as such have already been recovered. To permit a surcharge at this point would be administratively burdensome to refund amounts already reimbursed by shippers and then surcharge them, as well as costly to shippers who would be surcharged not only the $3,480,266 cost associated with the 1.3 Bcf adjustment, but the time value on that amount from August 1, 2002,[53] through the 36-month recovery period that the Coalition proposes the surcharge should run. Assuming an effective date of July 1, 2004, for such a surcharge, shippers would be required to pay interest through June 30, 2007. For these reasons, we reject the Coalition's proposal.

E. Chromatograph and Monetary Adjustments

1. Arguments of the Parties

50. Indicated Shippers state Northern has provided no explanation for the chromatograph adjustment of 0.094 which it claims was made pursuant to the agreement between the parties. Northern responds that the Final Award concluded that the Plant PTR retains a limited role as an alternate substitute measurement method, namely, when a Btu error occurs. Northern states that a Btu error is a problem with the measurement of the heating value of the gas, not the calculation of Btus associated with the volume of gas measured. According to Northern, a few short Btu error periods related to the functioning of the chromatograph installed at the meter site had already been identified prior to the arbitration hearing. Northern explains that it and Oneok had agreed that Plant PTR would be substituted for meter measurement during those Btu error periods, as provided for in the Measurement Agreement. Northern states that the agreement reflected the decision to resolve all measurement issues in one proceeding rather than separately.

[53] This is based upon the fact that Northern booked the adjustment in July 2002.

51. Indicated Shippers also argue that Northern failed to provide support for its claim that the $2,287,408 Oneok owed to Northern was reflected in Northern's previous PRA filings, which Indicated Shippers state it was unable to find after reviewing Northern's most recent of those filings. Moreover, Indicated Shippers assert that Northern has not explained why it purportedly included the adjustment related to dollars Oneok owed Northern in the May 1, 2001 PRA filing, while deferring the dollars related to what Northern owed Oneok to the May 1, 2002 PRA filing, when both amounts relate to the same arbitration award that was dated June 29, 2001.

52. Northern states that Indicated Shippers misunderstand the fact with respect to the amount Oneok owed to Northern. Northern explains that no adjustment was needed for this amount in the 2002 PRA filing or in prior PRA filings because Northern's prior PRA filings already reflected the volumes related to this amount in the filed UAF percentages. Thus, Northern submits that when the arbitrators upheld Northern's position on this issue, no adjustment was needed because Northern's position already was reflected in its PRA filings.

2. Commission Decision

53. We find that Northern has adequately addressed Indicated Shippers' concern on this issue.

The Commission orders:

Northern's November 12 Filing is accepted as in compliance and providing support for its 1.3 Bcf adjustment to its 2002 PRA filing.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.