124 FERC ¶ 61,121
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 Nos. RP07-174-001 and RP07-174-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued July 31, 2008)

1. On June 11, 2007, the Commission issued an order accepting and suspending revised tariff sheets filed by Columbia Gulf Transmission Company (Columbia Gulf) to be effective on the earlier of January 1, 2008, or a date specified in a further order of the Commission, subject to refund and conditions and further review.[1] Columbia Gulf's revised tariff sheets were filed to implement daily delivery point scheduling penalties to coincide with the anticipated launch date of its new Electronic Bulletin Board (EBB) and gas management system, Navigates, and provisions for resolving monthly shipper imbalances, including a tiered cash-out mechanism. Piedmont Natural Gas Company, Inc. (Piedmont) filed a request for rehearing of the June 11 Order.[2] For the reasons discussed below, the Commission denies the request for rehearing by Piedmont.

2. On June 26, 2007, Columbia Gulf filed revised tariff sheets[3] and information and explanations to comply with the June 11 Order (June 26 compliance filing). The Commission accepts the revised tariff sheets listed in footnote No. 3 of this order to be

[1] *Columbia Gulf Transmission Co.*, 119 FERC ¶ 61,268 (2007) (June 11 Order).

[2] Columbia Gulf filed, on August 22, 2007, a notice of withdrawal of its request for rehearing of the June 11 Order.

[3] The revised tariff sheets filed on June 26, 2007, are Ninth Revised Sheet No. 216, First Revised Sheet No. 216A, First Revised Sheet No. 216B, First Revised Sheet No. 216C, Sixth Revised Sheet No. 217, Sixth Revised Sheet No. 218, First Revised Sheet No. 219 to Columbia Gulf's FERC Gas Tariff, Second Revised Volume No. 1.

effective on the later of August 1, 2008,[4] or the commencement of Navigates on the Columbia Gulf system[5] and the June 26 compliance filing as in compliance with the June 11 Order, subject to conditions, as discussed below.

I. Background

3. On February 16, 2007, Columbia Gulf filed to revise section 19 of its General Terms and Conditions (GT&C) to implement the new daily delivery point scheduling penalties. The scheduling penalties would apply to the difference between a shipper's scheduled deliveries at a delivery point and gas quantities the shipper actually takes at the point each day. During non-critical periods, the penalty would be imposed on each Dth taken that varies by 5.0 percent or more either above or below the scheduled quantity, and would be equal to Columbia Gulf's then effective ITS-1 rate for Interruptible Transportation Service (IT). Columbia Gulf originally proposed to impose a scheduling penalty when a "critical notice" was issued on each Dth taken that varies by 2 percent or more above or below the scheduled quantity, and would be equal to three times the midpoint of the range of prices reported for "Columbia Gulf, Louisiana" as published in *Platts Gas Daily* price survey. Columbia Gulf would credit any revenues from these penalties to its non-offending shippers pursuant to its existing penalty revenue crediting mechanism. Columbia Gulf also proposed to revise section 19 to implement a monthly imbalance resolution process with a tiered cash-out imbalance mechanism for Cumulative Monthly Imbalances. Columbia Gulf originally proposed the filing to be effective June 1, 2007, but subsequently filed on several occasions to move the effective date later in time to reflect delay in the implementation of the new Navigates computer system. The filing was protested.

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[4] On March 26, 2008, Columbia Gulf filed, in Docket No.RP07-174-004, to change the requested effective date of the revised tariff sheets to June 1, 2008, to coincide with the revised launch date of Navigates. On April 23, 2008, Columbia Gulf's request to change the effective date to June 1, 2008, was granted in an unreported delegated letter order. On April 25, 2008, Columbia Gulf filed a notification of its commitment that proposed sections 19.5, 19.6 and 19.7 (Eighth Revised Sheet No. 216 and First Revised Sheet Nos. 216A, 216B, and 216C) will not be moved into effect until August 1, 2008. On May 20, 2008, as corrected on May 21, 2008, Columbia Gulf filed notification that the launch date of Navigates would be delayed, and the affected tariff sheets would not be placed into effect until the launch date of the Navigates. On July 21, 2008, as corrected on July 22, 2008, Columbia Gulf informed the Commission that Navigates would be launched on August 1, 2008.

[5] If Navigates commences on a date later than August 1, 2008, Columbia Gulf is directed to file a letter at least thirty days prior to that commencement stating the revised commencement date.

4. In the June 11 Order, the Commission accepted and suspended the revised tariff sheets to be effective on the earlier of January 1, 2008, or a date specified in a further order of the Commission, subject to refund and conditions and further review. The Commission found that the proposed scheduling penalties and monthly imbalance resolution process were generally consistent with Commission policy. However, the Commission directed Columbia Gulf to file revised tariff sheets and provide information and explanations, including why its proposed "critical notice" scheduling tolerance level of 2.0 percent should not be increased to 3.0 percent or some higher level, as described in detail below.

II. Discussion

A. Rehearing

5. In its request for rehearing, Piedmont argues that Columbia Gulf offered no credible evidence of operational impairment in support of the scheduling penalty proposal. Piedmont asserts that the data is limited to four months of actual operational experience (three during the summer) and a limited number of customers, several of whom are very small, and, therefore, is highly selective. Piedmont argues that the mere fact that imbalances can occur does not provide any useful information related to determining operational risk. Piedmont further argues that this showing does not support the existence of actual operational issues arising from current operations or the need for scheduling penalties in order to preserve reliable service. Piedmont contends that the net impact of variations in Columbia Gulf's support is highly exaggerated by its use of the percentage of the difference between scheduled and actual quantities delivered rather than the actual quantitative difference.

6. However, as the Commission found in the June 11 Order, Columbia Gulf is not required to show actual impairment of service, and pipelines may anticipate potential threats to reliable service during critical periods and take action to prevent them.[6] As the Commission noted in the June 11 Order, when a critical period has been declared and a shipper schedules quantities of gas greater than the actual takes, or schedules quantities of gas less than actual takes, Columbia Gulf has less operational control over its system and may experience increased operational risk. Therefore, Columbia Gulf has shown that scheduling variances have the potential to cause operational problems which may threaten the system's integrity and reliability of service during critical periods. Columbia

[6] June 11 Order, at P 26 citing *Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,134, at P 15 (2006) and *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61, 365, at 63,550-51 (1993). *See also Columbia Gulf Transmission Co.*, 115 FERC 61,135, at P 16 (2006).

Gulf is not required to demonstrate particular examples of shipper violations or general shipper behavior causing operational stress on its system. Further, Commission policy permits a nominal scheduling penalty at the IT rate level for non-Critical Days when scheduling variances will not have operational effects on the pipeline to provide an incentive to schedule accurately and to compensate the pipeline for its lost opportunity costs.[7] Therefore, there is no need to further address Piedmont's arguments related to the sufficiency of Columbia Gulf's support.

7. Piedmont further contends that Columbia Gulf's assertion that scheduling variances make it difficult to predict and post capacity on a daily basis indicates that its motives are more economic than operational since it can not sell capacity if it is being used by its customers. Piedmont asserts that Columbia Gulf will make additional capacity available for sale through its Auto PAL service accepted in Docket No. RP07-478[8] and this is patently unjust when shippers are penalized for operating within their contract demands for which they are compelled to pay fully compensatory charges. Piedmont argues that Columbia Gulf is compensated for its costs of service to provide up to maximum daily quantities to its shippers but is able to recapture capacity through variance restrictions and penalty structures.

8. However, consistent with Commission policy, a shipper does not have a right to scheduling flexibility within its contractual entitlements to create scheduling variances which could threaten the reliability of service to all customers. Columbia Gulf does not have the asserted economic motive since penalty revenues are credited to non-offending shippers and not retained by Columbia Gulf. Further, the scheduling penalties are not imposed at the pooling points where Auto PAL service is applicable.[9]

9. Piedmont also argues that Columbia Gulf's Auto PAL service filing in Docket No. RP07-478 contradicts its argument that system reliability requires daily scheduling penalties. Piedmont asserts that offering the Auto PAL service means that Columbia Gulf's system is capable of handling the difference between scheduled and delivered volumes. Piedmont further asserts that the Auto PAL service, with its retained incremental revenues, is being proposed in order for customers to avoid the scheduling penalties. Piedmont argues that to the extent that Columbia Gulf is able to offer Auto PAL at a given pooling point on a given day, there is no justification for allowing scheduling penalties at that point on that date.

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[7] *Natural Gas Pipeline Co. of America*, 103 FERC ¶ 61,174, at P 63 (2003).

[8] *Columbia Gulf Transmission Co.*, 121 FERC ¶ 61,147 (2007); unpublished delegated letter order issued March 7, 2008 accepting compliance filing.

[9] 121 FERC ¶ 61,147 at P 12.

10. However, as explained above, the scheduling penalties are not imposed at the pooling points where the Auto PAL service is applicable and, accordingly, a shipper need not subscribe to the Auto PAL service in order to avoid the scheduling penalties. Therefore, Piedmont's arguments concerning the Auto PAL service are without merit.

11. Based on the foregoing, Piedmont's request for rehearing is denied. However, As discussed below, in the June 11 Order (at P 43), the Commission required Columbia Gulf to revise proposed section 19.8(e) of its GT&C to include scheduling variances, consistent with Columbia Gas Transmission Corporation's (Columbia Gas) proposed revision of existing section 19.5 (e) in proposed section 19.6 (e) of its GT&C, to state that:

> To the extent that any imbalance *or scheduling variance* directly results from Shipper's reliance on inaccurate data from Transporter, or is otherwise caused by Transporter, no penalty will be assessed for that portion of the imbalance *or scheduling variance* shown by Shipper to be attributable to such inaccurate data. [Emphasis added.]

Therefore, Columbia Gulf will not impose a scheduling penalty if the scheduling variance resulted from the shipper's reliance on inaccurate data from Columbia Gulf. Columbia Gulf did not propose a similar revision to existing section 19.5(b) of Columbia Gulf's GT&C, proposed to be renumbered as section 19.8(b), in order to expressly exempt shippers from scheduling penalties determined to be caused by a bona fide force majeure event. That section currently states that:

> In the event Shipper seeks to avoid any penalty provided for in this section on the ground that such charge was incurred because of a force majeure event as defined at section 15 (Force Majeure) of the General Terms and Conditions, Shipper shall document such force majeure event to Transporter. Transporter shall waive penalties to the extent that it determines that the imbalance was caused by a bona fide force majeure event as defined at section 15. [[10]]

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[10] Section 15 states, in part, that:

> 15.1 Defined. Neither Transporter nor Shipper shall be liable to the other for any damages occurring because of force majeure. The term force majeure means an event that creates an inability to serve that could not be prevented or overcome by the due diligence of the party claiming force majeure. Such events include, but are not defined by or limited to, acts of God, strikes, lockouts, acts of a public enemy, acts of sabotage, wars, blockades, insurrections, riots, epidemics, landslides, earthquakes, fires, hurricanes, storms, tornadoes, floods, washouts, civil disturbances,

(continued…)

However, Columbia Gulf is directed, as reasonable and consistent with its revision of section 19.8(e), to file revised tariff sheets clarifying proposed renumbered section 19.8(b) to include scheduling variances by inserting the words “or scheduling variance” after the word “imbalance” within thirty days of the date this order issues. Therefore, shippers will also be exempt from a scheduling penalty, if the scheduling variance is caused by a force majeure event.

12. Finally, proposed section 19.9(b) erroneously refers to “this” section as section 19.6. Therefore, Columbia Gulf is directed to file revised tariff sheets correcting this tariff language to refer to section 19.9 within thirty days of the date of this order issues.

B. The Compliance Filing

1. Details of the Filing

13. As described above, Columbia Gulf proposed to impose substantially higher scheduling penalties during periods when a critical notice was issued than in other periods. In the June 11 Order, the Commission noted that Columbia Gulf’s tariff did not define when a “critical notice” would be issued or clarify for what period the proposed "critical notice” penalties would apply.[11] Therefore, the Commission directed Columbia Gulf to file revised tariff sheets incorporating the "Critical Day" definition and concept set forth in the tariff of Columbia Gas. Columbia Gulf proposes a new GT&C Section 19.10 to implement a "Critical Day Requirement for Penalties" provision that is the same as the provision set forth in Columbia Gas’ tariff.[12] Further, to comply with the June 11

> explosions, accidents, freezing of wells or pipelines, partial or entire electronic failure (including the failure of the EBB and the EBB backup plan, or the failure of SCADA or electronic measurement equipment), mechanical or physical failure that affects the ability to transport gas or operate storage facilities, or the binding order of any court, legislative body, or governmental authority which has been resisted in good faith by all reasonable legal means. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension.

[11] June 11 Order, at P 27.

[12] Proposed section 19.10 in the June 26 compliance filing, provides in part, that a “Critical Day” will be declared if Columbia Gulf determines, based on criteria such as weather forecasts, line pack, storage conditions, pipeline pressures, horsepower availability, system supply and demand, and other operational circumstances that operating conditions are such that Columbia Gulf faces a “threat to its system integrity and/or [its] ability to meet its firm service obligations.”

Order,[13] Columbia Gulf revises GT&C proposed section 19.4 to separate the scheduling penalty provision into two separate subsections to recognize that Critical Day and non-Critical Day scheduling penalty levels and tolerances are different.

14. The Commission directed Columbia Gulf to explain why its "critical notice" scheduling tolerance should not be increased from 2.0 percent to 3.0 percent or some higher level.[14] Columbia Gulf submits a revised tariff sheet increasing the tolerance level in proposed GT&C section 19.4 to 3.0 percent for the Critical Day scheduling penalty. Columbia Gulf asserts that the 3.0 percent level is fully consistent with its existing critical period penalties, the Takes in Excess of Total Firm Entitlements (TFE)[15] and Failure to Interrupt Service (FTI) penalties[16] in GT&C sections 19.1 and 19.2, respectively.

15. In response to Columbia Gulf stating, in its answer in Docket No. RP07-174-000, that it was receptive to including an absolute "safe harbor" tolerance to ensure that small shippers are not negatively affected, the Commission directed Columbia Gulf to revise

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[13] June 11 Order, at P 74.

[14] June 11 Order, at P 37.

[15] Section 19.1 of Columbia Gulf's tariff provides that, if a shipper takes gas within a zone in excess of 103 percent of its Total Firm Entitlement for that zone on any Day Columbia Gulf shall assess a penalty. Proposed section 19.10 provides that these penalties will only be imposed if a Critical Day has been declared and is in effect.

[16] Section 19.2 of the GT&C of Columbia Gulf's tariff provides, in part, that, if a shipper fails to interrupt service as directed by Columbia Gulf pursuant to GT&C section 16 and thereby delivers gas in excess of 103 percent of the lowered Scheduled Daily Receipt Quantity or Scheduled Daily Delivery Quantity under all applicable Rate Schedules as set by the interruption order, Columbia Gulf shall impose a penalty.

Section 16.1(a) provides, in part, that:

> If due to force majeure, other unforeseen conditions on Transporter's system, or operating conditions (such as, but not limited to, performing routine maintenance, making modifications, tests or repairs to Transporter's pipeline system or protection of the integrity and performance capability of its facilities), the gas available for delivery from Transporter's system or portion thereof is temporarily insufficient to meet all of Transporter's authorized firm services on any day, then Transporter, upon providing as much notice as possible, shall interrupt all such services in accordance with the priorities set forth at section 16.4 below.

the scheduling penalty to provide an absolute quantity "safe harbor" of 1,000 Dth.[17] Columbia Gulf revises proposed section 19.4 to include an absolute tolerance level for the scheduling penalties with a level of the higher of 1,000 Dth or 5 percent for non-Critical Days or 3 percent for Critical Days.

16. The Commission directed Columbia Gulf,[18] consistent with proposed GT&C section 19.6(e) of Columbia Gas's tariff to revise proposed GT&C section 19.8(e) to include scheduling variances. Columbia Gulf revises proposed GT&C section 19.8(e) to reflect the revised language.

17. The Commission held that Columbia Gulf cannot impose a non-critical notice scheduling penalty for the same conduct for which it imposes a critical notice scheduling penalty, and cannot impose either a critical notice or non-critical notice scheduling penalty for the same conduct that is also subject to a TFE, FTI, or Failure to Comply with Operational Flow Orders (OFO)[19] penalty.[20] Columbia Gulf revises proposed section 19.4(d) to prohibit the imposition of penalties under these circumstances. In addition, Columbia Gulf has revised proposed section 19.4(a) to clarify that the non-Critical Day penalty based on the Rate Schedule ITS-1 rate will apply only when a Critical Day has not been declared.[21]

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[17] June 11 Order, at P 40.

[18] June 11 Order, at P 43.

[19] Section 17.1(a) of the GT&C of Columbia Gulf's tariff provides, in part, that:

> Transporter, in its reasonable discretion, shall have the right to issue Operational Flow Orders (OFO) as specified in this section upon determination by Transporter that action is required in order to alleviate conditions which threaten the integrity of Transporter's system, to maintain pipeline operations at the pressures required to provide reliable firm services, to have adequate supplies in the system to deliver on demand (including injection of gas into the mainline and providing line pack), to maintain firm service to all Shippers and for all firm services, and to maintain the system in balance for the foregoing purposes.

[20] June 11 Order, at P 50.

[21] June 11 Order, at P 51.

18. The Commission found that the relationship of Operational Balancing Agreements (OBA) to Columbia Gulf's scheduling penalty requires additional explanation.[22] Columbia Gulf clarifies that variances between actual gas flows and confirmed nominations at each point covered by an OBA will be handled based on the terms of the OBA. Columbia Gulf further clarifies that shippers at points covered by OBAs will be deemed to be always in balance with Columbia Gulf. Columbia Gulf concludes that, therefore, the scheduling penalty will not apply to points covered by OBAs.

19. With respect to Columbia Gulf's proposed imbalance resolution cash-out mechanism, the Commission directed Columbia Gulf to clarify how the "Buy" and "Sell" prices will be determined under its monthly imbalance cash-out mechanism.[23] Columbia Gulf clarifies that the "Sell" price will be based on the highest price as between "Columbia Gulf-Rayne" and "Columbia Gulf-Erath" (i.e., Columbia Gulf will use the higher of the two prices in any given month). Columbia Gulf further clarifies that the "Buy" price will be based on the lowest price as between "Columbia Gulf-Rayne" and "Columbia Gulf-Erath" (i.e., Columbia Gulf will use the lower of the two prices in any given month). Columbia Gulf has revised proposed sections 19.6(a) and 19.6(b) to reflect these clarifications.

20. The Commission directed Columbia Gulf to clarify the manner, if any, in which the costs associated with operational sales and purchases of gas will be included in the Cash Pool, which reflects the cash balance and volumetric gas balance under its proposed cash-out mechanism.[24] Columbia Gulf clarifies that the costs associated with "operational sales and purchases of gas," as defined in GT&C section 41, will not be included in the Cash Pool. The Commission also directed Columbia Gulf to respond to Indicated Shippers' request for clarification concerning determination of the Cash Pool.[25] Columbia Gulf clarifies that it will credit all revenues attributable to high/low pricing of imbalances, regardless of the imbalance tier, to the annual determination of net cash-out loss or gain and will credit net-positive cash-out revenues, pursuant to proposed section 19.7. Columbia Gulf states that it believes that constant attempts to distinguish between penalties resulting from percentage multipliers for imbalances outside of the incremental tiers and revenues resulting from high/low pricing would be administratively burdensome and unnecessary. Columbia Gulf asserts that the inclusion of all gas imbalance cash-out purchases and sales into the Cash Pool is both administratively appropriate and just and reasonable.

[22] June 11 Order, at P 52.

[23] June 11 Order, at P 63.

[24] June 11 Order, at P 65.

[25] June 11 Order, at P 68.

21. The Commission directed Columbia Gulf to explain with adequate support how the cash-out mechanism will be implemented at OBA points on its system.[26] Columbia Gulf explains that variances between actual gas flows and confirmed nominations at each point covered by an OBA will be handled based upon the terms of the OBA. Columbia Gulf further explains that the presence of an OBA at a point should minimize the creation of imbalances for a shipper, but since a point is only one side of a transportation transaction, there is no direct correlation to whether that shipper ultimately will be subject to cash-out.

2. Notice, Protests, and Answer

22. Public notice of Columbia Gulf's filing in Docket Nos. RP07-174-001 was issued on June 29, 2007. Protests were due as provided in section 154.210 of the Commission's regulations. Indicated Shippers filed a protest to the June 26 compliance filing in Docket No. RP07-174-001. Columbia Gulf filed an answer to the protest.[27] The protest and answer will be discussed in detail below.

3. Discussion of the Compliance Filing

23. Columbia Gulf's compliance filing will be conditionally accepted as in compliance with the June 11 Order. The protest by Indicated Shippers is denied, as discussed below.

24. The Commission directed Columbia Gulf, in the June 11 Order, in response to requests by Sequent Energy Management, L.P. (Sequent) and Enbridge Marketing (U.S.) L.P. (EMUS) to explain with adequate support how the proposed penalties will be implemented at OBA points.[28] Sequent complained that Columbia Gulf failed to explain how the scheduling penalties would be implemented at OBA points, and EMUS argued that Columbia Gulf should be required to explain how the scheduling penalties will affect shippers using an OBA point as well as the OBA party itself.

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[26] June 11 Order, at P 70.

[27] The Commission's Rules of Practice and Procedure do not permit answers to protests (18 C.F.R. § 385.213(a)(2) (2008)). However, the Commission finds good cause to admit Columbia Gulf's answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record. Therefore, for good cause shown, Columbia Gulf's answer is accepted

[28] June 11 Order, at P 52.

25. Columbia Gulf clarifies in its compliance filing (at 3) that:

> variances between actual gas flows and confirmed nominations at each point covered by an OBA will be handled based on the terms of the specific OBA. Shippers at points covered by OBAs will be deemed to be always in balance with Columbia Gulf.

Columbia Gulf also includes, in its revised tariff sheets, proposed section 19.4(e) which expressly states that the scheduling penalties "will not apply at points of interconnection for which an OBA exists between [Columbia Gulf] and the Shipper."

26. Indicated Shippers argues that Columbia Gulf's filing fails to provide the information required by the June 11 Order and necessary for the Commission to make a determination regarding the proposal, including how Columbia Gulf's OBAs would handle scheduling variances, or whether OBAs provide for scheduling penalties. Indicated Shippers asserts that the information provided does not indicate the extent to which Columbia Gulf's deliveries are covered by OBAs. Indicated Shippers further asserts that Columbia Gulf's tariff includes a *pro forma* OBA, and, therefore, Columbia Gulf must provide information regarding the terms of its OBAs. Indicated Shippers asserts that Columbia Gulf does not indicate whether shippers at OBA points are subject to any penalties. Indicated Shippers argues that shippers may not control whether their delivery point has OBA coverage and, therefore, imposing the penalty on these similarly situated shippers based on a circumstance beyond their control would be unduly discriminatory. Indicated Shippers further argues that, if the facts show that a substantial amount of gas is delivered to points covered by OBAs, whether Columbia Gulf's penalty proposal has any meaningful relationship to the protection of system integrity is called into question.

27. In its answer, Columbia Gulf argues that it has more than adequately answered the Commission's request for clarification by stating that scheduling penalties will not be implemented at OBA points. Columbia Gulf asserts that, while Indicated Shippers claims that it did not provide adequate support showing how scheduling penalties will be handled at OBA points, such support is simply not necessary to prove the negative that scheduling penalties will not be implemented at OBA points.

28. There is no need for the information requested by Indicated Shippers. The Commission requested information regarding the imposition of the proposed scheduling penalty by Columbia Gulf and not how or the extent to which the parties to the OBA would resolve scheduling variances based on the terms of their OBA agreements.[29]

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[29] While OBAs are a jurisdictional activity, the Commission does not require pipelines to file OBAs if copies of executed agreements and detailed records are made

(continued…)

Columbia Gulf adequately responded that it will not impose the scheduling penalty at OBA points. In any case, Columbia Gulf, in its answer, responded to Indicated Shippers' contention that it did not indicate whether the shippers at OBA points or the point operators are subject to penalties, by stating that the OBAs that are currently in effect at Columbia Gulf's interconnects with other pipelines do not impose scheduling penalties. Columbia Gulf further responded that the OBAs provide terms and conditions for the reconciliation of operational imbalances[30] through physical flow adjustments, but do not set forth penalties for imbalances.

29. With respect to the request for information regarding the assertion of undue discrimination related to shippers not covered by OBAs, the exemption from scheduling penalties applies to all shippers at a delivery point covered by an OBA and the scheduling variances at such points are governed by the terms of the OBA. The Commission has encouraged pipelines to enter these types of arrangements where appropriate and directed that the OBAs be implemented on a non-discriminatory basis.[31] Further, the Commission's regulations require pipelines to have OBAs at all pipeline interconnects.[32] Accordingly, the Commission allows pipelines to permit OBAs to govern the resolution of the scheduling variances.[33] Consistent with that policy, Columbia Gulf states that the OBAs on its system provide terms and conditions for the reconciliation of operational imbalances through physical flow adjustments to which the parties have agreed. Therefore, it is appropriate that Columbia Gulf does not implement its scheduling penalty at points subject to OBA agreements. Indicated Shippers also requests information concerning the extent of coverage of OBAs related to the protection of system integrity. However, as the Commission pointed out in *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,267 (2007) (*Columbia Gas*), the possibility that only a small number of shippers will be subject to scheduling penalties has no relevance to the need for penalties to potentially deter conduct by any shipper.[34]

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available by the pipeline. *Transcontinental Gas Pipe Line Corp.*, 65 FERC ¶ 61,315, at 62,437 (1993) (*Transco*).

[30] The term operational imbalance as used in the *pro forma* OBA in Columbia Gulf's tariff refers to the inadvertent overdelivery or underdelivery of gas by one party to the other party relative to the shipper's nominated quantities.

[31] *Transco*, 65 FERC ¶ 61,315 at 62,436.

[32] 18 C.F.R. § 284.12(b)(2)(i) (2008).

[33] *See, e.g.*, *Iroquois Gas Transmission System, L.P.*, 63 FERC ¶ 61,285, at 62,913 (1993); *Viking Transmission Co.*, 63 FERC ¶ 61,104, at 61,659 (1993). *See also* NAESB Standards 2.13, *Business Practice Standards Book 1*; 2.2.1, 18 C.F.R. §284.12(a)(iii) (2008); and 2.3.64, 18 C.F.R. §284.12(a)(iv) (2008).

[34] *Columbia Gas*, 119 FERC ¶ 61,267 at P 40.

30. Columbia Gulf includes revised language in proposed section 19.4(e) which states that the scheduling penalties "will not apply at points of interconnection for which an OBA exists between [Columbia Gulf] and the Shipper." Columbia Gulf is directed to file, within thirty days of the date this order issues, revised tariff sheets eliminating the portion of the above-quoted tariff language following the word "exists." The Shipper may or may not be a party to the OBA. This language is unclear and unnecessary.

31. In the June 11 Order, the Commission denied Baltimore Gas and Electric Company's (BGE) request for numerical examples of how the proposed cash-out mechanism will work and how it will impact OBAs and Prior Period Adjustments (PPAs). However, the Commission directed Columbia Gulf to explain with adequate support how the cash-out mechanism will be implemented at OBA points.[35]

32. Columbia Gulf explained, in its compliance filing (at 4), that variances between actual gas flows and confirmed nominations at each point covered by an OBA will be handled based upon the terms of the OBA. Columbia Gulf further explained that the presence of an OBA at a point should minimize the creation of imbalances for a shipper, but since a point is only one side of a transportation transaction, there is no direct correlation to whether that shipper ultimately will be subject to cash-out.

33. Columbia Gulf presented that following example:

> assume in the month of June that Shipper A schedules 1,000 Dth to a delivery point covered by an OBA. 1,000 Dth will be deemed to be delivered at that OBA point, regardless of the physical delivery, because the OBA would handle the swing. However, if during the same month, Shipper A scheduled 1,000 Dth from a receipt point not covered by an OBA and only 800 Dth was physically received by Columbia Gulf at that non-OBA receipt point, Shipper A would have a monthly gas imbalance with Columbia Gulf that would be administered under the imbalance cash-out mechanism for the 200 Dth imbalance (i.e., the difference between the physical receipt of 800 Dth and the physical delivery of 1,000 Dth), assuming the imbalance is not resolved through netting and trading.
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> *If, however, using the same example, the receipt point is also an OBA point, the shipper is kept whole at both the receipt and delivery points, and therefore there is no imbalance.* [Emphasis added.]

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[35] June 11 Order, at P 70.

34. Columbia Gulf revised proposed section 19.7(e) to specifically provide that:

> variances between actual gas receipts and actual deliveries at each point covered by an OBA will be resolved in accordance with the terms of the OBA. Shippers will be deemed to be in balance with [Columbia Gulf] and will not be subject to [its] Cumulative Monthly Imbalance Cash-out Mechanism where the receipt point and the delivery point are both covered by an OBA.

35. Indicated Shippers argues that, as in the case of the daily scheduling penalties, Columbia Gulf failed to provide adequate support regarding its treatment of imbalances at OBA points. Indicated Shippers asserts that Columbia Gulf's filing does not identify which receipt and delivery points are covered by OBAs or the extent to which OBAs will govern resolution of receipt and delivery imbalances on a volumetric basis. Indicated Shippers further asserts that Columbia Gulf provides no information regarding how it resolves monthly imbalances under its OBAs. Indicated Shippers contends that the *pro forma* OBA in Columbia Gulf's tariff is illustrative only, and does not provide for cash-out of imbalances, or high/low pricing and penalty tiers. Indicated Shippers further contends that, the impact of the cash-out could be random, having no relationship to operational integrity, and, therefore, is unduly discriminatory. Indicated Shippers asserts that, as in the case of scheduling penalties, similarly situated shippers could face dramatically different imbalance cash-out resolution based on whether they were using points covered by OBAs. Indicated Shippers argues that this outcome would be unjust and unreasonable, and unduly discriminatory and preferential, and, therefore, contrary to the Natural Gas Act (NGA).

36. The information provided by Columbia Gulf adequately responds to the Commission's directive. The Commission requested information regarding how the cash-out mechanism will be implemented by Columbia Gulf at the OBA points. The Commission did not request information concerning how or the extent to which parties to the OBA resolve imbalances based on the terms of their OBA agreements. Columbia Gulf explained that the terms of the OBA govern variances between actual gas flows and confirmed nominations at each point covered by an OBA. Columbia Gulf further explained that the OBA only operates at a point and imbalances reflect the difference between receipts and deliveries. Therefore, as Columbia Gulf concluded, there is no direct correlation between imbalances subject to cash-outs and the OBA points unless both the receipt and delivery point are governed by OBAs. An imbalance may be created if the amount of gas received from the shipper at a receipt point without an OBA is different than the amount scheduled at a delivery point with an OBA. With respect to Indicated Shippers' assertions regarding undue discrimination, as discussed above, there is no undue discrimination between shippers at points covered by OBAs and shippers at points not covered by OBAs.

37. Finally, Indicated Shippers did not raise these issues related to the OBAs in its comments or request rehearing of the June 11 Order. Therefore, the information requested by Indicated Shippers is outside the scope of this compliance proceeding, and Indicated Shippers' request for further information is denied.

The Commission orders:

(A) Columbia Gulf's revised tariff sheets listed in footnote No. 3 of this order are accepted to become effective on the later of August 1, 2008, or the commencement of Navigates on the Columbia Gulf system, subject to conditions, as discussed in the body of this order and the Ordering Paragraphs below.

(B) The June 26 compliance filing is accepted as in compliance with the June 11 Order, subject to conditions, as discussed in the body of this order and the Ordering Paragraphs below.

(C) The request for rehearing of Piedmont is denied, as discussed in the body of this order.

(D) Columbia Gulf is directed to file revised tariff sheets (1) including scheduling variances in proposed section 19.8 (b) of its GT&C, (2) correcting language in proposed section 19.9(b) of its GT&C, and (3) eliminating revised tariff language in proposed section 19.4(e) of its GT&C, consistent with the Commission's discussion in the body of this order, within thirty days of the date this order issues.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.