134 FERC ¶ 61,133
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Pelico Pipeline, LLC Docket No. PR10-62-000

ORDER ON STATEMENT OF OPERATING CONDITIONS

(Issued February 18, 2011)

1. On July 15, 2010, Pelico Pipeline, LLC (Pelico) filed a revised Statement of Operating Conditions (SOC) to modify its imbalance cash-out penalty pricing, gas quality specifications, and pressure base. ConocoPhillips Company (ConocoPhillips) intervened out-of-time to protest the changes to the imbalance cash-out penalty tiers. For the reasons discussed below, we accept the filing subject to conditions, effective August 1, 2010, as requested.

Filing

2. Pelico is an intrastate natural gas pipeline operating within the State of Louisiana that provides interstate transportation service under section 311 of the Natural Gas Policy Act of 1978 (NGPA). Pelico's existing SOC uses an imbalance cash-out penalty process in order to resolve financially any net monthly imbalances. Net imbalances for each month are priced using the daily posted midpoint price in *Platts Gas Daily*. Pelico proposes "to modify the pipeline indices used for the cash out to be aligned with recent market conditions and pipeline activity."[1]

3. Pelico's filing makes three changes to its imbalance cash-out process. First, Pelico changes the definitions of High Price and Low Price so that they reflect a more extreme range of prices. For the High Price, Pelico formerly used the arithmetic average of the highest daily posted midpoint prices for several locations. As proposed, the High Price would be whichever one of these daily posted midpoint prices was the highest. For the Low Price, similarly, Pelico formerly used the arithmetic average of the lowest daily posted midpoint price for several locations. As revised, Pelico will use the single lowest price "for East Texas-North Louisiana Area, Texas Eastern, ETX," and strike the other locations from consideration. Second, Pelico proposes to eliminate the Average Price

[1] Pelico July 15, 2010 Cover Letter.

term, formerly used to resolve imbalances between 0 percent and 5 percent. Pelico proposes instead to use the High Price and Low Price for imbalances between 0 percent and 5 percent, eliminating what was in effect a safe harbor for small imbalances. Third, Pelico proposes to increase the imbalance penalty in the 5 percent to 10 percent range, so that instead of paying the High Price or Low Price for imbalances due to the pipeline or shipper, respectively, the penalty will be 110 percent of the High Price due to the pipeline and 90 percent of the Low Price due to the shipper.

4. Pelico has also made changes to its gas quality specifications and pressure base. It has tightened the limits on sulfur (from 10 grains to 5 grains per 100 cubic feet), and loosened the limits on carbon dioxide (from 1 percent to 2 percent by volume) and oxygen (from 0.02 percent to 0.2 percent by volume). Pelico has revised the base number used to measure a standard volume of gas from 15.025 to 14.73 pounds per square inch.

Public Notice and Intervention

5. Public notice of the filing was issued on July 26, 2010. Interventions and protests were due on or before on or before Monday, August 9, 2010, in accordance with section 154.210 of the Commission's regulations.[2] No parties timely intervened.

6. On August 23, 2010, ConocoPhillips filed a motion to intervene out-of-time and protest. ConocoPhillips states that it was late to intervene because it did not receive a copy of the filing until August 20, 2010, and neither Pelico's cover letter nor the Commission's notice made reference to the imbalance cash-out penalty tiers. ConocoPhillips argues that because the Commission had taken no action as of August 23, 2010, its untimely intervention and protest would not prejudice any other party.

7. On August 26, 2010, Pelico filed an answer in which it argues, *inter alia*, that ConocoPhillips's motion for late intervention should be denied. Pelico states that it did provide ConocoPhillips with an advance copy of its SOC revisions, and that regardless, it is not required to provide such advance notice. Pelico argues that allowing ConocoPhillips to intervene at this stage would disrupt the proceedings, and notes that no other shipper has protested the proposed changes to its SOC.

8. Pursuant to Rule 214(d),[3] we grant ConocoPhillips's motion to intervene out-of-time. Despite Pelico's objection, granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on Pelico. Allowing the

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[2] 18 C.F.R. § 154.210 (2010).

[3] 18 C.F.R. § 384.214(d) (2010).

intervention introduces an interest not adequately represented by other parties in the proceeding.

Protest and Answer

9. ConocoPhillips protests the proposed changes to imbalance cash-out pricing. It notes that Pelico's submission failed to provide justification for any of the proposed changes. ConocoPhillips argues that eliminating the 0-5 percent safe harbor is "wholly unreasonable … since the industry standard for measurement allows for a plus-or-minus 2 percent tolerance and Pelico has not demonstrated that it is able to measure or operate its system at this degree of perfection."[4] ConocoPhillips further argues that imbalances on the Pelico system are often not the fault of the shipper, stating that its nominations are routinely and unilaterally modified by Pelico to accommodate system imbalances, regardless of fault. ConocoPhillips argues that allowing Pelico to collect imbalance penalties would be not only unjust but also unduly discriminatory, since it claims that Pelico balances its system in a manner that favors DCP Gas Marketing, a Pelico affiliate that also ships the majority of volume on the Pelico system.

10. In its answer, Pelico urges the Commission to approve its revisions. Pelico argues that its filing complies with section 284.123(e) of the Commission's regulations.[5] Pelico argues that its "current imbalance cash-out pricing is clearly not a sufficient management tool" since, as ConocoPhillips "acknowledges in its filing, Pelico experiences frequent situations where Pelico is required to reduce nominations to avoid operational problems."[6] Pelico argues that the proposed change is justified and necessary in order to give shippers the proper incentive to help the pipeline remain in balance. Pelico also argues that another NGPA section 311 pipeline, DCP Guadalupe Pipeline, LLC, has identical imbalance cash-out pricing and has only minimal shipper imbalance problems.

Discussion

11. We accept the unopposed changes to gas quality specifications and pressure base as fair and equitable.

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[4] ConocoPhillips Protest at 3-4.

[5] 18 C.F.R. § 284.123(e) ("…If the pipeline changes its operations …, it must amend the statement [of operating conditions] and file such amendments not later than 30 days after commencement of the change in operations….")

[6] Pelico Answer at 3.

12. We accept the protested changes to imbalance cash-out pricing as fair and equitable, subject to the conditions discussed below. The Commission has been amenable to a variety of imbalance cash-out mechanisms, based on the operational needs of the NGPA section 311 pipeline, and has not prescribed a single approach. ConocoPhillips expresses concern that Pelico may administer the system in a way that penalizes shippers for imbalances for which they are not at fault, or in a way that unduly benefits Pelico's shipper affiliate. We find that the revised SOC is not on its face unduly discriminatory. In the event that Pelico administers it in an unduly discriminatory manner, ConocoPhillips or other shippers may file a complaint with the Commission.

13. ConocoPhillips further argues that Pelico cannot accurately implement the proposed revisions, which eliminate any safe harbor for *de minimis* imbalances, since according to Conoco-Phillips "the industry standard for measurement allows for a plus-or-minus 2% tolerance and Pelico has not demonstrated that it is able to measure or operate its system at this degree of perfection."[7] Pelico fails to address this point in its answer. In order for Pelico to implement the proposed revisions fairly and equitably, Pelico must be capable of measuring Receipt, Company Use, and Delivery volumes for a given month with sufficient accuracy that shippers can be fairly certain that any imbalance penalties are due to their own actions and not the pipeline's measurement error. In particular, we direct Pelico to make a filing demonstrating the standard margin of error in the measurements that it would use to calculate imbalance. Pelico should also address the argument of under what operating conditions it would be fair and equitable to impose penalties for levels of imbalance that are smaller than the margin of error in its measurements.[8] Accordingly, our acceptance is conditioned on Pelico filing the above evidentiary demonstration within 60 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[7] ConocoPhillips protest at 3-4.

[8] *E.g.*, *GulfTerra Texas Pipeline, L.P.*, 110 FERC ¶ 61,330 (2005) (approving section 311 pipeline implementing an imbalance penalty with no safe harbor, but only when operating conditions require, and allowing shippers to use either parking and lending service or third-party providers as an alternative remedy); *Katy Storage and Transportation, L.P.* 106 FERC ¶ 61,145, at P 31-33 (2004) (directing section 311 pipeline to remove section that penalizes shippers for *de mimimis* imbalances, finding the section vague and not operationally necessary).