

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
103 FERC ¶ 61,328

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Nicole Gas Production Ltd.

Docket No. RP03-243-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued June 11, 2003)

1. On January 24, 2003, Nicole Energy Services, Inc. (Nicole)¹ filed a Petition for Declaratory Order (Petition) requesting the Commission to find that Columbia Gas Transmission Corporation's (Columbia) tariff provides that: (1) Columbia must install meters at Columbia's cost to measure the volume of gas received from a shipper; (2) Columbia must permit, but cannot require, shippers of natural gas to install "check meters" to verify the gas volumes measured by Columbia's meters; and (3) Columbia may not make downward adjustments to a shipper's gas volumes, other than the retainage adjustment provided for in Columbia's tariff. As a result of what it claims were improper practices by Columbia, Nicole asserts that its gas injections have been understated by at least 550,000 dekatherms.

2. The Commission finds that portions of the General Terms and Conditions (GT&C) of Columbia's tariff regarding meters are ambiguous, grants Nicole's Petition, interprets Columbia's tariff as discussed below, and directs Columbia to file revised tariff language to reflect the clarifications and determinations made herein. In the Commission's view, this order is in the public interest because it results in Columbia's tariff being clarified which benefits its customers and may aid the parties or the courts in the resolution of the underlying disputes.

¹Nicole states that it was dissolved on September 6, 2002, and that Nicole Gas Production, Ltd., an affiliate of Nicole and its successor in interest, paid the filing fee for the instant filing. However, according to Commission records, the filing fee was actually paid by Nicole Energy Marketing, Inc. For purposes of this order, except as otherwise specified, we will generally refer to both entities as "Nicole".

I. Background

3. Nicole states that it is a natural gas producer with 143 gas wells in the State of Pennsylvania and that on December 1, 1999, its affiliate Nicole Gas Production, Ltd., (NGP) purchased 143 natural gas wells from Columbia Natural Resources (CNR), a Columbia affiliate. Nicole states that 55 of the 143 wells were unmetered at the time of the sale. Nicole asserts that at the same time it entered into six contracts with Columbia for different natural gas transportation and storage services² and that Columbia cancelled the contracts upon Nicole's dissolution on September 6, 2002.

4. In its Petition, Nicole requests that the Commission make three findings regarding Columbia's tariff. First, Nicole seeks a Commission determination that Columbia's tariff requires the installation of meters at all wells at Columbia's expense. Second, Nicole seeks a Commission determination that Columbia's tariff gives Nicole the right, but not the obligation, to install "check meters" to verify the accuracy of Columbia's meters. Lastly, Nicole requests that the Commission find that Columbia's tariff forbids Columbia from making any downward adjustment to a shipper's volumes of gas, except as specifically designated by Section 35 of Columbia's tariff for lost and unaccounted for fuel gas and retainage.

5. Nicole claims that Columbia's tariff required that Columbia install meters at each of Nicole's 55 unmetered wells, and that Columbia's failure to measure the actual output of each well is a violation of Columbia's tariff and resulted in an understatement of the gas tendered to Columbia by Nicole. Nicole also claims that Columbia impermissibly applied a "correction factor" based on one-minute pickup test results that underestimated the production of Nicole's wells. Overall, Nicole claims Columbia's actions resulted in an understatement of Nicole's gas injections by at least 550,000 dekatherms.

6. According to Nicole, this undercounting of its gas outputs has led to various members of the Nicole corporate family, Columbia, and several Nicole customers becoming involved in litigation in Ohio and Pennsylvania.³ Nicole states that the Ohio

²According to Nicole, the six agreements were for Interruptible Gathering Service, Gas Processing Service, Firm Transportation Service, Interruptible Transportation Service, Interruptible Paper Pooling Service, and Aggregation Service.

³Columbia Gas Transmission Corporation v. Nicole Energy Services, Inc., et al., (W.D. PA September 4, 2002); and Columbia Gas of Ohio et al., v. Nicole Energy Services, Inc., filed by Columbia Gas of Ohio, Inc., et al., on June 8, 2001, in the Court

(continued...)

suit was brought by several of its customers who claim that Nicole failed to make its required gas deliveries. Nicole responded by naming Columbia as a third-party defendant, alleging that it was Columbia's impermissible undercounting of Nicole's gas injections that resulted in Nicole's failure to provide its Ohio customers with the required quantities of gas. In the Pennsylvania case, Columbia sued Nicole alleging that Nicole failed to pay for its negative gas imbalances.

II. Interventions, Protests, and Answers

7. Public notice of Nicole's Petition was issued on February 11, 2003, with interventions and protests due on or before March 3, 2003. Pursuant to the Commission's regulations, all timely motions to intervene are granted. Timely interventions were filed by Columbia and Process Gas Consumers Group. Columbia also filed comments (Columbia's Answer) opposing the Petition.

8. On March 13, 2003, Nicole filed a reply to Columbia's Answer (Nicole's Reply). Columbia then filed an answer to Nicole's Reply (Columbia's Second Answer) on March 24, 2003, to which Nicole filed an additional reply on March 28, 2003 (Nicole's Second Reply). The parties' requests to file additional answers and replies are granted, as they provide additional information and clarification regarding the issues in this proceeding.

III. Discussion

A. Standard for Issuing Declaratory Order

1. Arguments of the Parties

9. Columbia requests that the Commission exercise its discretion to dismiss the Petition on procedural grounds because a ruling by the Commission would fail to "terminate a controversy or remove uncertainty."⁴ Columbia states that the parties are involved in ongoing litigation in state and federal court, and that a determination by the Commission would not resolve these matters.

³(...continued)
of Common Pleas of Franklin County, Ohio.

⁴Rule 207(a)(2). 18 C.F.R. § 385.207(a)(2) (2002).

10. Columbia also argues that this is a case of contract interpretation, and that under the Commission's three-part test for deciding whether to assert primary jurisdiction over contract disputes, the Commission should decline to issue the declaratory order requested by Nicole.⁵ According to Columbia, the Ohio litigation involves an action filed by three local distribution companies (affiliated with Columbia) for breach of contract against Nicole for failure to deliver natural gas supplies. The Pennsylvania cases involves a complaint by Columbia seeking recovery of unpaid invoices for various transportation and gathering services rendered to Nicole. According to Columbia, both of the pending court cases include actions for breach of contract which do not require a Commission interpretation of its tariff and would not assist in the resolution of the cases, since the litigation involves issues that go well beyond the tariff interpretations requested by Nicole.

11. Nicole answers that its petition only raises issues of law regarding Columbia's tariff and, therefore, the Commission need not render factual findings on the issues raised by Columbia.

2. Commission Ruling

12. The purpose and standards for issuing a declaratory order were discussed in Express Pipeline Partnership.⁶ As stated there, Section 554(c) of the Administrative Procedure Act provides that an agency in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty.⁷ Rule 207 of the Commission's Rules of Practice and Procedure⁸ provides that a person must file a petition when seeking a declaratory order. Thus, as both Nicole and Columbia acknowledge⁹, whether to consider providing declaratory relief under this provision is discretionary with the

⁵Citing Arkansas Louisiana Gas Company v. Hall, 7 FERC ¶ 61,175, reh'g denied, 8 FERC ¶ 61,031 (1979).

⁶75 FERC ¶ 61,303 at 61,967 (1996).

⁷5 U.S.C. § 554(c) (2002).

⁸18 C.F.R. § 385.207 (2002).

⁹Columbia's Answer at 5; Columbia's Reply at 3.

Commission.¹⁰ Under this standard, the Commission finds that it is in the public interest and a proper exercise of its discretion to provide requested interpretations and clarifications of Columbia's tariff in order to provide clarity for the parties and to promote uniform interpretation of these provisions.

13. Nicole's Petition requests that the Commission decide whether Columbia's tariff allows Columbia to make downward adjustments to a shipper's gas volumes other than the retainage adjustment, and whether Columbia must install and pay for meters. In order to reach a determination on these issues the Commission need not address the factual disputes arising from the instant controversy and will limit its response to an interpretation of Columbia's tariff.

14. The issue of whether a shipper is allowed to install check meters at its own expense will not be further discussed by the Commission because Columbia agrees with Nicole that a shipper has that right¹¹ and their interpretation is consistent with the tariff.

B. Requirement to Install Meters

1. Arguments of the Parties

15. In its Petition, Nicole argues that Section 26 of the GT&C of Columbia's tariff, entitled "Measurement", expressly requires Columbia to pay for and install meters to measure gas volumes received from a shipper. Specifically, Nicole points to Section 26.9(b) as requiring Columbia to install meters and metering stations unless there is a written agreement to the contrary, and, it asserts, there is no such agreement.¹² Nicole asserts that these provisions make it clear that Columbia's Tariff requires that Columbia determine gas volumes received onto its pipeline system by using "measuring

¹⁰See, e.g., Phillips Petroleum Company and Marathon Oil Company, 58 FERC ¶ 61,290 (1992); and Longhorn Partners Pipeline, 73 FERC ¶ 61,355 (1995).

¹¹Columbia's Answer at 2-3; Petition at 1-2.

¹²Section 26.9(b) of Columbia's GT&C states:

Unless otherwise agreed to in writing, or unless gas is being received from an interstate pipeline company, which has an approved FERC Gas Tariff governing measurement of gas it delivers, Transporter will install, operate, and maintain measuring stations and equipment by which the volume of natural gas or quantities of energy received by Transporter are determined.

stations and equipment" and not by methods intended to approximate actual measurement. Nicole, citing Section 26.9(j) of Columbia's Tariff, argues that the Tariff specifies four types of meters that Columbia may use, and that other types of meters may only be used if the parties mutually agree to use them. Nicole also asserts that there is no provision in the Tariff for measurement of gas except by a meter and that Columbia's Tariff does not allow Columbia the option of installing no meter.

16. Nicole also argues that, while Section 26.9(m)¹³ states that nothing in Section 26 shall require Columbia to build any new facilities, "facilities" do not include meters. Nicole points to Section 27.1 of Columbia's Tariff for support of this proposition, noting that Section 27's definition of "facilities" does not include meters.¹⁴ Therefore, Nicole argues, Section 26.9(m)'s prohibition against construction of new "facilities" does not apply to the construction of new meters.

17. In its answer, Columbia disputes its tariff requires it to install meters to measure the gas output from Nicole's wells. Columbia begins by pointing to Section 1(c) of the

¹³Section 26.9(m) of Columbia's GT&C states:

(m) Nothing in this Section 26.9 shall be construed to require Transporter to construct any facilities.

¹⁴Section 27.1 of Columbia's GT&C states:

Arrangement for construction of transmission facilities. Shipper may request Transporter to construct, maintain and operate, either all or a part of, the lateral line for the transportation of gas from Transporter's main transmission line to Shipper's markets, or when the delivery point to Shipper at Transporters main transmission line is in close proximity to a compressor station of Transporter, Shipper may request Transporter to provide facilities to deliver gas to Shipper in excess of Transporter's main line operating pressure. If Transporter shall determine that the granting of such request by Shipper is necessary or desirable, that no undue burden will thereby be placed upon Transporter, and that no impairment of Transporter's ability to render adequate service to its shippers will result therefrom, Transporter will construct or provide such facilities if it can obtain, proper, necessary authorization.

Interruptible Gathering Agreement (IGA) entered into by the parties which states that:

. . . Transporter shall not be required to perform service under this Agreement if any of the facilities necessary to render the requested service do not exist or are not available . . . Transporter shall not be required to construct facilities to provide any service requested hereunder.

Columbia asserts that it is this service agreement that governed the delivery of gas by Nicole onto Columbia's pipeline system and that the agreement makes clear that Columbia has no obligation to build facilities. As Columbia also notes, the IGA adopts certain provisions of Columbia's Tariff into the agreement, including Section 26 dealing with measurement and Section 9 dealing with pipeline operating conditions.

18. According to Columbia, Section 26 addresses the manner in which metered measurements are made, not whether all measurements must be metered measurements. The first sentence of Section 26 provides that: "The volumes of natural gas and quantities of energy received or delivered through a meter or meters shall be determined in accordance with the provisions set forth in this section." Therefore, Columbia argues, Section 26 as a whole, including Section 26.9 upon which Nicole relies, is applicable only to gas received or delivered through a meter. Columbia further explains that Section 26 was incorporated into Nicole's IGA because most of the wells purchased by Nicole are metered. Therefore, according to Columbia, it was necessary to incorporate that section of Columbia's Tariff into the IGA even though Section 26 would not apply to Nicole's unmetered wells.

19. Columbia argues that Section 26.9(a) must be read in light of the first sentence in Section 26. Columbia asserts that 26.9(a) only applies when an agreement has been reached that a meter will be utilized. If such an agreement exists, then Columbia must follow the provisions of Section 26 in installing and maintaining the meters.

20. Columbia also points to Section 26.9(m) which states that nothing in Section 26.9 shall be construed as requiring Columbia to construct any facilities. In regard to Nicole's assertion that the term "facilities" does not include meters, Columbia responds that Nicole cites no support for its assertion that Section 26.9(m), which provides that Columbia is not required to construct any facilities, is inapplicable to the installation of meters, and, that since Section 26.9(m) is part of a broader section entitled "Measurement," any logical reading of the term "facilities" would have to include meters.

21. Further, Columbia argues that Nicole is misreading Section 27's definition of "facilities". According to Columbia:

just as Section 26 deals with measurement facilities, Section 27 addresses the construction of transmission facilities, including lateral lines. Section 27.2, of course, states that if the pipeline agrees to construct a lateral line or other transmission facilities, "Shipper will pay transporter for the costs of such facilities. . ."

Therefore, Columbia disputes Nicole's contention that facilities in Section 26.9(m) would not include meters. Instead, Columbia argues, Section 26 deals with metering facilities while Section 27 deals with construction of transmission facilities.

22. In its reply, Nicole argues against Columbia's suggested harmonization of Section 26.9(m) and Section 26.9(b). According to Nicole, Columbia's interpretation of these two provisions should be rejected because it renders Section 26.9(b) meaningless. Further Nicole argues that "'Measuring stations and equipment' in Section 26.9(b) and 'facilities' in Section 26.9(m) obviously refer to different things."

23. Nicole states that the idea that Columbia's Tariff only obligates Columbia to install meters wherever meters already exist is "nonsensical":

The purpose of Section 26 is clearly the opposite – to require CGT [Columbia] to install meters on its gathering lines that have no meters. Section 26 of the tariff is clearly intended to take uncertainty out of the determination of gas volumes delivered on the Columbia transmission line by requiring meters. The public policy reason for such a requirement is obvious. Without a precise method of measurement, disputes such as this dispute are inevitable, with adverse consequences to both parties and to end-user customers.

According to Nicole, Section 19.4 of the Tariff, which assigns penalties for monthly gas imbalances, supports the need "for precision, not approximation, in the measurement." Section 19.4 assigns costs of \$0.25 per Dth "on any difference between actual cumulative receipts and actual cumulative deliveries."

24. In its March 24, 2003 Second Reply, Columbia urges the Commission to employ rules of contract interpretation and find that Nicole's interpretation of Section 26.9(b) – dealing with installation of facilities – reads Section 26.9(m) – stating that nothing shall be construed as requiring Transporter to construct any facilities – out of existence.

Columbia further argues that, while Nicole relies upon Section 27 of the Tariff to argue that "facilities" referred to in Section 26.9(m) does not include meters, Section 27 of the Tariff was not incorporated into their contract. Further, it argues that the Commission has limited authority to require the construction of facilities and that Commission orders directing installation of meters are based on the Commission's NGA Section 5 authority, and there is no basis for the Commission to exercise its Section 5 authority here. Finally, it argues that the issue is not who installs the meters, but rather who pays for them. It states that its policy is to require the shipper to pay for meters.

25. In its March 28, 2003 Second Reply, Nicole asserts that the gathering agreement is jurisdictional. Nicole states that the two systems consist of one continuous system that operates "in connection with" interstate transportation. Nicole asserts that gathering is only non-jurisdictional if a regulated interstate pipeline company establishes a separate corporate 'spin down' entity to provide the gathering services, which is not the case here.¹⁵

2. Commission Ruling

26. Section 26.9(b) requires Columbia to install meters and meter stations to measure gas received into its system. Unlike other measurement provisions in the tariff, such as for temperature,¹⁶ static pressure,¹⁷ specific gravity,¹⁸ heating value,¹⁹ or gas super-compressibility,²⁰ this provision does not include provisions explaining what happens if there are no meters. Therefore, the tariff assumes that meters will be installed by Columbia at all receipt points unless there is an agreement to the contrary as provided in Section 26.9(b). Further, it is reasonable to interpret this obligation as requiring Columbia to pay for such installations. Any issues regarding whether an agreement that modifies these obligations exists are questions of fact best left to the courts; however, it does not appear that parties here claim such an agreement exists. The fact that the

¹⁵Nicole's Second Reply at 2 (citations omitted).

¹⁶Section 26.4 of Columbia's GT&C.

¹⁷Section 26.5 of Columbia's GT&C.

¹⁸Section 26.6 of Columbia's GT&C.

¹⁹Section 26.7 of Columbia's GT&C.

²⁰Section 26.8 of Columbia's GT&C.

facilities on which the meters may be located may function in a gathering capacity is not relevant as the tariff does not limit the obligation to install meters only to transmission facilities and, in any event, Columbia's gathering services are subject to our jurisdiction as they are in connection with Columbia's interstate transmission services.²¹

27. The Commission finds that Section 26.9(m) only serves the purpose of clarifying that the requirements in Section 26 to install measuring equipment, including the installation of meters and metering stations to measure gas volumes, does not obligate Columbia to construct taps, interconnects, or pipe facilities necessary to connect production to its system, and was inserted to clarify that the section is consistent with its tariff's construction policy. This interpretation gives meaning to both Sections 26.9(b) and (m). Moreover, Columbia would not "construct" a meter; Columbia just has to "install" meters.

28. However, in order to have a clear and unambiguous tariff, Columbia is directed to file revised tariff language that makes it clear that it must install and pay for meters and metering stations if needed to measure gas receipts into its system, unless otherwise agreed to, and that Section 26.9(m) only applies to facilities needed to connect supplies to its system, such as taps and lines and does not apply to meters or meter stations. If Columbia believes that this meter installation requirement is too onerous, it should file an alternate tariff proposal which the Commission will review. In the meantime, the requirement to install meters and metering stations should be complied with and is consistent with the representations Columbia has made and promised in its various fuel tracker proceedings regarding its claimed ongoing program to eliminate problems with lost and unaccounted for gas.²²

C. Authority to Adjust Volumes

1. Arguments of the Parties

²¹Northern Natural Gas Co. v. FERC, 929 F.2d 1261 (8th Cir. 1991); Shell Offshore Inc. v. Transcontinental Gas Pipeline Corp., et al., 100 FERC ¶ 61,254 (2002).

²²See e.g., Columbia Gas Transmission Corp., 97 FERC ¶ 61,354 at 62,644 (2001) (accepting Columbia's compliance report in its fuel tracker proceeding on its efforts to mitigate its increasing Lost And Unaccounted For Gas balance filing, including its assertion that it would be installing meters to improve the accuracy of its gas flow accounts.)

29. Nicole requests that the Commission clarify that Columbia's tariff prohibits Columbia from making any downward adjustment to a shipper's natural gas volumes other than the retainage adjustment provided for in Columbia's tariff. Nicole asserts that Columbia improperly applied a "correction factor" to its gas inputs that understated Nicole's gas contributions by at least 550,000 dekatherms.²³ According to Nicole, Section 1 of Columbia's tariff²⁴ defines the term "retainage" and Section 35 of Columbia's tariff (entitled Retainage Adjustment Mechanism (RAM)) sets forth the methodology used to calculate lost and unaccounted for fuel gas, and that these are the only permissible reduction of Nicole's inputs.

30. Columbia states that Nicole's tenders of gas are measured using "one-minute pickup tests" as modified by a correction factor.²⁵ Columbia argues that Nicole was

²³Petition at 3.

²⁴Section 1.32 of Columbia's GT&C states:

"Retainage" shall mean the quantity of gas, expressed as a percentage of receipt quantities, Shipper must provide Transporter (in addition to quantities Transporter will deliver to Shipper) for company-use, lost and unaccounted-for quantities under any of Transporter's Rate Schedules that refer to such term.

²⁵In its answer, Columbia included the affidavit of Charles E. Faulk, a former employee of NGP who stated that a Columbia employee explained that:

[Columbia] measured gas from all of the un-metered wells through a two-part procedure. A well tender (an employee of the well owner who performs various services such as inspections, bailing, maintenance and repair, etc.) would perform a minute pick up test, which involves measuring the gas produced from a well during a sixty-second period. The minute pick up test yields a production value for that well at the time the test is performed. Because the production value from the minute pick up test does not account for fluctuations or changing conditions over the course of a month, correction factors are applied. The correction factors are derived from the actual production figures from several metered wells that

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aware²⁶ that its gas inputs would be determined using the one-minute test and that the correction factor would be used.²⁷

31. In its Answer, Columbia argues that Nicole "is mixing apples and oranges" when it states that the only "correction factor" to be applied to its gas measurements is the retainage factor. Columbia explains that:

retainage is assessed to account for the fuel that is used and the gas that is lost while it is being transported on the interstate pipeline. The one minute test and correction factor are used to measure the gas that is produced from an un-metered well before the gas enters the pipeline system. . . . In short, retainage and correction factor are not addressing the same issue. A correction factor is used in conjunction with the one minute test to determine the gas received into the pipeline from an un-metered well. Retainage, on the other hand, is assessed to account for the fuel that is used and the gas that is lost after the gas has been delivered into the pipeline by the producer for delivery to the market. The provisions of Columbia's tariff determining the appropriate adjustment to quantities transported from the receipt points to delivery points are simply inapplicable to the procedures used to determine the appropriate levels of gas received into the system.²⁸

Columbia further states that its correction factor is used in conjunction with the one minute test to determine the amount of gas gathered by Columbia according to the

²⁵(...continued)

are geographically and geologically similar to the un-metered wells. CNR [Columbia] personnel derive the correction factors on an ongoing, rolling basis.

²⁶In its Answer, Columbia asserts that, prior to Nicole's purchase of the wells, Columbia advised Nicole that meters would be preferable, but that Nicole declined to pay for the installation of the meters. Instead, according to Columbia's Answer and attached affidavits, Nicole elected to proceed with the purchase, with the understanding that Columbia would continue to use a one-minute pickup test and correction factor to measure the output of the unmetered wells. Columbia's Answer at 17-20.

²⁷This is the same methodology used when these wells were owned by a Columbia affiliate. Columbia's Answer at 17.

²⁸Columbia's Answer at 20.

parties' gathering agreement. This corrected measurement is the amount of gas received into the pipeline from an un-metered well. Columbia's argument boils down to the claim that only once the gas enters Columbia's pipeline does Columbia's tariff govern any downward adjustments.²⁹

32. Nicole replies that, even if Columbia were not required to install meters at each well, Columbia's Tariff still prohibits downward adjustments to Nicole's gas volumes above and beyond the retainage adjustment provided for in Section 35 of the tariff. According to Nicole, since Section 35 of the Tariff already accounts for retainage, no further reduction should be permitted.³⁰

33. In its March 24, 2002, Second Answer, Columbia asserts that the correction factor does not fall within the Commission's jurisdiction because the correction factor is not being applied as part of a FERC-jurisdictional service. Accordingly, it asserts, there is no reason for it to be included in the tariff. Finally, it asserts that the affidavits it submitted demonstrate that Nicole did agree to the use of a correction factor for the un-metered wells.

34. In its March 28, 2003 Second Reply, Nicole further responds that "the correction factor is illegal nonetheless for the simple reason that there is no provision for a 'correction factor' in [Columbia's] tariff . . . or gathering agreement."³¹ Finally, Nicole argues that it never agreed to the "correction factor." It states that the NGP employee, Charles Faulk, disputed the correction factor and that NES (the successor to NGP that filed the instant Petition) was not represented at the meeting where the correction factor was explained.

2. Commission Ruling

35. We agree with Nicole that Section 35 of Columbia's Tariff governs the retainage that may be taken out of gas volumes tendered to Columbia by a shipper for transport to compensate for fuel use and is the only section of the tariff authorizing Columbia to reduce or retain shipper volumes that have entered Columbia's system. However, while Nicole is correct, that once it enters the Columbia system, only gas for fuel may be removed, that clarification does not resolve the real issue in the case: how much

²⁹Columbia's Answer at 20.

³⁰Nicole's Reply at 9.

³¹Nicole's Second Reply at 3.

Nicole-produced gas actually entered Columbia's system during the period at issue? In the absence of meters to measure the amount of gas entering the system, Columbia used volumes derived from one-minute pickup tests and adjusted the volumes with its "correction factor" based on data from metered wells to arrive at the volumes it attributed to Nicole. The issue of whether that "adjustment" to the one-minute test results was authorized or achieved accurate results does not involve the matter of an "adjustment" of volumes already on Columbia's system; therefore, granting Nicole's Petition regarding Section 35 does not resolve that issue.³² Further, finding that Columbia is obligated to install and pay for meters also does not resolve the issue of how much gas actually entered Columbia's system. The Commission will leave for the court litigation the issue of whether Nicole and Columbia entered into an agreement to estimate un-metered receipt volumes by use of Columbia's calculation method. Further, the matter of whether the calculation methodology was a reasonably accurate way of determining volumes should also be for local litigation to resolve as it involves gas production technological issues.

36. Although the record reflects some 55 additional meters were needed to measure Nicole's gas, it does not include tariff provisions for what to do if there is no meter. It does, however, provide in Section 26.13 for calculations or agreements to estimate volumes in cases where an existing meter is inaccurate or out of service. By analogy, in the absence of a provision dealing specifically with situations where there is no meter, the Commission finds that it would be reasonable to apply the procedures in that section to resolve what volumes enter the system when there is no meter, including an agreement as to a calculation of volumes.³³ Accordingly, the Commission directs Columbia to file to revise Section 26.13 to apply to situations where there is no meter.

The Commission orders:

(A) Nicole's request for a declaratory order is granted as discussed above.

³²In framing the issue this way, we do not make any finding that Columbia's assertion, that it has not improperly reduced volumes that actually entered its system, is correct. While that is an issue normally for Columbia's fuel tracker cases, it cannot be resolved without first resolving the issue of how much of Nicole's gas actually entered Columbia's system. It is that latter issue that we defer to the courts to resolve.

³³For the same reasons as discussed earlier in rejecting Columbia's jurisdiction arguments regarding meters, we reject Columbia's claim that the provision for a correction factor in its tariff is beyond the Commission's jurisdiction.

Docket No. RP03-243-000

- 15 -

(B) Columbia's tariff is clarified as discussed in the body of this order.

(C) Within 30 days of this order, Columbia must file revised tariff sheets reflecting revised tariff language as specified in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.