132 FERC ¶ 61,134
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Columbia Gulf Transmission Company	Docket Nos. RP10-823-001 RP10-450-002 RP10-134-002

ORDER ACCEPTING TARIFF SECTIONS AND
DENYING REQUESTS FOR REHEARING

(Issued August 13, 2010)

1. On May 20, 2010, the Commission approved the incentive fixed fuel (IFF) mechanism proposed by Columbia Gulf Transmission Company (Columbia Gulf) as an alternative to its then-current fuel tracker and true-up mechanism (Transportation Retainage Adjustment (TRA) mechanism), subject to conditions.[1] On June 21, 2010, the North Carolina Utilities Commission (NCUC), the Associations,[2] and Washington Gas Light Company (Washington Gas) filed requests for rehearing and clarification of the Commission's May 2010 Order.

2. On June 3, 2010, Columbia Gulf filed revised tariff sections to implement a revised IFF mechanism in compliance with the Commission's May 2010 Order. On July 2, 1010, the Commission accepted and suspended Columbia Gulf's proposed tariff sections, to be effective July 1, 2010, subject to refund and further conditions.[3] Unwilling to make such further changes, on July 16, 2010, Columbia Gulf filed revised

[1] *Columbia Gulf Transmission Co.*, 131 FERC ¶ 61,156 (2010) (May 2010 Order).

[2] The Associations include Process Gas Consumers Group and the American Forest & Paper Association.

[3] *Columbia Gulf Transmission Co.*, 132 FERC ¶ 61,009 (2010) (July 2010 Order).

tariff sections[4] to remove the IFF mechanism and to reinstitute the TRA tracker and true-up mechanism.

3. As discussed below, the Commission accepts Columbia Gulf's proposed tariff sections listed in Appendix A, effective August 1, 2010, as requested, and denies as moot the requests for rehearing of the May 2010 Order.

I. Background

4. The background of this proceeding is described in detail in the May and July 2010 Orders. Briefly, prior to July 1, 2010, Columbia Gulf, under the TRA mechanism, recovered its system's fuel requirements (Company Use Gas or CUG) and lost and unaccounted for gas (LAUF) in each zone[5] by retaining in-kind a percentage of gas tendered by customers. Under the TRA mechanism, Columbia Gulf was required to make an annual filing on or before March 1 to be effective on April 1 to update its fuel retainage percentages. The fuel retainage percentage for each zone included two components. The first component, known as the current retainage percentage (Current Retainage Percentage), was calculated by: (i) estimating the CUG and LAUF quantities allocated to each zone during the future April to March 12-month period (Current Retainage Quantities); and (ii) dividing those amounts by the total applicable quantities estimated to be received in the zone during the same 12-month period (Current Transportation Quantities).

5. The second component, known as the unrecovered retainage surcharge or true-up component (True-Up Retainage Percentage), was calculated by: (i) determining the total system CUG and LAUF quantities for the preceding calendar year, i.e., the deferral period; (ii) subtracting the total system retainage quantities retained by Columbia Gulf during that period; (iii) allocating the result (Unrecovered Retainage Quantities), whether positive or negative, to each zone based on each zone's respective percentage of Current Transportation Quantities; and (iv) dividing the allocated unrecovered retainage quantities by the Current Transportation Quantities attributable to each zone.

6. On November 9, 2009, in Docket No. RP10-134-000, Columbia Gulf filed *pro forma* tariff sheets proposing, as an alternative to its TRA mechanism, an incentive fuel savings sharing mechanism utilizing fixed fuel retention percentages. Among other things, Columbia Gulf proposed to establish a fixed fuel retainage percentage for each fuel zone to recover both CUG and LAUF. The fixed rates were established at levels that

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[4] *See* Appendix A.

[5] Columbia Gulf has separate fuel retainage percentages for three zones. They are the mainline, onshore lateral, and offshore lateral zones.

would enable Columbia Gulf to receive 36 percent and its customers 64 percent of the savings that Columbia Gulf projected would result from capital investments made under the mechanism. Included among the projected savings, were 2.6 MMDth of LAUF savings resulting from the replacement of certain orifice meters at Columbia Gulf's Leach and Means delivery stations.[6] Columbia Gulf asserted that the fixed rates were lower than the rates that customers would otherwise pay under the TRA mechanism. Response to Columbia Gulf's proposal was mixed. Among the issues protested was that the fixed fuel rates did not represent a material reduction from the fuel rates shippers would otherwise pay under the TRA mechanism.

7. On March 1, 2010, subsequent to its initial IFF filing, Columbia Gulf filed its annual TRA filing for 2010 in Docket No. RP10-450-000. Columbia Gulf proposed to increase its TRA rates for 2010, but also proposed to keep the 2009 TRA rates in place until the Commission approved the IFF mechanism in a manner satisfactory to Columbia Gulf or November 1, 2010, whichever occurred first. Columbia Gulf calculated the Current Retainage Percentages for 2010 based upon projections of CUG, LAUF, and throughput for the period April 1, 2010 through March 31, 2011. Columbia Gulf did not include in the Current Retainage Percentages any mathematical adjustments to account for the orifice meters at Leach A and Means E delivery stations that were under-measuring deliveries into Columbia Gas, as it did in its previous 2009 TRA filing.[7]

8. Columbia Gulf calculated the True-Up Retainage Percentages for 2010 based on the actual system CUG and LAUF quantities for the preceding calendar year, January 1, 2009 through December 31, 2009. As was the case with the Current Retainage Percentages, Columbia Gulf did not apply any mathematical adjustments to account for the under-measurement occurring at the Leach and Means delivery stations.

[6] Following an investigation ordered by the Commission, Columbia Gulf discovered that orifice meters at its Leach A and Means E delivery stations were under-measuring Columbia Gulf's deliveries into Columbia Gas Transmission, LLC (Columbia Gas), resulting in an increase in LAUF on Columbia Gulf's system. *See Columbia Gulf Transmission Co.*, 130 FERC ¶ 61,136 (2010). Based on flow tests, Columbia Gulf determined that the under-measurement could be remedied by way of a mathematical adjustment to the fuel retainage percentages. Columbia Gulf included the mathematical adjustment in its 2009 TRA rates and the Commission accepted it and the corresponding rates proposed by Columbia Gulf. *Id.* P 14.

[7] *See* foregoing footnote. In general, a pipeline's LAUF is calculated by subtracting its deliveries from its receipts. An under-measurement of deliveries increases the difference between receipts and deliveries and thus, if the difference cannot be explained, increases LAUF.

9. In the May 2010 Order, the Commission clarified its policy concerning pipeline recovery of fuel costs and found that Columbia Gulf's IFF mechanism was just and reasonable, subject to conditions.[8] The new policy adopted by the Commission in the May 2010 Order permits a pipeline to establish, in a limited Natural Gas Act (NGA) section 4 filing, fixed fuel rates if such rates are significantly below the cost-based level that it could otherwise justify.[9] The Commission explained that for this purpose, only the pipeline's projected future fuel costs (including LAUF) should be considered, not the true-up component of a pipeline's fuel tracker mechanism.[10] The pipeline, in exchange, may keep a share of the fuel savings that result from the capital improvements it makes in order to reduce its fuel usage and LAUF.[11] The May 2010 Order stated that this new policy would assure customers an immediate, real rate reduction, as well as encourage pipelines to make investments to improve the fuel efficiency of their systems.[12]

10. Regarding the specifics of Columbia Gulf's IFF proposal, the Commission found that Columbia Gulf had not shown that its proposed IFF rates were below the cost-based fuel rates that would otherwise be in effect under Columbia Gulf's then-existing TRA mechanism.[13] The Commission found that Columbia Gulf's proposed 2010 TRA rates were unreasonably high because Columbia Gulf overstated its LAUF costs used to calculate the TRA rates.[14] For purposes of determining the Current Retainage Percentages, Columbia Gulf's projected LAUF volumes of 5,079,551 Dth were based on the actual LAUF volumes for 2009, plus a prior period adjustment of 1,083,336 Dth for activity that occurred during the 2008 calendar year. The Commission found that this projection was unreasonable in two respects, the first being the inclusion of the prior period adjustment and the second being Columbia Gulf's failure to include any mathematical adjustments for the under-recovering Leach and Means meters, as it did in its previous 2009 TRA filing. Similarly, the Commission found that Columbia Gulf's True-Up Retainage Percentages, which were determined in part by comparing the LAUF volumes it retained in 2009 to actual LAUF in 2009, were also overstated because

[8] May 2010 Order, 131 FERC ¶ 61,156.

[9] *Id*. P 36, 40.

[10] *Id.* P 42.

[11] *Id.* P 36.

[12] *Id.* P 40.

[13] *Id.* P 45.

[14] *Id*. P 47-51, 56.

Columbia Gulf failed to include any mathematical adjustments for the Leach and Means meters.

11. Therefore, the Commission required Columbia Gulf to recalculate the 2010 Current Retainage Percentages by removing from its LAUF projection the prior period adjustment and an amount equal to the under-measured deliveries at Leach and Means. The Commission also required Columbia Gulf to recalculate the 2010 True-Up Retainage Percentages based on the same Leach and Means mathematical adjustments.

12. The Commission required Columbia Gulf, should it elect to implement the IFF mechanism, to recalculate the IFF rates such that customers receive a significant upfront savings below the recalculated Current Retainage Percentages, consistent with the new Commission policy.[15] The Commission stated that it would be amenable to Columbia Gulf recalculating the IFF rates based on projected savings that do not include savings attributable to replacement of the Leach and Means meters given that those same savings are achieved by the mathematical adjustments without replacing the meters. The Commission also stated that, given the other adjustments, it would consider other modifications to the IFF proposal, including modification of the 36-64 savings allocation between Columbia Gulf and its customers reflected in the IFF rates, provided that customers receive significant upfront savings consistent with the new policy.[16] Finally, the Commission granted Columbia Gulf's request for waiver in order to permit it to keep its 2009 TRA retainage rates in effect until Columbia Gulf made the required compliance filing and further order of the Commission.

13. On June 21, 2010, NCUC, the Associations, and Washington Gas filed requests for rehearing and clarification of the May 2010 Order.

14. On June 3, 2010, Columbia Gulf filed a revised IFF proposal to comply with the Commission's May 2010 Order. Columbia Gulf recalculated the proposed 2010 TRA rates to reflect the adjustments ordered in the May 2010 Order and then recalculated the IFF rates based on the revised 2010 Current Retainage Percentages. Columbia Gulf's recalculated 2010 Current and True-Up Retainage Percentages for each zone were as follows:

[15] *Id.* P 36, 40.

[16] *Id.* P 61.

	Mainline Fuel	Mainline Backhaul	Onshore Fuel	Offshore Fuel
Revised Current Retainage Percentages	2.503%	0.115%	0.384%	0.117%
Revised True-up Retainage Percentages	-0.158%	-0.187%	-0.161%	-0.161%

Columbia Gulf derived the revised 2010 Current Retainage Percentage for each zone by removing from its total LAUF projection an amount reflecting the under-measured deliveries at Leach and Means, and 1,083,336 Dth of prior period adjustments. Columbia Gulf derived the revised 2010 True-Up Retainage Percentages for each zone by removing from its actual LAUF figures an amount reflecting the under-measured deliveries at Leach and Means.

15. Columbia Gulf's recalculated IFF rates, based on the 2010 revised Current Retainage Percentages, were as follows:

	Mainline Fuel	Mainline Backhaul	Onshore Fuel	Offshore Fuel
Revised IFF Retainage Percentages	2.45%	0.10%	0.37%	0.11%

Columbia Gulf made two changes to its original IFF proposal in order to arrive at these revised IFF rates. First, Columbia Gulf reduced the amount of projected savings to be shared with customers to reflect the removal of 2.6 MMDth of projected savings attributable to replacement of the Leach and Means meters. Second, Columbia Gulf modified the customers' allocation of the remaining projected savings reflected in the IFF rates from 64 percent to 10 percent. Though the projected savings did not include any savings attributable to replacement of the Leach and Means meters, Columbia Gulf failed to remove the Leach and Means meter replacements from the IFF program. In support of its revised IFF rates, Columbia Gulf claimed that various factors did not allow for a material reduction when comparing the IFF rates to the revised 2010 TRA rates.

16. To avoid a negative overall retainage percentage for the offshore and backhaul rates, Columbia Gulf also proposed to reduce the negative surcharge to hold the offshore and backhaul rates at zero rather than allowing the overall retainage percentages to go negative, until all of the over-recovery associated with the offshore and backhaul had been returned to those shippers.

17. Several protestors argued that the CUG projections underlying the mainline and onshore 2010 Current Retainage Percentages were unreasonably high. Specifically, they contended that Columbia Gulf had not supported its CUG projection of 15,309,984 Dth, with 14,761,732 Dth attributable to the mainline zone and 548,252 Dth attributable to onshore zone. They also contended that Columbia Gulf had not explained why its CUG projection of 15,309,984 Dth was higher than its actual total CUG in 2009 of 14,539,216 Dth.

18. In the July 2010 Order, the Commission accepted and suspended for a nominal period Columbia Gulf's proposed tariff sheets implementing the IFF mechanism, to be effective July 1, 2010, subject to refund and conditions.[17] Regarding Columbia Gulf's recalculated 2010 TRA retainage percentages, the Commission found that Columbia Gulf had not justified its CUG projection of 15,309,984 Dth underlying the 2010 Current Retainage Percentages.[18] It noted that, unlike Columbia Gulf's LAUF projection, which was based on its actual LAUF during 2009, after adjustments required by the May 2010 Order, the CUG projection did not appear to be tied in any way to Columbia Gulf's actual CUG in 2009.[19] In fact, Columbia Gulf's CUG projection for 2010 exceeded Columbia Gulf's actual 2009 CUG by 770,768 Dth.[20] The Commission also could not find any reasonable correlation between the limited historical data available and Columbia Gulf's CUG projection.[21] Therefore, the Commission concluded that Columbia Gulf had not sufficiently justified its CUG projection and required Columbia Gulf to: (a) provide additional throughput and CUG data for each month from January 2007 to the present; (b) explain the causes of significant changes in CUG and system throughput during January 2007 through the present and the likelihood of future changes in CUG and throughput; and (c) explain how this information supports its CUG projection.[22]

19. The Commission also found that Columbia Gulf had not sufficiently justified its other proposed changes to the IFF mechanism.[23] The Commission found that, among

[17] July 2010 Order, 132 FERC ¶ 61,009.

[18] *Id*. P 34.

[19] *Id*.

[20] *Id*.

[21] *Id*. P 35-37.

[22] *Id*. P 38.

[23] *Id*. P 45, 53 and 55.

other things, Columbia Gulf's proposed IFF rates did not reflect "significant upfront saving" below Columbia Gulf's proposed cost-based rates, because the mainline IFF rate was only two percent below the revised TRA rate. However, the Commission agreed with Columbia Gulf that the IFF rate should be set at a level that provides Columbia Gulf an adequate incentive to make capital investments under the program, taking into account the reduced quantities of projected savings reflected in the mechanism after eliminating the savings from the Leach and Means meter replacements. Accordingly, the Commission found that an allocation of 67 percent of the projected savings to Columbia Gulf and 33 percent to the customers would provide Columbia Gulf approximately the same return on investment, excluding taxes, as under its original proposal, while providing "significant upfront savings" to customers.[24]

20. The July 2010 Order found that the Columbia Gulf's proposal to revise the True-Up Retainage Percentage for the offshore and backhaul zones to prevent the overall retainage percentages from going negative was reasonable. However, the Commission found that the proposed tariff sheets were not clear in this regard and directed Columbia Gulf to clarify its tariff sheets accordingly.

21. In its June 3, 2010 filing, Columbia Gulf requested waiver of the thirty-day notice period to allow the revised tariff sections implementing the IFF mechanism to become effective July 1, 2010. Columbia Gulf also stated that, if the Commission amended the IFF proposal in a manner that rendered it unacceptable, Columbia Gulf would implement the higher 2010 TRA rates effective immediately and any under-collection that would be incurred since July 1, 2010 would be recovered through the under/over surcharge as if the TRA had been in place beginning July 1, 2010.

22. In the July 2010 Order, the Commission granted waiver of the thirty-day notice requirement to permit a July 1, 2010 effective date for the tariff sheets implementing its IFF mechanism. The Commission stated that, if Columbia Gulf subsequently determines to implement the 2010 TRA rates in place of the IFF rates, it must file revised tariff sheets in order to do so. The Commission also stated that it would permit Columbia Gulf to true-up any over- or under-collection incurred since July 1, 2010 through the true-up component of its TRA mechanism as compared to the TRA rates finally approved by the Commission.[25]

23. On July 16, 2010, Columbia Gulf filed to revise its tariff to remove the IFF mechanism and replace it with Columbia Gulf's previously-approved TRA mechanism. On July 22, 2010, Columbia Gulf also filed responses to the questions posed in the

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[24] *Id*. P 42, 45.

[25] *Id*. P 60.

July 2010 Order (Data Response).[26] The details of Columbia Gulf's July 16, 2010 filing and the requests for rehearing are discussed below.

II. Details of Filing

24. Columbia Gulf states that it is unable to move forward with implementing the IFF mechanism based on the changes required in the Commission's July 2010 Order. Faced with additional reductions in the IFF retainage percentages, Columbia Gulf has determined that there is insufficient incentive to move forward with the IFF proposal given the risks the pipeline bears in this proposal. Columbia Gulf claims that the business risks are too great, given the existing dynamics facing the Columbia Gulf pipeline system, including a variety of external factors outside of Columbia Gulf's control. Accordingly, Columbia Gulf proposes to withdraw the IFF mechanism and reinstate its previously-approved TRA tracker and true-up mechanism.

25. Columbia Gulf's proposed 2010 Current Retainage Percentages and True-Up Percentages are the same as the TRA retainage percentages set forth in Columbia Gulf's June 3, 2010 filing. Columbia Gulf does not propose any changes to the figures underlying either the Current Retainage Percentages or the True-Up Retainage Percentages. However, as was the case in the last proceeding, to avoid a negative overall surcharge for the offshore and backhaul rates, Columbia Gulf proposes to reduce the negative surcharge to hold the offshore and backhaul rates at zero rather than allowing the overall retainage rates to go negative, until all of the over-recovery associated with the offshore and backhaul has been returned to those shippers. Accordingly, Columbia Gulf's proposed rates are as follows:

	Mainline Fuel	**Mainline Backhaul**	**Onshore Fuel**	**Offshore Fuel**
Proposed Current Retainage Percentages	2.503%	0.115%	0.384%	0.117%
Calculated True-up Retainage Percentages	-0.158%	-0.187%	-0.161%	-0.161%
Proposed True-up Retainage Percentages	-0.158%	-0.115%	-0.161%	-0.117%
Proposed 2010 TRA Retainage Percentages	2.345%	0%	.223%	0%

[26] Columbia Gulf, Data Response, Docket No. RP10-823-000 (filed July 22, 2010).

26. In response to the Commission's request for additional information in the July 2010 Order, Columbia Gulf states that the CUG projection underlying its Current Retainage Percentages is predicated on the actual throughput for 2009.[27] Columbia Gulf states that it applied a regression analysis to the 2009 actual throughput to calculate expected CUG for the 12-month period.[28] Columbia Gulf states that, if actual CUG turns out to be lower than the CUG projection, the over-recovery will be refunded to customers in the 2011 annual TRA. Regarding the Commission's request for additional CUG and throughput data, Columbia Gulf's responses can be summarized as follows for 2007 through 2009:[29]

	2007	**2008**	**2009**
Total CUG (Dth)	15,984,904	15,407,579	14,539,216
Total Throughput (Dth)	1,009,104,048	873,449,479	802,462,506

27. Columbia Gulf states that from March 2, 2010 until June 30, 2010, it maintained the retainage rates from the 2009 TRA. According to Columbia Gulf, it used the IFF rates proposed in its June 3, 2010 filing for its July 2010 business. Columbia Gulf states that it will implement the 2010 TRA rates effective with business after August 1, 2010 and any over/under-collection for what has been incurred since July 1, 2010 will be recovered through the under/over surcharge as if the new 2010 TRA has been in place beginning July 1, 2010. Columbia Gulf requests an order approving the 2010 TRA rates by August 1, 2010 so that shippers know as soon as possible the retainage rates in effect on the Columbia Gulf system.

28. Columbia Gulf requests that the Commission grant a waiver of the thirty-day notice period to allow the revised tariff section on Appendix A to become effective August 1, 2010. Columbia Gulf states that its 2010 TRA was originally filed on

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[27] Columbia Gulf, July 16 Transmittal, Docket No. RP10-823-001, at 4 (filed July 16, 2010).

[28] Columbia Gulf did not provide the regression analyses it applied to its historical throughput to derive the forward looking CUG quantity underlying its proposed retainage rates.

[29] The following table does not include any prior period adjustments or backhaul deliveries, which are not charged CUG.

March 1, 2010 and all aspects of the TRA were addressed in the May 2010 Order, which this filing reflects.

III. Details of Requests for Rehearing

29. The rehearing requests raised issues regarding the IFF mechanism, as well as the fuel incentive rate policies adopted by the Commission in the May 2010 Order. Regarding the IFF mechanism, Washington Gas argued that the Commission erred by allowing Columbia Gulf to recalculate the IFF rates based on the cost data and throughput underlying the 2010 TRA filing, as opposed to utilizing the most recent cost data and throughput available. Washington Gas and NCUC also sought clarification that the May 2010 Order prohibited Columbia Gulf from including replacement of the Leach and Means meters as a qualifying investments under the IFF program. NCUC also contended that the May 2010 Order improperly ignored its arguments regarding whether it would be impracticable for Columbia Gulf to fully recover the costs of its IFF investments during the term of the IFF program.

30. Regarding the incentive fuel rate policies adopted in the May 2010 Order, the Associations and NCUC argued that the Commission erred by allowing Columbia Gulf to implement the IFF mechanism in a limited NGA section 4 proceeding, as opposed to filing a general NGA section 4 rate case. The Associations also argued that May 2010 Order contravened the Commission's policy against unreasonable and excessive pipeline revenues. Washington Gas believed that the May 2010 Order also erroneously determined that pipelines no longer needed to demonstrate benefits to customers when the incentive rate is significantly less than the cost-based rate, rather than continuing to require a nexus between investments in efficiency and the incentive fuel rate. Further, Washington Gas argued that as a prerequisite for qualifying for incentive rates, the Commission should require pipelines to maintain minimum reliability, maintenance and replacement standards. Otherwise, it argued, a fuel incentive mechanism proposal would economically reward a pipeline, in this case, Columbia Gulf, for long-overdue maintenance and replacement of equipment that otherwise poses safety and reliability issues.

31. The Associations also sought clarification that the significance of customer savings under an incentive proposal must be determined in relation to pipeline revenues under the program and that any revenues and other financial and tax benefits resulting from environmental attributes achieved under the incentive program should be included in the program's sharing mechanism.

IV. Public Notice, Intervention and Comments

32. The Commission issued notice of Columbia Gulf's filing in two dockets because of problems with Columbia Gulf's electronic submission of the filing. When Columbia Gulf first submitted the filing on July 16, 2010, it used a Type of Filing Code (TOFC)

of 570 identifying the filing as a “Change in Rate Schedule, Forms of Service Agreement, or GT&C,” and that filing was therefore assigned a new docket, Docket No. RP10-974-000 with a statutory obligation. However, later on the same day, Columbia Gulf withdrew the Docket No. RP10-974-000 filing. It did this by resubmitting the identical transmittal letter it had made earlier in the day, but using a TOFC of 590, identifying the filing as a “Withdrawal.” Still later on July 16, Columbia Gulf resubmitted the same filing it had submitted earlier in the day, but this time using a TOFC of 580 identifying the filing as a “Compliance Filing,” and this filing was assigned Docket No. RP10-823-001.

33. We recognize that the new electronic filing requirements are in their infancy. However, Columbia Gulf made a number of errors in its series of filings and in order to help Columbia Gulf and other parties, we point out some of the mistakes that were made. Filers using the electronic system must continue to make filings, including transmittal letters, in conformity with Commission regulations.

34. Section 154.205(a) of the Commission’s regulations requires that when a pipeline seeks to withdraw a tariff filing in its entirety before the Commission has acted on it, the pipeline must file a motion to withdraw the filing. While Columbia Gulf identified its second filing in Docket No. RP10-974-000 as a withdrawal within the metadata contained in its electronic submission, a withdrawal requires more than mere electronic designation of the filing as a withdrawal. The party making a withdrawal filing must comply fully with the Commission’s regulations by including a motion to withdraw the filing and serving the withdrawal on appropriate parties. Columbia Gulf did not include a document moving to withdraw its tariff filing and identifying that filing and the docket assigned to it.[30] In addition, Columbia Gulf failed to change the description of its filing in the eFiling system to indicate that it was withdrawing an earlier filing. Columbia Gulf’s resubmission of its earlier tariff filing, while using the correct TOFC for withdrawing a filing, did not result in there being any actual document on file providing notice that it was withdrawing its Docket No. RP10-974-000 filing. Thus, Columbia Gulf did not provide other interested persons clear notice that Columbia Gulf intended to withdraw its Docket No. RP10-974-000 section 4 tariff filing.

35. Moreover, Columbia Gulf’s compliance filing in Docket No. RP10-823-001 also was incorrect. First, although designating the filing as a compliance filing, Columbia Gulf stated in the transmittal letter that it was making a section 4 filing. A company is not permitted to mix a compliance filing and a statutory filing.[31] As we stated in the

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[30] Instead, Columbia Gulf simply attached the same transmittal letter it had used for the initial filing, so that parties received no notice of the withdrawal.

[31] 18 C.F.R. § 154.203(b) (2010).

January 21, 2010 Order Establishing Procedures Relating to Tariffs Filed Electronically,[32] the treatment of a filing depends on the metadata code selected by the filer, not on the text of the transmittal letter, and accordingly we are processing this filing as a compliance filing without any statutory action date. However, Columbia Gulf should not have designated this filing as a compliance filing, because it contains new proposed tariff provisions. Hence, its first section 4 filing submitted on July 16, 2010 in Docket No. RP10-974-000 actually was correct. Rather than rejecting this filing, and requiring a correctly designated resubmittal, however, we will respond to this filing on the merits.

36. Without realizing that Columbia Gulf had withdrawn its Docket No. RP10-974-000 section 4 filing, the Office of Secretary issued a notice of that filing on July 19, 2010. Notice of Columbia Gulf's July 16, 2010 filing in Docket No. RP10-823-001 was issued on July 20, 2010. Both notices provided that interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2010). Piedmont Natural Gas Company, Inc. (Piedmont), Sequent Energy Management, L.P. (Sequent), and the Cities[33] filed protests in Docket No. RP10-974-000. Interventions were filed in both dockets. In light of Columbia Gulf's withdrawal of its Docket No. RP10-974-000 filing, the Office of the Secretary has since transferred the interventions and protests in Docket No. RP10-974-000 to Docket No. RP10-823-001. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2010), 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 this proceeding or place additional burdens on existing parties.

37. Piedmont and the Cities protest Columbia Gulf's projected CUG quantity of 15,309,984 Dth. They contend that the data and responses Columbia Gulf provided in Docket No. RP10-823 strongly suggest that Columbia Gulf's CUG projection is in fact unreasonable. Piedmont states that, based on a steady decline in CUG over the last several years and in the first six months of this year, it would appear that a substantially lower CUG figure would be appropriate for this proceeding than that proposed by Columbia Gulf.

38. Sequent requests that the Commission consolidate the IFF and TRA proceedings and set the consolidated proceedings for a technical conference. Sequent also requests that the Commission (a) clarify that Columbia Gulf must credit to its customers 100

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[32] *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 5 (2010) ("any discrepancy between the description of the filing in the transmittal letter (or other pleading) and the Type of Filing code chosen will be resolved in favor of the Type of Filing code").

[33] Cities include the City of Charlottesville, Virginia, and the City of Richmond.

percent over-collections in July 2010, and (b) reject Columbia Gulf's proposal to defer crediting 100 percent of the negative surcharge amounts to its offshore and mainline backhaul customers.

V. **Commission Determination**

39. As discussed below, the Commission accepts Columbia Gulf's proposed tariff sections listed in Appendix A, to be effective August 1, 2010, as requested and denies as moot the requests for rehearing of the May 2010 Order.

40. As the two protesters point out, Columbia Gulf's CUG projection of 15,309,336 Dth for the period April 2010 through March 2011 exceeds its actual CUG during calendar year 2009 of 14,539,216 Dth. Columbia Gulf has also stated that its CUG decreases as its throughput decreases. Based on the information provided by Columbia Gulf in its Data Response, both throughput and CUG on Columbia Gulf's system have been trending downward since 2007. While Columbia Gulf states in its Data Response that it cannot identify any specific events that explain the decline in throughput, it notes two trends that it considers significant: (a) the general downturn in the economy has impacted throughput on Columbia Gulf's system; and (b) a decline in the basis spread since 2007, impacting how customers use Columbia Gulf versus alternative pipelines. Columbia Gulf does not suggest or provide any evidence that this downward trend will not continue.

41. It thus appears that Columbia Gulf's projected CUG of 15,309,984 Dth is most likely overstated. However, Columbia Gulf's throughput projection of 812,939,306 Dth for the April 2010 to March 2011 tracking period also exceeds its total actual throughput for 2009 of 802,462,506 Dth. It would thus appear that Columbia Gulf's throughput projection, used to design the TRA retainage percentages, is also overstated. If the Commission were to require Columbia Gulf to recalculate its proposed retainage percentages to reflect a lower projection of CUG, consistency would required that the Commission also require Columbia Gulf to reduce the projected throughput used to design the retainage percentages. The reductions in both the CUG and throughput projections would nearly offset each other and result in a minimal reduction to the 2010 TRA rates.

42. Given this limited reduction in the retainage percentages, the limited number of protests, and the reality that any over-recovery will be trued-up in Columbia Gulf's next annual filing, the Commission will not require Columbia Gulf to make any further changes to its proposed 2010 TRA rates. Should Columbia Gulf, however, find itself significantly over-recovering its fuel costs during the 2010 TRA tracking period, and to minimize the need for a substantial True-up Retainage Percentage in 2011, the Commission notes that section 32.2 of the GT&C of Columbia Gulf's tariff permits the

pipeline to adjust its Current Retainage Percentages in advance of its next annual TRA filing.

43. The Commission also finds, as we did in the July 2010 Order, that Columbia Gulf's proposal to hold the offshore and backhaul retainage rates at zero, rather than allowing the overall retainage rates to go negative, until all of the over-recovery associated with the offshore and backhaul has been returned to those shippers, is reasonable.[34] Further, in the July 2010 Order, the Commission already required Columbia Gulf, if it subsequently determined to implement the 2010 TRA rates in place of the IFF rates, to true-up any over- or under-collection incurred since July 1, 2010 through the true-up component of its TRA mechanism as compared to the TRA rates finally approved by the Commission. We see no reason to disturb that decision.

44. Regarding the requests for rehearing and clarification of the May 2010 Order by Washington Gas, Sequent, and NCUC, the Commission finds these requests to be moot. To the extent the rehearing applicants contest findings concerning specifics of Columbia Gulf's IFF proposal, e.g., the appropriate CUG projection to be used to determine Columbia Gulf's cost-based fuel retainage percentages, Columbia Gulf's withdrawal of the IFF proposal renders these issues moot.[35] In this regard, none of the rehearing applicants protested any aspect of Columbia Gulf's July 16 filing reinstating its TRA, including the CUG projection used in that filing.

45. To the extent, the rehearing applicants object to general policy statements in the May 2010 Order, rehearings of policy statements do not lie. As the Commission pointed out previously:

> [A] policy statement is not a final action of the Commission but an expression of policy intent. As the U.S. Court of Appeals for the District of Columbia Circuit has held, a statement of policy "is not finally determinative of the issues or rights to which it is addressed"; rather, it only "announces the agency's tentative intentions for the future." Therefore,

[34] See also, *Sabine Pipe Line LLC*, 125 FERC ¶ 61,241, at P 6-7 (2008) (permitting pipeline's tariff to prohibit *total* fuel retainage percentage from being less than zero) (emphasis added)

[35] The Commission would like to point out that, regarding Washington Gas's and NCUC's requests for clarification regarding Columbia Gulf's inclusion of Leach and Meter replacement in the IFF mechanism, the July 2010 Order found that it was inconsistent with the May 2010 Order for Columbia Gulf to include such replacements in the IFF program. *See* July 2010 Order, 132 FERC ¶ 61,009 at P 53.

> the parties are not aggrieved by the revised policy statement, and rehearing does not lie.[36]

If Columbia Gulf or another pipeline should make a new section 4 filing proposing an incentive fuel savings mechanism pursuant to the policy established in the May 2010 Order in this case, all parties will be free to raise any issues they desire concerning such a filing. The Commission accordingly dismisses the requests for rehearing.[37]

The Commission orders:

(A) The Commission accepts Columbia Gulf's proposed tariff sections listed in Appendix A, effective August 1, 2010.

(B) The Commission denies as moot the requests for rehearing of the May 2010 Order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[36] *Natural Gas Pipeline Negotiated Rates Policies and Practices,* 114 FERC ¶ 61,042, at P 6 (2006) (citing Pacific Gas & Electric Co. v. FPC, 506 F.2d 33, 38 (D.C. Cir. 1974) and *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines,* 75 FERC ¶ 61,024, at 61,076 (1996)).

[37] *See also, Southern Company Service, Inc.*, 108 FERC ¶ 61,139 (2004) (stating that the Commission does not adjudicate policy questions outside of concrete cases).

APPENDIX A

Columbia Gulf Transmission Company
Columbia Gulf Tariffs
FERC Gas Tariff
Third Revised Volume No. 1
Docket No. RP10-823-001
Tariff Sheets Accepted, to be Effective August 1, 2010

Currently Effective Rates, FTS-1 Rates, 3.0.0
Currently Effective Rates, FTS-2 Rates, 3.0.0
Currently Effective Rates, ITS-1 Rates, 3.0.0
Currently Effective Rates, ITS-2 Rates, 3.0.0
Currently Effective Rates, Retainage Rates, 1.0.0
Rate Schedules, Rate Schedule FTS-1, 3.0.0
Rate Schedules, Rate Schedule FTS-2, 3.0.0
Rate Schedules, Rate Schedule ITS-1, 3.0.0
Rate Schedules, Rate Schedule ITS-2, 3.0.0
Gen. Terms and Conditions, 3.0.0
Gen. Terms and Conditions, Transportation Retainage Adjustment, 3.0.0