Docket Numbers: RP09–81–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits Second Revised Sheet 21 *et al.* in compliance with the G-II Certificate Order compliance filing, proposed to be effective 12/31/08.
Filed Date: 11/14/2008.
Accession Number: 20081118–0044.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 26, 2008.

Docket Numbers: RP09–82–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits an application for authorization to construct and operate the proposed G-II Expansion Project, to be effective 12/31/08.
Filed Date: 11/14/2008.
Accession Number: 20081118–0043.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 26, 2008.

Docket Numbers: RP09–84–000.
Applicants: Destin Pipeline Company, L.L.C.
Description: Destin Pipeline Co., LLC submits Title Sheet *et al.* to FERC Gas Tariff, Original Volume No. 1, to be effective 12/18/08.
Filed Date: 11/17/2008.
Accession Number: 20081118–0104.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: RP09–85–000.
Applicants: Northwest Pipeline GP.
Description: Northwest Pipeline GP submits Second Revised Sheet No. 7 to FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective 1/1/09.
Filed Date: 11/17/2008.
Accession Number: 20081118–0103.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: CP08–8–001.
Applicants: Leaf River Energy Center LLC.
Description: Leaf River Energy Center, LLC submits its application for amendment of certificate to permit modification of Pro form FERC Gas Tariff.
Filed Date: 11/14/2008.
Accession Number: 20081118–0047.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E8–28023 Filed 11–25–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–20–000]

Fuel Retention Practices of Natural Gas Companies

Issued November 20, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice Terminating Proceeding.

SUMMARY: The Federal Energy Regulatory Commission is terminating its notice of inquiry regarding its policy on the in-kind recovery of fuel and lost and unaccounted-for gas by natural gas pipeline companies and will consider any changes to the application of such policy in individual cases.

EFFECTIVE DATE: November 26, 2008.

FOR FURTHER INFORMATION CONTACT: Anna Fernandez (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6682.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff

1. On September 30, 2007, the Commission issued a Notice of Inquiry concerning its current policy on the in-kind recovery of fuel and lost and unaccounted-for gas by natural gas pipeline companies.[1] The Commission sought comments on whether it should change its current policy to provide pipelines a greater incentive to reduce their fuel use and lost and unaccounted-for gas and to minimize pipeline over-recoveries of these costs. For the reasons discussed below, the Commission is terminating this proceeding.

I. Background

2. A detailed discussion of the Commission's current policy regarding in-kind fuel retention by natural gas pipeline companies is contained in the NOI and will not be repeated here. Briefly, interstate natural gas pipelines frequently require that customers contribute in-kind a small percentage of the volumes of natural gas tendered for transportation service to provide fuel for compressors and to make up for lost and unaccounted-for gas. Each pipeline states the percentage of gas it retains in its tariff.

3. The Commission established its current policy concerning a pipeline's in-kind recovery of fuel use and lost and unaccounted-for gas in *ANR Pipeline Company* (*ANR*).[2] In its January 2005 order in the *ANR* case,[3] the Commission stated that pipelines have two options to recover these costs. The first option is to establish a fixed fuel retention percentage in a general Natural Gas Act (NGA) section 4 rate case, and leave that

[1] *Fuel Retention Practices of Natural Gas Companies*, FERC Stats. & Regs. ¶ 35,556 (2007) (NOI).

[2] *ANR Pipeline Co., order on compliance filing*, 108 FERC ¶ 61,050, *order inviting comments*, 109 FERC ¶ 61,038 (2004), *order on reh'g and compliance filing*, 110 FERC ¶ 61,069, *order on reh'g and compliance filing*, 111 FERC ¶ 61,290 (2005).

[3] 110 FERC ¶ 61,069 at P 18–28.

percentage unchanged until the pipeline files its next general section 4 rate case. That option is consistent with the Commission's general ratemaking policy, set forth in section 284.10(c)(2) of the Commission's regulations,[4] that pipelines must design their rates based on estimated units of service without any type of tracker or true-up mechanism. That policy provides pipelines an incentive to minimize costs, by allowing them to retain any cost over-recoveries between rate cases, while putting them at risk for cost under-recoveries.[5] The second recovery option is for the pipeline to include in its tariff a mechanism permitting periodic changes in its fuel retention percentage outside of a general section 4 rate case, as allowed by section 154.403 of the Commission's regulations.[6] *ANR* held that, if a pipeline chooses the second option, it must include in its tariff a mechanism to true-up any over- and under-recoveries of fuel, absent agreement otherwise by all interested parties.

4. In *ANR*,[7] the Commission also left open the possibility that a pipeline could include an incentive mechanism in a fuel cost tracker, if the pipeline made the proposal pursuant to the Commission's incentive ratemaking policy. The Commission's current policy on incentive rates is set forth in *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines (1996 Incentive Ratemaking Policy Statement)*.[8]

5. In the NOI, the Commission sought comments on whether it should change its current in-kind fuel retention policy for the purpose of (a) minimizing pipeline over-recoveries of fuel and lost and unaccounted-for gas or (b) providing pipelines with a greater incentive to reduce their fuel use and lost and unaccounted-for gas, for example by permitting pipelines with fuel trackers and true-up mechanisms to include a profit or loss sharing mechanism.[9]

6. Thirty-two parties filed comments in response to the NOI.[10] Shippers and end-users generally argued that the Commission should require all pipelines to use a tracker with a true-up in order to prevent over-recovery of costs. The pipelines, however, argued that the Commission should retain its current policy and continue to permit pipelines to choose whether a fixed retention percentage established in a section 4 rate case or a tracker is best suited to their particular circumstances. Most parties stated that including some form of incentive mechanism in a tracker true-up mechanism could encourage greater efficiency. However, the parties asserted that the Commission should consider such mechanisms on a case-by-case basis rather than imposing any generic requirements.

II. Discussion

7. After carefully reviewing the comments, the Commission has determined to terminate this proceeding and consider any changes to the application of the Commission's policy concerning fuel recovery in individual cases.

8. As described above, a number of non-pipeline commenters contend that the Commission should require all pipelines to recover their fuel costs through trackers with true-up mechanisms in order to minimize pipeline over-recovery of fuel costs. However, the Commission would have to act under NGA section 5 to require pipelines which currently have fixed fuel charges established in general section 4 rate cases to adopt trackers and true-up mechanisms. In order to do that, the Commission would have to find that all fixed fuel charges are unjust and unreasonable and that the only just and reasonable method for pipelines to recover fuel costs is through a tracker with a true-up mechanism. The commenters have failed to provide the Commission a basis to take such generic action under NGA section 5.

9. Recovery of fuel costs through a fixed charge established in a general section 4 rate case is consistent with the Commission's general ratemaking policy for open access pipelines, set forth in section 284.10(c)(2) of the Commission's regulations, that pipelines design their rates based on estimated units of service, without any type of true-up mechanism.[11] The non-pipeline commenters' only basis for requiring all pipelines to recover their fuel costs in a manner contrary to that policy is that (1) fixed fuel charges present too much potential for pipelines to over-recover their fuel costs and (2) remedying such over-recoveries through complaints under NGA section 5 is too difficult.[12] However, the courts have insisted that the Commission not "compromise section 5's limits on its power to revise rates." [13] Requiring pipelines to recover their fuel costs through a tracker and true-up mechanism based solely on the alleged difficulty of remedying cost overrecoveries under NGA section 5, and without any other independent policy justification, would be contrary to the court's holding that the Commission may not order pipelines to make section 4 filings in order "to avoid the 'insufficient protection' afforded by section 5, *i.e.*, to avoid its procedural constraints." [14]

10. Accordingly, if a shipper believes that a particular pipeline is over-recovering its fuel costs, it should file a complaint under NGA section 5, pursuant to the procedures set forth in section 385.206 of the Commission's procedural regulations. While several shippers commented that section 5 does not provide an adequate remedy,[15] in fact, section 5 complaints have resulted in significantly reduced fuel charges on several pipelines. *National Fuel*[16] and *Dominion*[17] are two examples of how actual or potential section 5 complaints can cause pipelines to reduce their fuel retention percentages.

11. In addition, the changes recently enacted by the Commission to the financial reporting requirements for natural gas pipelines should assist shippers who wish to file a section 5 complaint involving fuel cost over-recovery. In March 2008, the Commission issued Order No. 710,[18] a

[4] 18 CFR 284.10(c)(2).

[5] *See Canyon Creek Compression Co.*, 99 FERC ¶ 61,351, at P 14 (2002).

[6] 18 CFR 154.403.

[7] 110 FERC ¶ 61,069 at P 39.

[8] 74 FERC ¶ 61,076, at 61,237–38 (1996).

[9] NOI at P 23–26.

[10] The parties are listed in Appendix A.

[11] In Order No. 436, the Commission explained that this requirement means that the pipeline is at risk for under-recovery of its costs between rate cases, and may retain any over-recovery. This gives the pipeline an incentive both to minimize its costs and maximize the service it provides. A cost tracker would undercut these incentives by guaranteeing the pipeline a set revenue recovery. *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g,* Order No. 636–A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g,* Order No. 636–B, 61 FERC ¶ 61,272 (1992), *order on reh'g,* 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos.* v. *FERC,* 88 F.3d 1105 (D.C. Cir. 1996), *order on remand,* Order No. 636, 78 FERC ¶ 61,186 (1997).

[12] Industry Associations at 7–8 ("Although the Commission and pipeline customers are entitled to bring Section 5 complaints, such complaints require the complainant to carry the burden of proof, can be extremely expensive, and only offer prospective relief."). *See also* Ameren, TVA, and Texas Producers.

[13] *Western Resources, Inc.* v. *FERC,* 9 F.3d 1568, 1578 (D.C. Cir. 1993).

[14] *Public Service Commission of New York* v. *FERC,* 866 F.2d 487, 491 (D.C. Cir. 1989).

[15] *See, e.g.*, comments of the American Public Gas Association at 3–4.

[16] *National Fuel Gas Supply Corporation,* 118 FERC ¶ 61,091 (2007) (*National Fuel*) (settlement agreement followed section 5 complaint).

[17] *Dominion Transmission, Inc.,* 111 FERC ¶ 61,285 (2005) (*Dominion*) (settlement agreement came about in response to potential section 5 complaint).

[18] *Revisions to Forms, Statements and Reporting Requirements for Natural Gas Pipelines,* Order No. 710, 73 FR 19389 (Apr. 10, 2008), FERC Stats. &

Final Rule to change the financial forms and reporting requirements for natural gas pipelines in order to enhance the transparency of financial reporting by interstate natural gas pipelines and better reflect the current market and cost information. Among the changes were new reporting requirements that require natural gas companies to provide detailed information regarding the acquisition and disposition of fuel use and lost and unaccounted-for gas.[19] With this new information, shippers will be better able to use the section 5 complaint process to address fuel cost over-recovery by a pipeline.

12. Finally, the operation of the interstate pipeline system involves a significant amount of fuel use and lost and unaccounted-for gas to deliver supplies to market. Fuel gas charges now make up a greater percentage of the overall interstate transportation rate than they have in the past. Such considerations reinforce the need to improve the efficiency of our existing infrastructure. While the parties generally commented that fuel savings incentive mechanisms could be helpful in reducing fuel use and, therefore, fuel costs, they believed that such mechanisms should be developed by the parties in individual proceedings. In light of those comments, the Commission will take a case-by-case approach at this time. In a recent order, the Commission ordered a technical conference to consider a three-year experimental fuel incentive mechanism proposed by Texas Gas Transmission, L.L.C. and what changes, if any, might be necessary or appropriate.[20] The Commission concludes that case-by-case consideration of incentive proposals will assist in the development of the Commission's policies concerning pipelines' recovery of fuel costs, and encourages pipelines to work with their customers to develop these mechanisms.

13. For these reasons, Docket No. RM07–20–000 is terminated.

The Commission orders:

Docket No. RM07–20–000 is terminated.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Appendix A

List of Parties

Ameren Energy Generating Company, Central Illinois Public Service Company, Central Illinois Light Co., Illinois Power Co., and Union Electric Company (Ameren)

American Chemistry Council

American Gas Association

American Public Gas Association

Apache Corporation

Atmos Energy Corporation

Boardwalk Pipeline Partners, LP, Gulf Crossing Pipeline Company LLC, Gulf South Pipeline Company, LP, and Texas Gas Transmission, LLC

Calpine Corporation

Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Granite State Gas Transmission, Inc., and Central Kentucky Transmission Company

Dominion Resources, Inc.

El Paso Corporation

Enbridge, Inc. and Enbridge Energy Partners, L.P.

FPL Group, Inc.

Honda of America Mfg., Inc.

Interstate Natural Gas Association of America

Independent Oil & Gas Association of West Virginia

The Independent Petroleum Association of America, The Process Gas Consumers Group, The American Forest & Paper Association and The American Iron and Steel Institute (Industry Associations)

Kinder Morgan Interstate Gas Transmission, LLC, Natural Gas Pipeline Company of America, Trailblazer Pipeline Company, and TransColorado Gas Transmission

Louisville Gas and Electric Company

MidAmerican Energy Company and PacifiCorp

Middle Tennessee Natural Gas Utility District

National Fuel Gas Supply Corporation

Natural Gas Supply Association

Northern Natural Gas Company and Kern River Gas Transmission Company

The Ohio Oil & Gas Association

Public Service Commission of New York

Sequent Energy Management, L.P.

Spectra Energy Transmission, LLC

Tennessee Valley Authority (TVA)

Texas Independent Producers and Royalty Owners Association (Texas Producers)

Transwestern Pipeline Company, LLC

Williston Basin Interstate Pipeline Company

[FR Doc. E8–28021 Filed 11–25–08; 8:45 am]

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Regs. ¶ 31,267 (2008), *reh'g and clarification,* Order No. 710–A, 123 FERC ¶ 61,278 (June 20, 2008).

[19] Order No. 710 at P 16.

[20] *See Texas Gas Transmission, LLC,* 125 FERC ¶ 61,134 (2008).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2008–0872; FRL–8745–1]

Board of Scientific Counselors (BOSC), Executive Committee Meeting—December 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The meeting (a teleconference) will be held on Wednesday, December 17, 2008, from 10 a.m. to 12 p.m. EDT. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

ADDRESSES: The meeting will be held via teleconference only. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2008–0872, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2008–0872.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2008–0872.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC), Executive Committee Meeting—2008 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2008–0872.
- *Hand Delivery or Courier*. Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2008–0872. Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2008–0872. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at