

127 FERC ¶ 61,059
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Columbia Gulf Transmission Company	Docket Nos.	RP09-141-002 RP09-141-001 RP09-141-000
Columbia Gas Transmission Company		RP09-142-000 RP09-142-001 RP09-142-002 (not consolidated)

ORDER ACCEPTING TARIFF SHEET WITHDRAWAL
AND DENYING REHEARING AS MOOT

(Issued April 20, 2009)

1. On December 5 and 15, 2008, Columbia Gulf Transmission Company and Columbia Gas Transmission Company (collectively, Applicants) filed proposed changes to their tariffs to implement new firm daily delivery point scheduling services under Rate Schedules Scheduling Variance Service (SVS). Following the Commission's issuance of an order accepting and suspending the tariff sheets, and establishing a technical conference,¹ Applicants initially sought rehearing of the Suspension Order and subsequently moved to withdraw its proposed tariff sheets. In this order, the Commission accepts the tariff sheet withdrawal and denies Applicants' rehearing requests as moot.

I. Background

2. Columbia Gulf and Columbia Gas filed similar proposals for their two pipelines to establish Rate Schedule SVS on December 5 and 15, 2008. According to Applicants, the new service would provide transportation customers and delivery point operators (jointly referred to as shippers) who value additional scheduling flexibility with the option to

¹ *Columbia Gulf Transmission Co. and Columbia Gas Transmission Co.*, 126 FERC ¶ 61,006 (2009) (Suspension Order).

acquire additional variance quantities at points not covered by no-notice service or an operational balancing agreement. Applicants explained that they and the shipper will agree to a Maximum Daily Variance Quantity (MDVQ), which is defined as the maximum volume by which the shipper's scheduled deliveries can differ from its actual deliveries on any given day for a specific delivery point. For that shipper, according to Applicants, the MDVQ would then be added to the absolute value of the sum of the scheduling penalty tolerance levels of the shipper's transportation agreements at that point. The shipper's actual delivery quantities would be permitted to vary from the scheduled quantities by the tolerance level already provided plus the MDVQ contracted for under Rate Schedule SVS without incurring a scheduling penalty, so long as the shipper's deliveries do not exceed its total transportation demand. Therefore, they continue, a shipper's MDVQ will determine the level of scheduling flexibility for which it has contracted. Applicants explain that the additional variance quantity may not be used to increase a shipper's deliveries above its total transportation demand.

3. Several parties protested the establishment of Rate Schedule SVS, on several grounds. They first asserted that the Navigates electronic bulletin board system used by Applicants experiences continuing problems, making it difficult to perform business functions on the pipeline systems. Second, other protesters argued that Applicants already recover the costs of the assets proposed to be used for Rate Schedule SVS service from existing shippers. As such, these protesters asserted that Rate Schedule SVS is an attempt by Applicants to increase their revenue between rate cases.

4. On January 6, 2009, the Commission issued the Suspension Order accepting and suspending the proposed tariff sheets for five months, finding that they have not been shown to be just and reasonable. The Commission also established a technical conference to consider the Navigates and cost recovery issues raised by protesters.

II. Procedural Matters

5. Following the issuance of the Suspension Order, Interstate Gas Supply, Inc., BP Energy Company and BP America Production Company, Delta Energy, LLC, Southstar Energy Services, LLC, and Chesapeake Appalachia, L.L.C. filed motions to intervene out of time. As the Commission is granting Applicants' motions to withdraw, the Commission denies these motions to intervene out of time as moot.

6. On January 13, 2009, Applicants sought rehearing of the Suspension Order. On January 26, 2009, Atmos and Piedmont sought leave to answer the request for rehearing. We deny that motion as moot, as discussed herein.

7. Following Applicants' filing of motions to withdraw the proposed Rate Schedule SVS tariff sheets, several parties filed answers to the motions. On February 16, 2009, Applicants filed a motion for leave to file answer and answer to the shippers' answers. On February 20, 2009, Indicated Shippers and Sequent each filed an answer to

Applicants' answer. Although Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits answers to answers, the Commission will accept Applicants' answer, as well as the answers filed by the Indicated Shippers and Sequent, as these pleadings have aided us in our consideration of the issues.

III. Discussion

A. Request for Rehearing

1. Request

8. On January 13, 2009, Applicants filed requests for rehearing in both of the above-captioned dockets, arguing that the Commission erred in determining that issues of whether Applicants are currently recovering the costs of the assets to be used for service under Rate Schedule SVS should be considered at the technical conference. Rather, the Applicants assert that the Commission should have resolved these issues on their merits in the Suspension Order, since technical conferences are intended for the exchange of factual information. In contrast, they assert that here, there are no issues of material fact in dispute. Applicants further assert that the Commission should hold that revenues from Rate Schedule SVS are not subject to crediting to customers. Finally, Applicants argue that the protests by Atmos and Piedmont on these issues are a collateral attack on the Commission orders approving Applicants' scheduling penalties.

2. Commission Determination

9. As discussed below, the Commission denies Applicants' requests for rehearing as moot because the Rate Schedule SVS tariff sheets have been withdrawn.

B. Withdrawal of Rate Schedule SVS Tariff Sheets

1. Motion to Withdraw

10. On January 26, 2009, Applicants filed motions under section 154.205, 18 C.F.R. § 154.205, and Rule 216 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.216, to withdraw the proposed Rate Schedule SVS tariff sheets without prejudice. Applicants assert that Rate Schedule SVS is consistent with Commission policy and will benefit shippers that need greater flexibility. Applicants state that they will not impose scheduling penalties on their systems before April 1, 2009, the traditional end of the winter season. They also state that they will provide shippers with 30 days' notice before implementing those penalties.

11. Applicants assert, however, that a technical conference on the Navigates issues at this time would be an "unnecessary burden" on the Commission and shippers, since the technical conference would be convened to discuss a service which is designed to help

shippers avoid penalties which have not yet been imposed. Further, Applicants argue that a technical conference would require them to devote significant personnel and resources to the conference, rather than devoting such resources to Navigates. Applicants therefore move to withdraw the proposed Rate Schedule SVS tariff sheets without prejudice, to allow them time to respond to shipper concerns and implement planned changes on Navigates. Applicants assert that they will re-file the tariff sheets once these issues have been resolved.

2. Answers

12. On February 10, 2009, three parties filed answers in opposition to Applicants' motions to withdraw. Indicated Shippers argue that the tariff sheet withdrawal is unsupported and unjustified, and Applicants have not shown good cause for the withdrawal. Indicated Shippers assert that the desire to avoid a technical conference is not good cause. They further assert that the purpose of SVS service is to help shippers avoid scheduling penalties on the two pipelines' systems, and note that the penalties were justified in part by the introduction of the Navigates system. Further, Indicated Shippers argue that the withdrawal of Rate Schedule SVS would not moot the need for a technical conference to discuss the problems on Navigates because shippers need information to structure transactions and make informed decisions. Indicated Shippers also describe specific problems on the Navigates system, including Prior Period Adjustments.

13. Second, Sequent also opposes the motion to withdraw, arguing that the Commission should reject Applicants' request to cancel the technical conference, condition withdrawal of the tariff sheets upon scheduling the technical conference, and schedule the technical conference soon so that parties would have the opportunity to air their concerns about Navigates. Sequent emphasizes that the continuing problems with Navigates are taking a significant toll on the company, requiring it to divert resources to monitoring and correcting Navigates-related errors. According to Sequent, these problems are so pervasive that they must not be allowed to continue.

14. Third, NYSEG opposes Applicants' motions to withdraw, arguing that they should not be allowed to withdraw the Rate Schedule SVS tariff sheets without addressing the issue of Navigates problems set for technical conference. It asserts that the five-month suspension period is sufficient to address Navigates-related problems, before the Rate Schedule SVS tariff sheets go into effect. Second, NYSEG emphasizes that a technical conference is the appropriate forum in which to address the significant problems with Navigates that the shippers have raised. It notes that it looks forward to addressing these issues in a forum other than a customer meeting sponsored by one of the pipelines. Third, NYSEG notes that although Applicants indicated that they intend to refile the Rate Schedule SVS tariff sheets once the Navigates problems have been resolved, it is unclear whether the timing of such refiling will coincide with the introduction of scheduling penalties on the two pipelines' systems.

15. On February 16, 2009, Applicants filed an answer to the Indicated Shippers' and Sequent's answers. They assert that concerns regarding Navigates have nothing to do with proposed Rate Schedule SVS and the issues set for the technical conference do not relate to the merits of the proposed service. As such, Applicants assert that this proceeding is not the appropriate forum in which to resolve problems related to Navigates. Applicants emphasizes that neither Indicated Shippers nor Sequent protested the proposed SVS service itself and Sequent did not take a position on the motion to withdraw. Applicants state that they have been working on the Navigates problems for several months and have made responsive adjustments and enhancements to the system. They propose to submit a monthly report to the Commission, starting March 2, 2009, detailing shipper issues with Navigates, their proposed resolution of the issues and the timeline for such resolution.

16. On February 20, 2009, Sequent filed an answer to Applicants' answer. Sequent asserts that the applicants' claim that the Navigates problems have no bearing on the merits of proposed Rate Schedule SVS is absurd, because Navigates is critical to a shipper's ability to use SVS service. Sequent also asserts that the proposed monthly report will be a one-sided assessment of the Applicants' customer-service efforts, and will not provide the Commission with a realistic assessment of the Navigates system or the applicants' remedial efforts.

17. Also on February 20, 2009, Indicated Shippers filed an answer to Applicants' answer, asserting that the Applicants did not respond to Indicated Shippers' assertion that they failed to demonstrate good cause for the withdrawals of the proposed Rate Schedule SVS tariff sheets, and did not address their concern that scheduling penalties may be imposed as early as April 1, 2009, regardless of whether the Navigates system is working.

3. Commission Determination

18. Applicants seek to withdraw the proposed Rate Schedule SVS tariff sheets, which have been accepted and suspended by the Commission, with an effective date of June 5, 2009. Applicants filed their motions pursuant to section 154.205 and Rule 216 of the Commission's Rules of Practice and Procedure. Pursuant to Order No. 714, these sections have been revised effective November 3, 2008.² Rule 216 no longer applies to withdrawals of tariff filings.³ Section 154.205 states:

² *Electronic Tariff Filings*, Order No. 714, 73 Fed. Reg. 57,515 (Oct. 3, 2008), FERC Stats. & Regs. ¶ 31,276 (2008).

³ Order No. 714, FERC Stats. & Regs. ¶ 31,276 at P 78.

A natural gas company may not, within the period of suspension, withdraw a proposed tariff, executed service agreement, or part thereof, that has been suspended by order of the Commission, except by special permission of the Commission granted upon application therefor and for good cause shown.⁴

19. The Commission finds that Applicants have demonstrated good cause to withdraw the proposed Rate Schedule SVS tariff sheets. Since Applicants are not required to offer the proposed SVS service,⁵ and are not prepared to support their proposed tariff sheets,⁶ Applicants may withdraw the proposed Rate Schedule SVS tariff sheets. Accordingly, the Commission accepts the withdrawal of the relevant tariff sheets. If intervenors believe that the Commission's attention is necessary to resolve problems with Columbia's Navigates system or other aspects of the service provided on Applicants' pipelines, we remind intervenors that the Natural Gas Act and the Commission's Rules of Practice and Procedure provide procedural mechanisms for the Commission's involvement.⁷

The Commission orders:

(A) Columbia Gas' motion to withdraw the tariff sheets filed in Docket Nos. RP09-142-000 and -001 is granted.

(B) Columbia Gulf's motion to withdraw the tariff sheets filed in Docket No. RP09-141-000 and -001 is granted.

⁴ 18 C.F.R. § 154.205(a) (2008), to be codified at 18 C.F.R. § 154.205(c) pursuant to Order No. 714, Regulatory Text at P 39.

⁵ Columbia Gas Transmission Co., 124 FERC ¶ 61,122 at P 13 (2008) (holding that Columbia Gas may implement scheduling penalties without offering services which would allow its shippers to avoid such penalties).

⁶ 18 C.F.R. § 154.301(c) (2008).

⁷ See 5 U.S.C. § 717d(a), 18 C.F.R. § 385.206(a).

(C) The requests for rehearing by Columbia Gas and Columbia Gulf are hereby denied as moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.