

129 FERC ¶ 61,020
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 9, 2009

In Reply Refer To:
Columbia Gulf Transmission Company
Docket No. RP09-1039-000

Columbia Gulf Transmission Company
5151 San Felipe, Suite 2500
Houston, TX 77056

Attention: James R. Downs
Director of Regulatory Affairs

Reference: Request for Waiver of Tariff Provision

Dear Mr. Downs:

1. On September 9, 2009,¹ Columbia Gulf Transmission Company (Columbia Gulf) filed a petition for limited waiver of sections 19.5(g), 19.6(a), and 19.6(b) of the General Terms and Conditions (GT&C) of its FERC Gas Tariff for the one-month period from July 1, 2009 to July 31, 2009.² Columbia Gulf also requested waiver of a “30-day notice period,” which the Commission assumes refers to the 30-day notice period required for changes to tariffs under section 154.207 of the Commission’s regulations.³ As discussed below, the Commission grants a limited waiver of sections 19.5(g), 19.6(a), and 19.6(b) for the one-month period from July 1, 2009, to July 31, 2009 as requested. The Commission dismisses Columbia Gulf’s request for waiver of the 30-day notice period referred to in its filing because the 30-day notice period under section 154.207 does not apply to waivers of tariff provisions.

¹ Columbia Gulf filed a supplement to its September 9, 2009 filing on September 30, 2009 (September 30, 2009 Supplement).

² Columbia Gulf Transmission Company, FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 216A and First Revised Sheet No. 216B.

³ 18 C.F.R. § 154.207 (2009).

2. Sections 19.6(a) and 19.6(b) set forth Columbia Gulf's tiered cash-out mechanism for resolving Cumulative Monthly Imbalances,⁴ which requires any imbalance remaining on a shipper's account after the netting and trading period to be cashed out according to a price tier determined by the extent of the imbalance. Columbia Gulf contends that it would be inequitable to require shippers with historical imbalances to be subject to the price tiers set forth in sections 19.6(a) and 19.6(b) and that the requested waiver will benefit all shippers subject to cash-outs by ensuring that shippers receive the highest value for the resolution of their imbalances. Columbia Gulf specifies in its September 30 Supplement that such waiver would apply only to imbalances that were not netted or traded out during the month of August, as provided under section 19.5(e)(3) of the GT&C.⁵ Columbia Gulf further argues that waiver of section 19.5(g), which sets up different cash-out prices depending on whether the prior period adjustment (PPA) imbalance is in the same Direction (i.e., positive or negative) as the "original" imbalance, is required because the recent implementation of the mechanism leaves no "original" imbalance available for comparison.

3. On June 11, 2007 and July 31, 2008,⁶ respectively, the Commission approved Columbia Gulf's proposal to implement a tiered cash-out imbalance mechanism and accepted revised tariff sheets to become effective the later of August 1, 2008 or the launch of its new Electronic Bulletin Board (EBB) and gas management system, Navigates.⁷ In order to give its shippers time to become familiar with Navigates,

⁴ Section 19.5(a) of the GT&C defines "Cumulative Monthly Imbalance" as: "any outstanding imbalance associated with prior months that have yet to be cashed out plus the difference between (1) the total gas quantities Transporter actually received from or for Shipper's account (adjusted for Retainage) at the point(s) of receipt under all of Shipper's firm and interruptible transportation service agreement(s), interruptible paper pool service agreement(s), and aggregation service agreement(s); and (2) the total gas quantities Transporter actually delivered to or for Shipper's account at the point(s) of delivery under all of Shipper's firm and interruptible transportation service agreement(s), interruptible paper pool service agreement(s), and aggregation service agreement(s)."

⁵ Columbia Gulf Transmission Company, FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 216A.

⁶ *Columbia Gulf Transmission Co.*, 119 FERC ¶ 61,268 (2007), *order on reh'g*, 124 FERC ¶ 61,121 (2008).

⁷ Due to delays in launching the Navigates system, Columbia Gulf requested several extensions of time from August 1, 2007 to August 1, 2008 to place tariff sheets into effect that were dependent on the Navigates system. *E.g.*, *Columbia Gulf Transmission Co.*, Docket No. RP07-174-005 (August 27, 2008) (unpublished letter order); *Columbia Gulf Transmission Co.*, Docket No. RP07-174-003 (December 14, 2007) (unpublished letter order); 121 FERC ¶ 61,147 (2007); 121 FERC ¶ 61,045 (2007).

Columbia Gulf made various postings on its EBB notifying its customers that it would waive sections 19.6(a) and 19.6(b) until July 1, 2009, thereby postponing implementation of the tiered cash-out mechanism until that date.⁸ Columbia Gulf contends that it waived sections 19.6(a) and 19.6(b) pursuant to section 19.8(d) of the GT&C.⁹

4. Columbia Gulf states that many of its shippers have historical imbalances that could have existed on their contracts for years. Columbia Gulf contends that it would be inequitable to require shippers with historical imbalances to be subject to the price tiers set forth in sections 19.6(a) and 19.6(b) under the tiered cash-out mechanism. Therefore, Columbia Gulf requests waiver of sections 19.6(a) and 19.6(b) for the one-month period from July 1, 2009 to July 31, 2009, so that all cash-outs of Cumulative Monthly Imbalances in effect as of August 18, 2009 will be cashed out at 100 percent of the applicable “Sell” or “Buy” price regardless of the percentage of the shipper’s excess receipts or deliveries.¹⁰ Columbia Gulf argues that the requested waiver will benefit all shippers subject to cash-outs by ensuring that shippers receive the highest value for the resolution of their imbalances.

In its April 25, 2008 filing, Columbia Gulf stated that it would not move the tariff sheets pertaining to the cash-out provisions into effect until August 1, 2008 when it launched the Navigates system.

⁸ Columbia Gulf states that it notified its customers via EBB notices posted August 28, 2008, and September 30, 2008, that it was waiving the tiered cash-out provisions of the GT&C for the months of August 2008 and September 2008, respectively. Later at its customer meeting on October 20, 2008, Columbia Gulf informed shippers that it would waive the cash-out provisions until further notice. However, Columbia Gulf failed to issue an EBB notice to that effect. Columbia Gulf then notified customers by an EBB notice posted April 28, 2009 that the cash-out provisions would become effective on July 1, 2009. Subsequently, Columbia Gulf reminded customers that the cash-out provisions would be implemented on July 1, 2009 by EBB notices posted June 18, 2009 and June 24, 2009. The Commission notes that Columbia Gulf used several methods of providing notice to its customers and urges Columbia Gulf in the future to provide consistent, timely notice via EBB notice to best advise customers of changes affecting their billing. *See* September 30, 2009 Supplement.

⁹ Section 19.8(d) states: “Transporter may waive its right to collect all or any portion of the penalties assessed against Shipper, provided that any such waiver is granted in a nondiscriminatory manner.” Columbia Gulf Transmission Company, FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 217.

¹⁰ Section 19.5(e)(3) of the GT&C permits the netting and trading of any Cumulative Monthly Imbalances that remain in any rate zone that Shippers have not cleared by the 17th Business Day of the month.

5. Columbia Gulf further requests waiver of section 19.5(g) of the GT&C, which sets up different cash-out prices depending on whether the PPA imbalance is in the same Direction (i.e., positive or negative) as the “original” imbalance. Columbia Gulf contends that due to the recent implementation of the tiered cash-out mechanism, there is not an “original” imbalance available for comparison, and therefore proposes to net all PPA’s with the shipper’s Cumulative Monthly Imbalance and cash those volumes out at the applicable buy or sell price.

6. Columbia Gulf states that the requested waiver will concern only July 2009 imbalances that are cashed out in the month of August and reflected in September bills and that all future cash-out amounts will be determined in accordance with section 19.6. Columbia Gulf also states that if the Commission does not grant the requested waiver, it will make any required corrections in shippers’ October billing statements.

7. Columbia Gulf further requests waiver of a “30-day notice period,” which the Commission assumes refers to the 30-day notice requirement for proposed changes to tariffs under section 154.207 of the Commission’s regulations.

8. Public notice of Columbia Gulf’s filing was issued on September 11, 2009, with interventions and protests due by September 21, 2009. Pursuant to Rule 214,¹¹ all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

9. The Commission finds that waiver of the tariff’s cash-out penalty provisions for July imbalances is warranted under the circumstances here of that month being the first month for the penalty provisions to apply since the provisions were first placed into effect on August 1, 2008. Therefore, the Commission grants the requested limited waiver of sections 19.5(g), 19.6(a), and 19.6(b) of the GT&C for the one-month period from July 1, 2009, to July 31, 2009. The Commission dismisses Columbia Gulf’s request for waiver of the 30-day notice period because section 154.207 does not apply to waivers of tariff provisions.

10. However, the Commission also calls attention to Columbia Gulf’s failure to file a petition for waiver of the cash-out provisions for the period from August 1, 2008, to June 30, 2009, and its failure to timely file its current petition for waiver. Section 19.8(d) of the cash-out provisions only authorizes Columbia Gulf to waive cash-out penalties, whereas, for the period August 1, 2008 to June 30, 2009, Columbia Gulf did not apply its cash-out provisions at all. In the future, Columbia Gulf should only rely upon the waiver

¹¹ 18 C.F.R. § 385.214 (2009).

provision in section 19.8(d) for waiver of its right to collect specific penalties. Furthermore, Columbia Gulf should not have waited until the day before it sent out its billing invoices reflecting the requested waiver to file its waiver request. In the future, in the absence of exigent circumstances, Columbia Gulf should timely file its requests for waiver by filing a petition at least 10 days prior to the date the waiver is to take effect.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.