168 FERC ¶ 61,135
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Enable Gas Transmission, LLC — Docket Nos. RP18-1193-001, RP18-1193-002

ORDER ACCEPTING TARIFF RECORDS, GRANTING CLARIFICATION, AND DENYING REHEARING

(Issued August 29, 2019)

1. On October 22, 2018, the Commission issued an order accepting Enable Gas Transmission, Inc.'s (EGT) revised tariff records, subject to conditions.[1] EGT filed a timely request for rehearing and clarification of the Tariff Order in Docket No. RP18-1193-002. Additionally, on November 6, 2018, in Docket No. RP18-1193-001, EGT filed revised tariff records to comply with the Tariff Order. This order accepts EGT's revised tariff records,[2] grants EGT's request for clarification, and denies rehearing.

I. **Background**

2. Sections 27 and 28 of the General Terms and Conditions of EGT's tariff require EGT to adjust its fuel percentages and electric power cost tracker on or before October 1 of each year based on actual data for the twelve-month period ending June 30.

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[1] *Enable Gas Transmission, LLC*, 165 FERC ¶ 61,035 (2018) (Tariff Order).

[2] EGT, Enable Gas Transmission, LLC/Tariffs, Sheet No. 21, RATES: FT, FT-2, FT-SMALL CUSTOMER, IT, 11.1.0; Sheet No. 22, RATES: NNTS, NNTS-SMALL CUSTOMER, FSS, ISS, 12.1.0; Sheet No. 23, RATES: EFT, 12.1.0; and Sheet No. 35, RATES: RSS, 12.1.0.

3. On September 20, 2018, EGT filed revised tariff records that included supporting calculations used to derive EGT's proposed system-wide Fuel Use and Lost-and-Unaccounted-For Gas (LUFG) percentages.[3]

4. On October 2, 2018, in response to EGT's revised tariff records filing, the Missouri Public Service Commission (Missouri PSC) filed a motion to intervene and comments. Missouri PSC asked the Commission to require EGT to remove all gas losses attributed to incidents reported to the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) from EGT's LUFG fuel tracker calculation.[4] Missouri PSC stated that long-standing Commission policy dictates that "fuel tracking mechanisms are appropriate for normal operating costs but are not appropriate for the recovery of gas losses outside the scope of normal pipeline operations."[5] Missouri PSC contended that none of the incidents reported to PHMSA were caused by normal operation of EGT's pipeline[6] nor fit within the definition of LUFG included in EGT's tariff.[7]

5. On October 9, 2018, EGT filed an answer to Missouri PSC's comments, stating that nothing in the Commission's precedent requires EGT to remove PHMSA-related losses from its LUFG fuel tracker calculation.[8] Rather, EGT stated that Commission precedent on fuel tracker recovery excludes gas losses associated with extraordinary

[3] EGT September 20, 2018 Revised Tariff Records at 2.

[4] Missouri PSC Comments at 3.

[5] *Id.* at 2 (citing *Southern Star Cent. Gas Pipeline, Inc.*, 138 FERC ¶ 61,222, at P 14 (2012) (*Southern Star*); *CenterPoint Energy Gas Transmission Co*., 131 FERC ¶ 61,047, at P 12 (2010) (*CenterPoint*); *Cheyenne Plains Gas Pipeline Co*., *L.L.C.*, 123 FERC ¶ 61,220, at P 10 (2008) (*Cheyenne Plains*); *Williams Nat. Gas Co.*, 73 FERC ¶ 61,394, at 61,215 (1995) (*Williams*)).

[6] *Id.* at 3.

[7] *Id*. (citing EGT, Enable Gas Transmission, LLC/Tariffs, Sheet No. 515, 1. DEFINITIONS AND INTERPRETIVE MATTERS (1.0.0) (defining Fuel Use and LUFG as "Gas consumed by compressors and other Gas handling equipment, company use Gas and Gas lost or otherwise unaccounted for.")).

[8] EGT Answer at 4.

events[9] and allows gas losses associated with normal operations.[10] EGT asserted that the PHMSA-related incidents represented gas losses associated with normal operations of the pipeline, not losses associated with extraordinary or catastrophic events, and are thus eligible for fuel tracker recovery.[11]

6. In the Tariff Order, the Commission accepted EGT's revised tariff records, subject to condition, and required EGT to remove its PHMSA-reported losses from its LUFG fuel tracker calculations.[12] The Commission explained that fuel tracking mechanisms are appropriate for normal operating costs but are not appropriate for the recovery of gas losses outside the scope of normal pipeline operations.[13] The Commission determined that none of the incidents EGT reported to PHMSA were caused by normal operation of the pipeline,[14] and found that the incidents were "known amounts [of released gas] caused by abnormal events that are required to be included in a PHMSA report, and should not be recovered in a fuel tracker or as an unaccounted-for gas loss."[15] Thus, the Commission required EGT to submit a compliance filing with revised tariff records removing the PHMSA-reported losses from its LUFG percentages, within 15 days of the date of the Tariff Order.[16]

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[9] *Id*. (citing *Colo. Interstate Gas Co.*, 121 FERC ¶ 61,161, at PP 24-25 (2007), *reh'g denied*, 123 FERC ¶ 61,183 (2008), *aff'd*, *Colo. Interstate Gas Co. v. FERC*, 599 F.3d 698 (D.C. Cir. 2010) (*Colo. Interstate*); *Cheyenne Plains*, 123 FERC ¶ 61,220 at PP 10-11).

[10] *Id*. (citing *Southern Star*, 138 FERC ¶ 61,222 at P 14; *CenterPoint*, 131 FERC ¶ 61,047 at P 12; *WTG Hugoton, LP*, 125 FERC ¶ 61,288, at P 33 (2008)).

[11] *Id*. at 5 (citing *Colo. Interstate*, 121 FERC ¶ 61,161 at P 24, *reh'g denied*, 123 FERC ¶ 61,183 at P 17, *aff'd*, 599 F.3d at 700).

[12] Tariff Order, 165 FERC ¶ 61,035 at P 19 and ordering para. (B).

[13] *Id*. P 20 (citing *Southern Star*, 138 FERC ¶ 61,222 at P 14; *CenterPoint*, 131 FERC ¶ 61,047 at P 12).

[14] *Id*.

[15] *Id*. P 22.

[16] *Id*. P 22 and ordering para. (B).

7. On November 6, 2018, EGT filed revised tariff records[17] to comply with the Tariff Order. Public notice of the filing was issued on November 7, 2018. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[18] No interventions or protests were received in response to the notice.

8. On November 21, 2018, EGT filed its request for clarification and, in the alternative, rehearing of the Tariff Order.

II. Discussion

A. EGT's Request for Rehearing

9. EGT asks the Commission to clarify that it is not replacing its case-by-case analysis of PHMSA-reported losses with a categorical rule that all PHMSA-reported losses are "outside the scope of normal pipeline operation" and must be excluded from a pipeline's fuel tracker.[19] Alternately, on rehearing, EGT asserts that the Commission departed from its prior precedent when it determined that all PHMSA-reported losses are "outside of the scope of normal pipeline operations."[20] EGT claims that the Tariff Order failed to explain why the Commission was changing its policy that allowed companies to include PHMSA-reported losses in their fuel tracker calculations on a case-by-case basis.[21] EGT asserts that if the Commission had conducted a case-by-case analysis, then the Commission would have found that some or all of the PHMSA-reported losses at issue are the result of normal pipeline operations.[22]

10. We clarify that in the Tariff Order, the Commission did not create a categorical rule that all PHMSA-reported losses must be excluded from a pipeline's fuel tracker. As the Commission stated in the Tariff Order, "[t]he Commission's policy on fuel trackers has evolved in recent years, and favors a narrow application of tracker mechanisms in assessing the allowable costs to be tracked" and "the Commission intends that fuel

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[17] *See supra* n.2.

[18] 18 C.F.R. § 154.210 (2018).

[19] EGT Request for Rehearing at 2-4.

[20] *Id.* at 5, 7 (quoting Tariff Order, 165 FERC ¶ 61,035 at P 20).

[21] *Id.*

[22] *Id.* at 7.

tracking mechanisms track only those costs related to normal pipeline operations."[23] Applying that narrow approach to the PHMSA-reported losses at issue here, the Commission concluded that none of the incidents reported to PHMSA and included in EGT's filing were caused by normal operation of EGT's pipeline.[24]

11. Companies may use fuel tracking mechanisms to recover normal operating costs, but may not use fuel tracking mechanisms to recover gas lost outside of the scope of normal pipeline operations.[25] For example, companies may use a fuel tracking mechanism to recover the costs of compressor fuel used in normal pipeline operations and may use LUFG to recover the costs of unaccounted-for volume variances that arise in normal pipeline operations.[26] However, the Commission does not permit companies to use a fuel tracking mechanism or LUFG to recover the costs of damages that are known, accounted for, and arise from an unusual, non-recurring event, whether small or large, such as from a complete failure of some portion of a pipeline system, or from more common incidents, such as those generally requiring a PHMSA report.[27]

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[23] Tariff Order, 165 FERC ¶ 61,035 at P 21.

[24] *Id*. P 22.

[25] *See id.* P 20 (citing *Southern Star*, 138 FERC ¶ 61,222 at P 14; *CenterPoint*, 131 FERC ¶ 61,047 at P 12). *See also Enable Gas Transmission, LLC*, 151 FERC ¶ 61,069, at P 14 (2015) (*EGT*); *CenterPoint Energy Gas Transmission Co., LLC*, 139 FERC ¶ 61,064, at P 16 (2012), *order on reh'g*, 144 FERC ¶ 61,195, at P 12 (2013) (*CenterPoint Energy*); *Cheyenne Plains*, 123 FERC ¶ 61,220 at P 10, *order on reh'g*, 132 FERC ¶ 61,206, at P 12 (2010); *Colo. Interstate*, 121 FERC ¶ 61,161 at P 22, *order on reh'g*, 123 FERC ¶ 61,183 at P 11, *aff'd*, 599 F.3d at 702-703 (affirming the Commission's finding that the pipeline could not recover gas lost as a result of a well-casing failure through its fuel tracking mechanism).

[26] *EGT*, 151 FERC ¶ 61,069 at P 14.

[27] *Id*.; *CenterPoint Energy*, 139 FERC ¶ 61,064 at P 17, *order on reh'g*, 144 FERC ¶ 61,195 at P 14; *Colo. Interstate*, 121 FERC ¶ 61,161 at P 22, *order on reh'g*, 123 FERC ¶ 61,183 at P 16, *aff'd*, 599 F.3d at 704-705. *See Southern Star Cent. Gas Pipeline, Inc.*, 154 FERC ¶ 61,258, at P 9 (2016) (finding gas lost as a result of losses due to flooding, line damage caused by fallen communications tower, and other similar losses were not part of normal pipeline operations); *Southern Star Cent. Gas Pipeline, Inc.*, 150 FERC ¶ 61,246, at P 9 (2015) (finding gas lost as a result of relief and Emergency Shut Down valves failures and line blow downs due to leak were not part of normal pipeline operations); *Panhandle Eastern Pipe Line Co., LP*, 149 FERC ¶ 61,087, at P 12 (2014) (finding gas lost as a result of a pipeline rupture was not part of normal pipeline

12. EGT contends that a case-by-case analysis of fuel tracker recoveries appropriately reflects the wide range of PHMSA-reported losses.[28] EGT states that under PHMSA's rules a pipeline must report an event to PHMSA if it resulted in "(i) a death or personal injury necessitating in-patient hospitalization, (ii) estimated property damage of $50,000 or more (excluding the cost of lost gas), or (iii) the unintentional estimated gas loss of three [million cubic feet (MMcf)] or more."[29] EGT argues that in some instances, a pipeline may report a gas loss to PHMSA because of an unintentional release of gas in a quantity slightly above 3 MMcf.[30] EGT asserts, it was for this reason, that it filed two of its PHMSA-reported incidents: one caused by a broken pilot stainless steel tubing and the other from a shifted relief valve setpoint.[31]

13. Based on the evidence presented in the record, we affirm the Tariff Order's determination that none of the incidents reported to PHMSA and included in the subject filing were caused by normal operation of EGT's pipeline.[32] EGT attempted to recover the following, asserting these were part of its normal operations: (1) 13.5 MMcf lost due to a shifted relief valve set point; (2) 4.6 MMcf from a broken pilot stainless steel tubing; (3) 4.04 MMcf from broken tubing in a feeding controller; (4) 6.3 MMcf from failure of a pressure coupling caused by construction; (5) 21 MMcf from a blowdown valve leak; (6) 3.69 MMcf from a corroded pipe; and (7) 4.45 MMcf from a valve malfunction.[33] We affirm the finding in the Tariff Order that the gas losses EGT attempts to recover resulted from unexpected, non-routine malfunctions of pipeline equipment and were not

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operations); *Southern Star Cent. Gas Pipeline, Inc.*, 146 FERC ¶ 61,242, at P 9 (2014) (finding gas lost as a result of line failures, leaking coupling, and line blow downs caused by a leak were not part of normal pipeline operations); *Southern Star Cent. Gas Pipeline, Inc.*, 134 FERC ¶ 61,260, at P 14 (2011) (finding gas lost as a result of a gird weld failure was not part of normal pipeline operations); *Cheyenne Plains*, 123 FERC ¶ 61,220 at P 10 (finding gas lost as a result of a valve flange connection failure was not part of normal pipeline operations).

[28] EGT Request for Rehearing at 6.

[29] *Id*. (citing 49 C.F.R. § 191.3 (2018)).

[30] *Id*.

[31] *Id*. at 7.

[32] Tariff Order, 165 FERC ¶ 61,035 at P 22.

[33] EGT Answer at 3, Table 1; Missouri PSC Comments at 9-11.

associated with routine maintenance or other normal operations activity.[34] We considered PHMSA's 3 MMcf reporting-threshold as a factor in our determination[35] and whether the releases caused by these events could be classified as a normal operating expense such that EGT could recover these costs from shippers through its fuel tracker.[36] EGT claims that the PHMSA-reported losses were part of normal pipeline operations, but it failed to adequately justify why the losses were normal and in compliance with safe operation of the pipeline system. Moreover, the PHMSA-related gas losses are not properly classified as LUFG; though the gas was lost, the cause of the loss is known and accounted-for. Nor are the losses properly classified as Fuel Use as they were not related to compressor usage.[37] Although we find that EGT may not recover the cost of gas lost from these PHMSA-reported incidents through its fuel tracking mechanism or LUFG, EGT may seek to recover such costs in a general rate proceeding under section 4 of the Natural Gas Act.[38]

14. EGT states that in *Colo. Interstate*,[39] the D.C. Circuit Court upheld the Commission's fuel tracker policies because it applied a consistent standard for recovering losses in tracking mechanisms.[40] Specifically, *Colo. Interstate* distinguished between two categories of losses: "losses resulting from normal pipeline operations, which are recoverable; and losses resulting from the malfunction of underground storage

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[34] Tariff Order, 165 FERC ¶ 61,035 at P 22.

[35] PHMSA, an agency charged with prescribing safety standards for gathering, distribution, interstate, and intrastate pipeline systems, requires companies to report any unintentional gas loss of 3 MMcf or above. We expect companies to comply with PHMSA requirements and to maintain the integrity and safety of their pipeline systems.

[36] *EGT*, 151 FERC ¶ 61,069 at PP 14-15 (finding that EGT's PHMSA-reported gas losses could not be included in its fuel tracker because those losses were the result of unusual circumstances not directly related to fuel use in compressors or unaccounted-for volumes related to actual operation of gas flow on the pipeline).

[37] *Id.*; *Colo. Interstate*, 123 FERC ¶ 61,183 at P 13, *aff'd*, 599 F.3d at 704.

[38] 15 U.S.C. § 717c (2012). *See EGT*, 151 FERC ¶ 61,069 at P 14; *Colo. Interstate*, 123 FERC ¶ 61,183 at P 13, *aff'd*, 599 F.3d at 704.

[39] 599 F.3d 698.

[40] EGT Request for Rehearing at 5.

mechanics, which are not recoverable in [a LUFG] tracking mechanism."[41] EGT contends that by excluding the recovery of PHMSA-reported losses, the Commission is applying an inconsistent standard. We disagree. As stated above, the Commission evaluated EGT's PHMSA-reported losses and found that the losses arose from the malfunction of equipment and were abnormal losses that are not part of normal pipeline operation, thus applying a standard consistent with the fuel tracker policies at issue in *Colo. Interstate*

15. For the foregoing reasons, we grant EGT's request for clarification and deny rehearing.

B. <u>EGT's Revised Tariff Records in Docket No. RP18-1193-001</u>

16. To comply with the Tariff Order, EGT filed revised tariff records that exclude all PHMSA-reported losses from its LUFG percentages made in its fuel tracker filing.[42] We find that the revised tariff records comply with the Tariff Order and are accepted, effective November 1, 2018, as proposed by EGT in its September 20, 2018 filing.

<u>The Commission orders</u>:

(A) Enable Gas Transmission, LLC's request for clarification is granted, as discussed in the body of this order.

(B) Enable Gas Transmission, LLC's request for rehearing is denied, as discussed in the body of this order.

(C) Enable Gas Transmission, LLC's November 6, 2018 revised tariff records are accepted, effective November 1, 2018, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[41] *Id*. at 5-6 (quoting *Colo. Interstate*, 599 F.3d at 703).

[42] *See supra* n.2.