141 FERC ¶ 61,117

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wyoming Interstate Company, L.L.C. Docket No. RP13-184-000

ORDER INSTITUTING INVESTIGATION AND SETTING MATTER FOR HEARING PURSUANT TO SECTION FIVE OF THE NATURAL GAS ACT

(Issued November 15, 2012)

1. As discussed in more detail below, based upon our review of publicly available information on file with the Commission, it appears that Wyoming Interstate Company, L.L.C. (WIC) may be substantially over-recovering its cost of service, causing WIC's existing rates to be unjust and unreasonable. Therefore, the Commission will initiate an investigation, pursuant to section 5 of the Natural Gas Act (NGA), to determine whether the rates currently charged by WIC are just and reasonable and set the matter for hearing. The Commission directs WIC to file a full cost and revenue study within 75 days of the issuance of this order.

I. Background

2. WIC provides firm and interruptible natural gas transportation services through approximately 800 miles of pipeline with a design capacity of 3.34 Bcf per day. WIC is comprised of a mainline system that extends from western Wyoming to northeast Colorado (the Cheyenne Hub) and several lateral pipeline systems that extend from various interconnections along the WIC mainline into western Colorado and northeast Wyoming and into eastern Utah. WIC operates as a one of the primary interstate natural gas transportation systems providing takeaway capacity from the Overthrust, Piceance, Uinta, Green River and Powder River Basins in Wyoming, Utah and Colorado. WIC, which is wholly owned by El Paso Pipeline Partners, is operated by an affiliate, Colorado Interstate Gas Company, L.L.C. (CIG).

3. WIC's current rates were established as part of a settlement approved by the Commission on September 27, 2000.[1] The settlement was the result of a NGA section 4 filing by WIC on July 1, 1999 to raise its rates for jurisdictional service. The rates went into effect, subject to refund, on January 1, 2000. Pursuant to Article X of the settlement, the settlement terminates on the date that a general rate change filing by WIC under section 4 of the NGA is first made effective or on the effective date of any change in rates resulting from a rate proceeding instituted by the Commission with respect to WIC's rates under section 5 of the NGA, whichever comes first. WIC recovers its system's fuel requirements and lost and unaccounted for gas pursuant to a tracking mechanism set forth in section 13 of its General Terms and Conditions (GT&C). WIC is currently under no obligation to file a new rate case at any time in the future.

II. Discussion

4. In March 2008, the Commission issued Order No. 710,[2] a Final Rule to change the forms and reporting requirements for interstate natural gas pipelines to enhance the transparency of financial reporting and better reflect current market and cost information relevant to interstate natural gas pipelines and their customers. The revised forms included FERC Form No. 2 (Form 2), the annual report for major natural gas companies, and FERC Form No. 3-Q (Form 3-Q), and the quarterly financial report of natural gas companies, electric utilities and licensees. The Commission stated that the revised forms and reporting requirements would provide, in greater detail, the information the Commission needs to carry out its responsibilities under the NGA to ensure just and reasonable rates. The Commission required major interstate pipelines to use the revised Form 2 in making their annual reports beginning in calendar year 2008.

5. The Commission has reviewed the cost and revenue information provided by WIC in its Form 2 for the years 2010 and 2011. Based upon our review of this cost and revenue information, the Commission estimates WIC's return on equity for those calendar years to be 19.55 percent, and 18.51 percent, respectively. Based upon these

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[1] *Wyoming Interstate Co., Ltd.*, 91 FERC ¶ 61,256 (2000).

[2] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* Order No. 710, 73 FR 19389 (Apr. 10, 2008), FERC Stats. & Regs. ¶ 31,267 (2008), *reh'g and clarification*, Order No. 710-A, 123 FERC ¶ 61,278 (2008), *remanded sub nom. American Gas Ass'n v. FERC,* 593 F.3d 14 (D.C. Cir. 2010), *order on remand*, Order No. 710-B, 134 FERC ¶ 61,033 (2011), *order on reh'g*, Order No. 710-C, 136 FERC ¶ 61,109 (2011).

figures, the Commission is concerned that WIC's level of earnings may be substantially exceeding its actual cost of service, including a reasonable return on equity. A description of how the Commission arrived at these figures is set forth below.[3]

6. Based upon the information provided by WIC in its Form 2 for 2010, the Commission calculated WIC's 2010 cost of service to be $89.91 million, excluding equity return and related income taxes.[4] Next, the Commission compared WIC's 2010 cost of service to WIC's 2010 Form 2 adjusted revenues of $192.74 million. The difference between WIC's adjusted reported revenues and the estimated cost of service is $102.83 million, before income taxes. After taking into consideration income taxes, WIC's equity return totals approximately $65.53 million for 2010. This equates to an estimated return on equity of 19.55 percent.

7. An identical analysis, based upon the cost and revenue information provided by WIC in its 2011 Form 2, generated a similar estimated return on equity. Based upon WIC's Form 2 for 2011, the Commission calculated WIC's cost of service for 2011 to be $104.63 million, exclusive of equity return and related income taxes. Next, the Commission compared this cost of service to WIC's 2011 Form 2 reported revenues, as adjusted, which total $205.89 million. The difference between WIC's adjusted reported revenues and the estimated cost of service is $101.26 million, before income taxes. After taking into consideration income taxes, WIC's equity return totals approximately $64.77 million. This equates to an estimated return on equity of 18.51 percent.

8. The Commission finds that, based upon its preliminary analysis of the information provided by WIC in its Form 2 for the calendar years 2010 and 2011, WIC's currently effective tariff rates may be unjust and unreasonable. The Commission's analysis of this information indicates that WIC's currently effective tariff rates may allow WIC to recover revenue substantially in excess of its estimated cost of service. While NGA

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[3] Details of the Commission's derivation of the return on equity are fully set forth in the Appendix to this order. The Appendix, where applicable, provides a page and line reference to WIC's Form 2 for 2010 and 2011 for each item utilized by the Commission in its calculations.

[4] The reported capital structure in WIC's Form 2 was used to calculate the pipeline's cost of service. However, in this order, we make no finding as to what would constitute a just and reasonable capital structure for WIC. That is among the issues set for hearing in this order and should be decided consistent with the Commission's capital structure policies. *See Transcontinental Gas Pipe Line Corp.*, Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,413-5 (1998), *reh'g denied*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), *petition for review denied sub nom. North Carolina Utilities Comm'n v. FERC*, D.C. Cir. Case No. 99-1037 (Feb. 7, 2000) (per curiam).

section 4 permits WIC to seek authorization from the Commission to adjust its rates to establish just and reasonable rates, WIC has not filed a general NGA section 4 rate case in the 12 years since the 2000 settlement of the previous section 4 proceeding concerning its rates. Accordingly, the Commission will initiate an investigation to examine the justness and reasonableness of WIC's rates pursuant to section 5 of the NGA and set the matter for hearing.[5]

9. As the Commission has done in other cases initiating section 5 investigations of a pipeline's rates,[6] it directs WIC to file a cost and revenue study based on cost and revenue information for the latest 12-month period available. The filing shall be made within 75 days of the date this order issues and include all the schedules required for submission of a section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations.[7] Because the Commission is seeking actual cost and revenue information, the information submitted by WIC must exclude any adjustments or projections that may be attributable to a test period referenced in the schedules and statements set forth in section 154.312 of the regulations. Thus, WIC should not file nine months of post-base-period adjustment data required by section 154.303(a).[8] The cost

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[5] In this order, we make no finding as to what would constitute a just and reasonable return on equity for WIC. That is among the issues set for hearing by this order and should be decided consistent with the Commission's Policy Statement *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (2008).

[6] *See Bear Creek Storage Co. L.L.C.*, 137 FERC ¶ 61,134 (2011), *order denying reh'g*, 138 FERC ¶ 61,019 (2012); *MIGC LLC*, 137 FERC ¶ 61,135 (2011), *order denying reh'g*, 138 FERC ¶ 61,011 (2012); and *ANR Storage Co.*, 137 FERC ¶ 61,136 (2011); *Ozark Gas Transmission, LLC*, 133 FERC ¶ 61,150 (2010), *reh'g granted in part and denied in part*, 134 FERC ¶ 61,062, *reh'g granted in part and denied in part*, 134 FERC ¶ 61,193 (2011) (*Ozark*); *Kinder Morgan Interstate Gas Transmission LLC*, 133 FERC ¶ 61,157 (2010), *reh'g granted in part and denied in part*, 134 FERC ¶ 61,061 (2011) (*Kinder Morgan*); *Natural Gas Pipeline Co. of America LLC*, 129 FERC ¶ 61,158 (2009), *reh'g denied*, 130 FERC ¶ 61,133 (2010) (*Natural*). As the Commission explained in the *Natural* rehearing order, "[s]ections 10(a) and 14(a) of the NGA authorize the Commission to require [the pipeline] to submit the information required by the [order instituting investigation] in order to carry out its responsibility under NGA section 5 to ensure that the pipeline's rates are just and reasonable." *See Natural*, 130 FERC ¶ 61,133 at P 16.

[7] 18 C.F.R. § 154.312 (2012).

[8] However, WIC may, if fully supported, reflect changes to costs and revenues for a known and measurable change that took place during the 12-month period. For

(continued…)

and revenue study required by this paragraph will provide a baseline of actual annual costs and revenues, which can then be used as a starting point for further analysis of WIC's costs and revenues.[9] Additionally, because WIC does not have an NGA section 4 burden in this section 5 proceeding and will be filing testimony in response to other parties, WIC does not need to file the Statement P required by section 154.312(v) of the Commission's regulations at this juncture.[10]

10. However, as we have done in other recent section 5 proceedings, in addition to the cost and revenue study required above, WIC may file a separate cost and revenue study that does reflect adjustments for changes WIC projects will occur during a timeframe which may reasonably be taken into account in this proceeding, as established in the following paragraph.[11] Given this expedited hearing schedule, this abbreviated adjustment period should be limited to a six-month period after the 12-month base period, to permit the parties to perform discovery and prepare testimony for the hearing based on actual data for this test period.[12]

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example, if a general pay raise became effective during month 5 of the 12-month period, an adjustment to the cost of service could be made to annualize the impact of this cost change.

[9] *Ozark*, 134 FERC ¶ 61,062 at P 26.

[10] *See Pub. Serv. Comm'n of New York, Pennsylvania Public Utilities Commission, and Pennsylvania Office of Consumer Advocate v. National Fuel Gas Supply Corporation,* 115 FERC ¶ 61,368, at P 6 (2006).

[11] *See, e.g., Ozark*, 134 FERC ¶ 61,062, *reh'g granted in part and denied in part*, 134 FERC ¶ 61,193.

[12] For a detailed explanation why the adjustment period in the section 5 proceeding differs from the adjustment period in a section 4 proceeding *see Ozark*, 134 FERC ¶ 61,062 at PP 17-36, *reh'g granted in part and denied in part*, 134 FERC ¶ 61,193 at PP 21-27. *See also Kinder Morgan*, 134 FERC ¶ 61,061 at PP 36-51. Given that the hearing schedule in this case is set to begin on the date the cost and revenue study is due (*see* P 11 *infra*), the Commission finds that it is appropriate to extend the adjustment period from approximately 4 months, as was the case in *Ozark* and *Kinder Morgan*, to 6 months. In *Ozark* and *Kinder Morgan*, the Commission permitted an adjustment period, but the adjustment period was abbreviated to 4 months based on the hearing schedule established in those proceedings. In this case, the Commission is ordering the hearing schedule to begin 75 days later than the hearing schedule ordered in *Ozark* and *Kinder Morgan*. Therefore, it is appropriate to extend the adjustment period to the same extent the hearing schedule is extended.

11. Finally, due to the potential for continued over-recovery of revenues, the Commission will establish a date for an initial decision from an administrative law judge. Such a date will expedite the proceeding. We believe that conducting the hearing in this case pursuant to the Administrative Law Judges' Track II Hearing Timeline is reasonable. However, to provide more time to the parties to conduct discovery concerning the cost and revenue study, the Commission orders that the deadlines in the Track II timeline run from the date the pipeline's cost and revenue study is due, rather than the date of the order designating the presiding judge. Therefore, the initial decision must issue within 47 weeks of the date the cost and revenue study is due.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Natural Gas Act, particularly section 5 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Natural Gas Act, a public hearing shall be held concerning whether WIC's rates are unjust, unreasonable, or otherwise unlawful.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall, within thirty (30) days of the date of this order, convene a prehearing conference in these proceedings in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

(C) The Commission directs that the hearing be conducted pursuant to the Track II Hearing Timeline and that an initial decision be issued in this proceeding within 47 weeks of the date the cost and revenue study is due, as discussed in the body of this order.

(D) WIC shall file a cost and revenue study within 75 days of this order. The filing should include only actual data for the latest 12-month period available as of the date of this order. The filing should include all of the schedules required for the submission of a section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations (18 C.F.R. § 154.312), as modified above.

(E) Any person wishing to become a party to this proceeding must file a notice of intervention or motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Such notice or motion must be filed within 30 days of the date of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "eFiling" link at http://www.ferc.gov. Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Wyoming Interstate Company	Form 2 Reference	2011	2010
Rate Base			
Gas Plant in Service	p. 110; ln. 2, col. C	$950,668,729	$946,035,102
Accumulated Depreciation	p. 110; ln. 5	($304,730,586)	($274,885,401)
Gas Stored Underground			
Account 117.1 (Base Gas)	p. 220; ln. 5, col. b	$0	$0
Account 117.2 (System Balancing)	p. 220; ln. 5, col. c	$0	$0
Working Capital			
Prepayments	p. 230a; ln. 6	$1,000,000	$1,000,000
Materials and Supplies	p. 111; ln. 45	$4,926,168	$4,787,828
ADIT			
Account 190	p. 235; ln. 7, col. k, as adjusted on p. 552.1	$0	$0
Account 282	p. 275; ln. 7, col. k, as adjusted on p. 552.1	($77,062,817)	($90,222,550)
Account 283	p. 277; ln. 7, col. k, as adjusted on p. 552.1	($368,336)	($324,918)
Regulatory Assets	p. 232; ln. 40, col. g	$11,147,468	$13,091,275
Regulatory Liabilities	p. 278; ln. 45, col. g	($2,126,062)	($795,030)
Total Rate Base		$583,454,564	$598,686,306
Capital Cost	p. 218a		
Cost of Debt[1]		1.08%	1.07%
Capitalization[2]	p. 218a		
Debt		40.03%	44.00%
Equity		59.97%	56.00%
Weighted Cost of Debt		0.43%	0.47%
Cost of Service			
Interest on Debt		$2,522,414	$2,818,615
Other Taxes	p. 114; ln. 14, col. c	$6,658,274	$5,729,676
Depreciation	p. 337; ln. 12, col. h	$31,952,642	$29,820,661
O&M			
Production & Gathering	p. 317; ln. 30	$0	$0
Net Storage Costs	p. 322; ln. 177 (less ln. 106)	$0	$0
Net Transmission Costs	p. 323; ln. 201 (less ln. 184)	$48,716,296	$37,001,312
A&G	p. 325; ln. 270	$14,782,448	$14,544,348
Total Cost of Service Excl. Return and Taxes		$104,632,074	$89,914,612
Operating Revenue			
Other Revenues	p. 301; ln. 21, col. f	$204,740,803	$191,859,816
ACA Revenues	p. 300; ln. 21, col. d	$1,342,934	$1,531,754
(Less) Sales for Resales (Act. 480-484)	p. 301; ln. 4, col. f	$0	$0
(Less) Commercial & Industrial Sales	p. 301; ln. 2, col. f	$0	$0
(Less) Gas Sales & Oth Adj. from Acct 495	p. 308	($189,411)	($647,305)
Total Adjusted Revenue		$205,894,326	$192,744,265
Income			
Income Before Income Taxes		$101,262,252	$102,829,653
Composite Income Tax		$36,494,916	$37,296,315
Net Income		$64,767,336	$65,533,338
Total Estimated ROE		18.51%	19.55%
Composite Tax Rate		36.04%	36.27%

[1] The capital costs were those listed in the Form 2

[2] The capitalization on structure on p. 218a of the Form 2 was used