124 FERC ¶ 61,113
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gulf Transmission Company | Docket No. RP08-266-000

ORDER REJECTING TARIFF SHEETS

(Issued July 30, 2008)

1. On May 7, 2008, Columbia Gulf Transmission Company (CGT) filed tariff sheets[1] to implement a new Meter Access Service under Rate Schedule EMA and a new Interruptible Meter Access Service under Rate Schedule IMA, proposing an effective date of August 1, 2008. These meter access services would consist of shippers' use of capacity created at new and expanded receipt and delivery points on its system. For the reasons discussed below, the Commission rejects the proposed tariff sheets.

Background

2. In its transmittal letter, CGT states that its system is fully subscribed, but an expansion of its mainline capacity is not financially warranted at this time. However, CGT states that some shippers have expressed an interest in expanding the capacity at several points on CGT's system, such as interconnections with other interstate pipelines, in order to have greater access to competitive markets. CGT states that it would not be economically worthwhile for it to invest the capital needed to construct new points or expand existing point capacity without some means of recovering its investment. However, CGT states that, currently, it has no means to do so, because there is no additional firm mainline capacity that it could offer at transportation rates that would recover the costs of building the incremental point capacity. Therefore, it proposes the new meter access services in order to provide it an economic incentive to invest in new or expanded points and thus make additional capacity available at new and existing points on its system. CGT believes that the proposed services would benefit shippers by

[1] The proposed tariff sheets are listed in the Appendix.

providing them with increased operational flexibility and increased access to competitive markets.

Details of the Proposal

3. Meter access service would consist of shippers' use of incremental capacity at meter access points as described in Rate Schedules EMA and IMA and defined in the General Terms and Conditions (GT&C). CGT states that service under Rate Schedule EMA would have a scheduling priority above interruptible service but below firm service under CGT's tariff, thereby ensuring that existing firm shippers will not be affected by the new EMA service. Accordingly, CGT states that EMA service is appropriately considered an interruptible service under the Commission's Part 284 regulations. CGT states that service under Rate Schedule IMA is interruptible and will have a lower priority than service under Rate Schedule EMA.

4. CGT proposes to define the incremental capacity used by the EMA and IMA services as "the amount of meter capacity at a Meter Access Point that is made available as a result of [CGT's] expansion of the meter at an existing point or construction of a new point"[2] [. . .] "when there is no available transportation capacity to provide increased transportation service."[3] Section 2(a) of Rate Schedule EMA states that "[q]ualifying Meter Access Points will be determined in [CGT's] sole discretion."[4] In its transmittal letter, CGT states that all capacity at newly constructed points will be deemed meter access capacity.[5] CGT also indicates that meter access service will be applicable to expanded or newly constructed pipeline interconnections.[6]

5. Once meter access service is implemented, all point capacity that is not designated as meter access capacity would be considered general point capacity not subject to the proposed tariff provisions. At meter access points created by expanding metering capability, the meter capacity prior to the expansion would be considered general point capacity. General point capacity and meter access capacity would always be scheduled

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[2] Proposed GT&C section 1.24.

[3] Proposed GT&C section 1.26.

[4] CGT stated that if a shipper reimburses CGT for construction or expansion of a point, the new capacity that is created as a result will not be considered meter access capacity. Answer at 12. However, CGT would retain sole discretion to determine the designation of a point as a meter access point.

[5] Transmittal Letter at 3, Answer at 11.

[6] Transmittal Letter at 2.

separately, with all general point capacity scheduled first. Thus, even if unsubscribed or unused general point capacity became available due to a contract termination or otherwise, such capacity could not be scheduled as meter access capacity. Similarly, unsubscribed or unused meter access capacity could not be scheduled as general point capacity.[7]

6. Unsubscribed meter access capacity would be made available to shippers through an auction process, with awards going to bids with the highest net present value.

7. In order to nominate a complete transportation transaction, a meter access service shipper would nominate capacity under a transportation contract, in combination with any receipt and/or delivery meter access capacity it wishes to use as part of the transportation path. Shippers could nominate any combination of firm or interruptible transportation capacity and EMA or IMA service to which they subscribe. Thus, a shipper could nominate primary or secondary firm or interruptible capacity under its transportation contract, in combination with whatever priority point capacity it has under its meter access service contract.

8. CGT's tariff generally describes its scheduling process when nominations exceed available capacity as first prioritizing nominations through all delivery points, then at internal locations between the receipt and delivery points (i.e., along the transportation path), and finally through all receipt points in that order.[8] Thus, whether a nomination utilizing meter access service is ultimately scheduled depends not only on the priority of the nominated transportation service at each location along the transportation path, but also on the priority of the nominated meter access service relative to other meter access nominations at the applicable point(s). CGT proposes to curtail meter access capacity based on the priority of the underlying transportation contract.[9]

9. CGT states that if it expands the available transmission capacity to a Meter Access Point, it will exercise one of two options. If there are no contracts for meter access service at that point, CGT may exercise its option to change the point's designation as a meter access point. Alternatively, CGT may undertake an additional expansion of the meter in order to retain the same level of meter access capacity at that point. In either case, any non-meter access point capacity at the point would be increased in proportion to the amount of transportation capacity added.

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[7] Rate Schedule EMA, section 2(d).

[8] GT&C section 7.1.

[9] Non-meter access capacity would continue to be curtailed, as currently provided in GT&C 16.4, according to the priorities at the constrained location.

10. In addition to its primary meter access points, a meter access shipper will have the right to access all other meter access points on CGT's system on a secondary basis, subject to the ability of the shipper to access the secondary point under its transportation contract.[10] Enhanced Meter Access capacity can be released but not segmented.[11]

11. CGT states that the rate for EMA service will be the same as the base reservation rate applicable to FTS-1 service: \$0.1034 per Dth per day. The rate for IMA service will be the same as the daily equivalent of the base reservation rate applicable to FTS-1: \$0.1204 per Dth. CGT maintains that because the proposed rates are based on its existing FTS-1 rates, which have been approved by the Commission and are cost-based, it has presented a just and reasonable foundation for the proposed EMA and IMA rates.

Notice of Filing, Protests, Answer and Reply

12. Public notice of CGT's filing was issued on March 10, 2008 and published in the *Federal Register*, 73 Fed. Reg. 13,880 (2008), with interventions and protests due by March 19, 2008. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), all timely filed motions to intervene are granted. Protests were filed by Indicated Shippers;[12] Bear Energy LP; and jointly, by Piedmont Natural Gas Company, Inc. and Atmos Energy Corporation (Piedmont/Atmos). The protests variously requested that the Commission reject the filing, condition acceptance of the filing on further revisions and clarifications, suspend the proposed rates for the maximum allowable period, establish an evidentiary hearing, and convene a technical conference. On April 4, 2008, CGT filed an answer to the protests, and on April 21, 2008, Indicated Shippers filed a reply to CGT's answer. We will accept the Indicated Shippers' reply and CGT's answer as they have assisted the Commission in its decision-making process.[13]

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[10] Rate Schedule EMA, section 2(e).

[11] Rate Schedule EMA, sections 2(f)(1) and (2).

[12] Indicated Shippers consist of Chevron U.S.A. Inc.; ConocoPhillips Company; ExxonMobil Gas & Power Marketing Company, A Division of Exxon Mobil Corporation; Hess Corporation; and Interstate Gas Supply, Inc.

[13] *See, e.g.*, *Midwest Independent System Operator Corp.*, 121 FERC ¶ 61,132 at P 12 (2007); *Westar Energy, Inc.*, 121 FERC ¶ 61,108 at P 18 (2007).

Protests

Indicated Shippers

13. Indicated Shippers protest several aspects of CGT's proposal, arguing that the proposal is not just and reasonable, is ambiguous and requires clarification. As such, Indicated Shippers request that the Commission establish a technical conference. Indicated Shippers contend that the proposed rates far exceed the cost of service, and are based on mainline transportation service rates when the proposed service is not mainline service. Further, according to Indicated Shippers, CGT failed to demonstrate why its proposed system-wide rates for EMA and IMA service are based on its highest zone rates. Indicated Shippers also argue that treating the proposed rates as reservation rates is improper, since there is no guarantee of service availability and the service appears to be interruptible (though according to Indicated Shippers, CGT's representations on this point are inconsistent).

14. Indicated Shippers state that although CGT projects only minimal revenues from the proposed service, it has failed to file any workpapers documenting the impacts of such revenue or costs. CGT does not define, according to Indicated Shippers, the direct costs which it will track, nor does it indicate that it will track revenues. Further, Indicated Shippers argue that the impacts of the proposed service on existing services must be quantified and explained, particularly as it may affect shippers' ability to schedule service. Indicated Shippers also challenge CGT's proposed prioritization of service based on points as violating Commission policy and precedent.

15. Before the proposed service can be accepted, Indicated Shippers argue that several aspects of the proposal require further clarification, including the determination, differentiation or conversion between general and meter access capacity at given points, and expansion of meter access points. Finally, Indicated Shippers argue that any approval of this proposal cannot be applied as precedent to a reticulated pipeline, which would raise much more substantial concerns.

Piedmont/Atmos Protest

16. Piedmont/Atmos join in the protest filed by the Indicated Shippers, arguing that CGT's proposal contains insufficient information and CGT seeks to implement market-based rates for the proposed services, without any recourse to existing rates, in an area where CGT has market power. They emphasize that the proposed rate for EMA and IMA service is based on the mainline FT-1 rate, which is a cost-based rate, but the cost of establishing meter access points and capacity should be significantly less than that of mainline service. Further, Piedmont/Atmos note that CGT does not specify where it will develop meter access points, nor the quantity of capacity it plans to add, nor how the quantity of such expansion will be determined. Piedmont/Atmos ask that the filing be

rejected, or in the alternative, set for hearing so that CGT could provide full information about its proposal.

Bear Energy Protest

17. Bear Energy protests CGT's filing, requesting that the Commission reject its proposed rates for meter access service and clarify certain aspects of the proposal, including the scheduling, allocation and curtailment provisions. Bear Energy objects to the proposed rates since they are for facilities which have yet to be built or even planned, and several operational aspects of the proposal remain unclear. Bear Energy argues that the use of CGT's currently-effective FT-1 rates for EMA and IMA service is contrary to Commission policy and precedent, and essentially allows CGT to charge market-based rates for the proposed meter access service. It notes that the EMA and IMA services are not transportation services, as CGT itself admits, such that the use of a mainline transportation rate is not appropriate. Further, Bear Energy argues that CGT has failed to satisfy the requirements set forth in the Commission's regulations for such proposals, including the filing of workpapers showing costs and volumes, as well as the requirement that rates be designed so as to recover actual costs based on projected units of service. It asserts that the cases cited by CGT do not support the instant proposal, as none of them stand for the proposition that system-wide mainline transportation rates could be used as a proxy for meter expansion facilities which have not yet been cost-estimated, scoped or even built.

18. Bear Energy states that Northern Border Pipeline Company recently filed in Docket No. CP08-72-000 for authority to construct a new interconnect and to establish a rate for firm and interruptible compression service at the new point based the design capacity and actual capital facility costs of the new point and asserts that there is no reason why Columbia Gulf should not follow the same process to establish cost-based rates for each Meter Access Point it constructs. Bear Energy also notes that in similar situations to the instant proposal, where the pipeline has proposed rates for future expansion facilities with little support, the Commission has simply rejected the proposal as premature. Bear Energy also asks that the Commission condition any future attempts by CGT to roll-in the costs of meter access service, so as to protect CGT's shippers from any "double-dipping." Finally, it asks that the Commission order CGT to clarify certain aspects of its proposal, including curtailment, scheduling and allocation.

CGT's Answer

19. On April 4, 2008, CGT sought leave to answer and answered the protests by Indicated Shippers and Piedmont/Atmos. It first opposes Piedmont/Atmos' assertions that the proposed rate for EMA and IMA service is a market-based rate, arguing that the rate for meter access service is based on CGT's existing Commission-approved cost based rates, with both a minimum and a maximum rate proposed. CGT emphasizes that Commission policy allows rate proposals filed between rate cases to be based on

currently-approved cost-based rates, and meter access service will be offered system-wide such that it is comparable to the FT-1 rates upon which it is based.

20. CGT also argues that a reservation charge is appropriate for meter access service. According to CGT, the proposed service does not fit into either the firm or interruptible category, and cites Commission precedent allegedly demonstrating that reservation rates may be charged for services such as that proposed herein. Finally, CGT argues that it has sufficiently supported its proposal, which does not require detailed cost analysis of how much each point expansion will cost or where shippers will request such expanded access. CGT also provided clarification on certain issues raised by protesters, including access to the proposed service by shippers who have not subscribed to it and how the determination of meter access capacity versus general capacity will be made.

Indicated Shippers Reply

21. On April 21, 2008, Indicated Shippers replied to CGT's answer on one point: scheduling priority for the proposed EMA service at a primary meter access service point. They assert that CGT's answer has created greater ambiguity on the firmness of the proposed service, which according to Indicated Shippers, now appears even less firm. Indicated Shippers assert that a technical conference is needed to resolve this issue, as well as the other issues previously identified.

Discussion

22. The Commission finds that CGT's proposal is unsupported and is inconsistent with the Commission's interconnection and open-access policies. Therefore, we will reject the proposed tariff sheets.

23. CGT claims that because its financial evaluations do not support building additional mainline capacity, Meter Access Service will address the issue of how to provide its shippers with increased access to competitive markets. But CGT does not explain why its proposed Meter Access Service is necessary to address this issue. Here, simply put, CGT is proposing to construct new points or increase capacity at existing points and, instead of seeking direct reimbursement for the costs of the new points or upgrades, to charge the same rates as it charges for mainline open access transportation service.

24. Apart from the fact that we find that this is not a legitimately unbundled "service" and the proposed rates are unsupported, as discussed in more detail below, we find that the proposal is contrary to our interconnection policy established in *Panhandle*.[14] The

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[14] *Panhandle Eastern Pipe Line Corp.*, 91 FERC ¶ 61,037 (2000) (*Panhandle*).

Panhandle interconnection policy enables a party desiring access to a pipeline to obtain an interconnection if it satisfies five conditions: (1) the party seeking the interconnection must bear the cost of construction of the interconnection; alternatively the party seeking the interconnection could construct the facilities in compliance with the pipeline's technical requirements; (2) the proposed interconnection must not adversely affect the pipeline's operations; (3) the proposed interconnection and resulting transportation must not result in diminished service to the pipeline's existing customers; (4) the proposed interconnection must not cause the pipeline to be in violation of any applicable environmental or safety laws or regulations with respect to the facilities required to establish an interconnection with the pipeline's facilities; and (5) the proposed interconnection must not cause the pipeline to be in violation of its right-of-way agreements or any contractual obligations with respect to the interconnection facilities. The Commission stated that the policy requires the pipeline to grant the interconnection if the conditions are satisfied.[15] In *Transcontinental Gas Pipe Line Corporation,*[16] we clarified that, although the pipeline should have the discretion to decide whether it or the shipper will actually perform the construction, if the pipeline performs the construction the shipper may choose whether to reimburse the pipeline up front in a lump sum or over time in a surcharge. We also scrutinized Transco's proposed interconnection economic tests to ensure that Transco would not be able to improperly deny an interconnect.

25. Thus, if CGT's existing shippers are willing to reimburse CGT for costs associated with construction of a new point, provided the other *Panhandle* conditions are satisfied, then CGT must allow the requested access and provide transportation service to or from the point consistent with the terms of any applicable service agreement.[17] We also find that CGT's proposal regarding the upgrade of existing point capacity should be subject to the same *Panhandle* requirements. Accordingly, CGT's proposal to reserve the sole right to determine when and where to construct new points or upgrade existing points would violate our *Panhandle* policy.

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[15] *Panhandle*, at 61,141.

[16] 95 FERC ¶ 61,245 (2001). *But see*, *Transcontinental Gas Pipe Line Corp*., 113 FERC ¶ 61,165 (2005) (accepting the pipeline's proposal to require advance payment for all reimbursable costs unless the pipeline and shipper mutually agree to an alternative payment method).

[17] CGT appears to recognize that reimbursement is a vehicle to make point construction projects economically viable as it states that if a shipper reimburses CGT for construction or expansion of a point, the new capacity that is created as a result will not be considered Meter Access capacity. CGT Answer at 12.

26. In addition to the problem with the conflict this proposal presents with our *Panhandle* interconnection policy, CGT's claims that this proposal entails the provision of an actual unbundled "service" and that the application of the FTS-1 rate as a proxy for a rate properly designed to recover only the costs of the proposed services is appropriate are unsupported and rejected. Access to a transmission system is not a service in and of itself and is part of the open access rights attributable to the Part 284 transportation service provided by the use of the pipeline's transmission system facilities under its transportation rate schedules, such as FTS-1.[18]

27. Further, even assuming that Meter Access Service could reflect an actual, unbundled service, the proposed rates for this claimed service are not justified. CGT attempts to support using its existing FTS-1 rates as a proxy here by citing to the Commission's statement in *Columbia Gas* that "[i]n between rate cases, the Commission accepts initial rates for new services <u>if designed properly</u> based on a currently-approved cost-based rate. Issues regarding the levels and allocation of costs can be addressed in the pipeline's next rate case."[19] The underscored quoted language requires that initial proxy rates for new services must be properly designed, not simply borrowed from other services without regard to whether there is a rational basis for the choice of the proxy rate. Thus, in *Columbia Gas*, the Commission considered the fact of the operational similarities between the existing and proposed no-notice services and the fact that the proposed rates reflected appropriate adjustments to the proxy rates: "Here, Columbia's NTS-S Service rates are appropriately based on its existing no notice NTS Service rates, and are adjusted to give consideration to the hourly flexibility under this new service."[20] For example, in *Tennessee Gas Pipeline Company*,[21] the Commission found that "existing tariff charges for storage injections cannot automatically be applied to" the pipeline's proposed in-place storage transfers. The Commission stated: "[T]he injection and withdrawal charges set forth in Tennessee's tariff were presumably not designed to recover the actual costs incurred by Tennessee [attributable to the proposed in-place

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[18] *See, e.g., Dominion Transmission, Inc*., 119 FERC ¶ 61,242 (2007), *reh'g denied*, 121 FERC ¶ 61,164, at P 7 (2007) (rejecting a proposed "access charge," but authorizing Dominion to propose an incremental transportation rate as the proposed project would add transportation capacity and not simply create access to Dominion's system.).

[19] *Columbia Gas Transmission Co.*, 122 FERC ¶ 61,239, at P 36 (2008) (footnote omitted and emphasis added).

[20] *Id*. (emphasis added).

[21] 75 FERC ¶ 61,252 (1996).

transfers], but were only propose to be assessed in lieu of a charge specifically designed to recover such costs."[22]

28. Here, there is no similarity between the proposed service and the FTS-1 service whose rate is being proposed as a proxy (i.e., "access" to the transmission system even if considered a "service" is not the same as point to point transmission service). Further, there is no similarity between the costs to be recovered by the proposed rates and the costs recovered by the FTS-1 rates (i.e., the cost of a new or upgraded receipt or delivery point versus the costs the CGT transmission system rolled into and recovered by its transmission rates). Since FTS-1 rates are designed to recover CGT's transmission costs, which would not include the cost of any as yet not constructed new points or point upgrades, using FTS-1 rates would overrecover costs allocated to those FTS-1 rates. In addition, since the EMA service is interruptible, it would be inappropriate to charge a reservation charge for that service as CGT proposes.[23] Thus, there is no rational basis for the proposed rates.

29. Finally, we agree with the protests that the proposal lacks sufficient clarity regarding many aspects of its proposal, including curtailment, scheduling and capacity allocation, such that we could not find it just and reasonable.

<u>The Commission orders</u>:

The tariff sheets listed in the Appendix are rejected.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[22] *Id*.

[23] See 18 C.F.R. § 284.9(c) (2008).

Appendix

Columbia Gulf Transmission Company: Second Revised Volume No. 1
Docket No. RP08-266-000

List of rejected tariff sheets:

Eighth Revised Sheet No. 1
Eighth Revised Sheet No. 20
First Revised Sheet No. 95
Original Sheet No. 96
Original Sheet No. 97
Original Sheet No. 98
Original Sheet No. 99
Fifth Revised Sheet No. 128A
Eleventh Revised Sheet No. 129
Fourth Revised Sheet No. 129A
Ninth Revised Sheet No. 130
Fourth Revised Sheet No. 145A
Original Sheet No. 162B
Tenth Revised Sheet No. 163
Fifth Revised Sheet No. 164
Sixth Revised Sheet No. 206
First Revised Sheet No. 336
Original Sheet No. 337
Original Sheet No. 338
Original Sheet No. 339