

133 FERC ¶ 61,078  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

October 22, 2010

In Reply Refer to:  
Columbia Gulf Transmission Company  
Docket No. RP10-1332-000

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

Attention: James R. Downs, Vice President of Rate & Regulatory Affairs

Reference: Discount-Type Adjustments for Negotiated Rate Agreements

1. On September 23, 2010, Columbia Gulf Transmission Company (Columbia Gulf) filed revised tariff records<sup>1</sup> pursuant to section 4 of the Natural Gas Act. Columbia Gulf proposes to revise its tariff to clearly set forth the circumstances in which it may seek a discount-type adjustment of its recourse rates that reflects negotiated rate agreements. Several shippers have filed comments or protests, in particular expressing concern about the application of the proposed tariff language to Columbia Gulf's upcoming general section 4 rate proceeding.<sup>2</sup> For the reasons set forth below, we accept Columbia Gulf's proposed tariff revisions and accept its revised tariff record to become effective October 23, 2010, as proposed.

2. Columbia Gulf proposes to add a new section 20.5 to its General Terms and Conditions, which would set forth the circumstances in which Columbia Gulf may seek a discount-type adjustment related to negotiated rate agreements (including those that are converted from pre-existing discounted Part 284 agreements to negotiated rate agreements). The proposed language states that an adjustment would "only be allowed to

---

<sup>1</sup> Gen. Terms and Conditions, Discounting 1.0.0, to Columbia Gulf Tariffs, FERC NGA Gas Tariff.

<sup>2</sup> On September 22, 2010, one day before commencing this docket, Columbia Gulf posted notice on its electronic bulletin board that it would file a general section 4 rate case with the Commission by the end of October 2010.

the extent that Transporter can meet the standards required of an affiliate discount-type adjustment.”<sup>3</sup> Any proposal would place on Columbia Gulf the burden of proof to demonstrate five conditions. Columbia Gulf would have to demonstrate that:

- a. any discount granted is required to meet competition;
  - b. any discount-type adjustment for negotiated rate agreements does not have an adverse impact on recourse rate shippers;
  - c. in the absence of Transporter’s entering into such negotiated rate agreement providing for such discount, Transporter would not have been able to contract for such capacity at any higher rate;
  - d. recourse rates would otherwise be as high or higher than recourse rates which result after applying the discount adjustment; and
  - e. the negotiated rate discount contributes more fixed costs to the system than could have been achieved without the discount.
3. Columbia Gulf claims that, except for minor, non-substantive changes to conform to Columbia Gulf’s tariff conventions and to provide additional clarity, the proposed tariff provision is the same as the provision approved by the Commission in *Wyoming Interstate Company, Ltd.*<sup>4</sup> On September 23, 2010, Columbia Gulf supplemented its filing comparing the proposed tariff language to the language that the Commission ordered pursuant to section 5 of the Natural Gas Act in *WIC*. Columbia Gulf asserts that, other than formatting, its language differs in two respects: (1) it repeats the phrase “negotiated rate agreements” throughout, rather than just in the final paragraph and (2) it strikes all references to non-conforming agreements. Columbia Gulf argues that in *WIC*, the Commission established that “there is no *per se* rule against discount-type adjustments to recourse rates to reflect negotiated rate[s],” provided that “a pipeline’s negotiated rate proposal must protect the recourse rate-paying shippers against inappropriate cost-shifting.”<sup>5</sup> It urges the Commission to approve its language as in accordance with requirements established in *WIC* and are just and reasonable.

---

<sup>3</sup> See section 20.5, found within tariff record, *Gen. Terms and Conditions, Discounting 1.0.0*.

<sup>4</sup> 117 FERC ¶ 61,150 (2006) (*WIC*).

<sup>5</sup> *Id.* P 14.

4. Public notice of the filing was issued on September 23, 2010. Interventions and protests were due on or before on or before October 5, 2010, as provided in section 154.210 of the Commission's regulations.<sup>6</sup> Pursuant to Rule 214,<sup>7</sup> all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

5. Baltimore Gas and Electric Company (BGE) filed comments, arguing that the Commission should consider Columbia Gulf's language on the merits, rather than based on precedent, because BGE was not eligible to intervene in *WIC*. BGE requests that Columbia Gulf "present a more complete rationale for its proposal," and that "all intervenors being afforded an opportunity to respond" before the Commission issues its order.<sup>8</sup>

6. The city of Charlottesville, Virginia and the city of Richmond, Virginia (collectively, Cities) protest that the rationale and facts underlying the Commission's prior ruling in *WIC* must be revisited in this proceeding. Cities argue that the proposed language would "substantially expand the number and scope of agreements that captive customers may be required to subsidize. The result will turn on its head the foundation of negotiated rates, that captive shippers not be harmed."<sup>9</sup> Cities argues that the proposed language would virtually equate negotiated and discounted rates. Further, Cities argues that the Commission previously rejected Columbia Gulf's proposed tariff language that would have allowed it to seek a discount adjustment:

In *Columbia Gulf Transmission Co.*, 77 FERC ¶ 61,093 at pp. 61,385-86 (1996) the Commission rejected tariff language that stated Columbia Gulf would have a "right to employ a discount adjustment in establishing the level of [its] recourse rates in a future rate case filing." The Commission affirmed this ruling on rehearing. *Columbia Gulf Transmission Co.*, 81 FERC ¶ 61,206 at p. 61,876 (1997). Thus, based on the

---

<sup>6</sup> 18 C.F.R. § 154.210 (2010).

<sup>7</sup> 18 C.F.R. § 384.214 (2010).

<sup>8</sup> BGE Comments at 3.

<sup>9</sup> Cities Protest at 3.

Commission's prior rulings, a discount adjustment for negotiated rate agreements had been expressly precluded and for years Columbia Gulf's shippers were entitled to rely on the tariff without such a provision.<sup>10</sup>

7. Further, Cities argues that *WIC* did not address whether a discount-type adjustment could apply retroactively to agreements executed before the authorizing tariff language. Accordingly, Cities propose that, "the Commission to clarify that the proposed tariff language, if adopted, applies only to negotiated rate agreements entered into subsequent to the adoption of any tariff language that appropriately addresses the scope or permissibility of discount-type adjustments for negotiated rate agreements."<sup>11</sup>

8. Cities also expresses concern about the particular facts and circumstances concerning Columbia Gulf's negotiated rate agreements, which it notes have not been introduced into the record in this docket. Cities urges the Commission to either more fully vet the particular negotiated rate agreements in this docket, or in the alternative, "make clear that nothing in any order addressing Columbia Gulf's tariff filing here prejudices any issue regarding the application of a discount adjustment in the upcoming rate proceeding."<sup>12</sup>

9. Orange and Rockland Utilities, Inc., (O&R) requests that the Commission clarify that Columbia Gulf's proposed language would not only allow Columbia Gulf to adjust recourse rates upward for lower-than-recourse negotiated rates, but also oblige Columbia Gulf to adjust recourse rates downward to adjust for higher-than-recourse negotiated rates. O&R argues that *WIC* compels such an interpretation. In *WIC*, the Commission held:

because negotiated rates, unlike discounted rates, can be above, as well as below, the maximum recourse rate, pipelines should not be able to shift the cost of below maximum rate discounts to the recourse rate shippers, while

---

<sup>10</sup> Cities Protest at 4, n.4.

<sup>11</sup> Cities Protest at 4-5.

<sup>12</sup> Cities Protest at 6.

keeping the profits from above maximum rate negotiated rate transactions for themselves.<sup>13</sup>

10. Washington Gas Light Company (Washington Gas) protests Columbia Gulf's procedure in filing a rate-related tariff change in a separate docket immediately before embarking on a general section 4 rate proceeding. On September 22, 2010, one day before filing this docket, Columbia Gulf posted notice on its electronic bulletin board that it would file a general section 4 rate case with the Commission by the end of October 2010. Washington Gas argues that it would be more appropriate to examine Columbia Gulf's tariff filing in the same docket as the rate proceeding in which Columbia Gulf files for specific discount-type adjustments. Combining the dockets, Washington Gas argues, is in keeping with the Commission's principle expounded in *WIC* that the "pipeline's negotiated rate proposal must protect the recourse rate-paying shippers against inappropriate cost-shifting."<sup>14</sup> Further, Washington Gas argues that a more complete evidentiary record is necessary in order for Columbia Gulf to demonstrate that its contracting practices and market conditions are analogous to those of *WIC*, and whether *WIC* is relevant precedent.

11. On October 7, 2010, Columbia Gulf filed an answer addressing the protests, comments, and request for clarification.<sup>15</sup> Columbia Gulf contends that "no commenter disputes that [its] proposed tariff language is consistent with the Commission's clear precedent."<sup>16</sup> Columbia Gulf argues that the Commission is not opposed to discount-type adjustments to recourse rates to reflect negotiated rates, so long as the pipeline's rate proposal is structured to protect recourse-rate shippers from inappropriate cost shifting. By adopting the language in *WIC*, Columbia Gulf argues, its mechanism for potentially proposing such adjustments is just and reasonable.

12. Columbia Gulf argues that it will be more appropriate to address the specific adjustments that it might proposes in its upcoming general rate filing, rather than in the

---

<sup>13</sup> *WIC*, 117 FERC ¶ 61,150 at P 13.

<sup>14</sup> *Id.* P 14.

<sup>15</sup> While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, the Commission will accept the answers to allow a better understanding of the issues. *See* 18 C.F.R. § 385.213(a)(2) (2010).

<sup>16</sup> Columbia Gulf Answer at 1.

present proceeding. Columbia Gulf asserts that its proposed language “in no way impacts the shippers’ rights to contest any discount-type adjustments requested in Columbia Gulf’s next general rate filing.”<sup>17</sup> Rather, Columbia Gulf asserts, its proposed language establishes a process in which the burden of proof would be on Columbia Gulf as to whether any proposed adjustment is just and reasonable.

13. As an initial matter, nothing in this order addressing Columbia Gulf’s tariff filing here prejudices any issue regarding the application of a discount-type adjustment in Columbia Gulf’s upcoming rate proceeding. Columbia Gulf’s tariff language merely sets out the circumstances in which the pipeline may file for a discount-type adjustment; it in no way obliges the Commission to approve any particular adjustment.

14. The Commission finds that Columbia Gulf has adequately supported its proposed revisions for discount-type adjustments to negotiated rate agreements, consistent with Commission policy in *WIC*. In *WIC*, the Commission carefully reviewed its policy concerning pipelines’ ability to make discount-type adjustment for negotiated rates in section 4 rate cases. The Commission pointed out that in a series of orders issued in November 1997, including the *Columbia Gulf* rehearing order cited by Cities, the Commission stated,

Although the Commission is not promulgating a *per se* rule against discount-type adjustments to recourse rates to reflect negotiated rates, the Commission does require that a pipeline’s negotiated rate proposal protect the recourse rate-paying shippers against inappropriate cost-shifting. . . Thus, without protective measures in place, the Commission will not permit discount adjustments for negotiated rates.<sup>18</sup>

The Commission stated that this remains the Commission policy on discount adjustments for negotiated rates. The Commission then reviewed the tariff language in *WIC*’s section 5 compliance filing and determined that it included adequate measures to protect recourse rate-paying shippers against inappropriate cost-shifting to comply with this policy.

15. Columbia Gulf’s proposed tariff language is consistent with the tariff language approved in *WIC*. The proposed tariff language does not guarantee Columbia Gulf the

---

<sup>17</sup> Columbia Gulf Answer at 4.

<sup>18</sup> *WIC*, 117 FERC ¶ 61,150 at P 10, quoting, among other orders, *Columbia Gulf*, 81 FERC ¶ 61,206, at 61,876 (1997).

right to make a discount-type adjustment, but only establishes burden of proof Columbia Gulf must satisfy in order to obtain a discount-type adjustment consistent with the policy in *WIC*. The tariff language requires Columbia Gulf to “meet the standards required of an affiliate discount-type adjustment.” The Commission has consistently held that, in order to obtain a discount adjustment in connection with a discount provided to an affiliate, “the pipeline has a heavy burden to show that competition required discount to affiliates.”<sup>19</sup> In addition, in regard to the concern of Cities that captive shippers not be harmed, the tariff language specifically requires Columbia Gulf to demonstrate that any discount-type adjustment “does not have an adverse impact on recourse rate shippers.” Further, when Columbia Gulf files its next general section 4 rate proceeding, shippers will have the opportunity to fully evaluate all of Columbia Gulf’s cost and revenue data and make any arguments as to whether Columbia Gulf has satisfied its heavy burden of proof and shown that recourse rate shippers are not adversely affected. Among other things, shippers can raise the issue whether any proposed discount-type adjustment is consistent with the policy stated in *WIC*, that “pipelines should not be able to shift the cost of below maximum rate discounts to the recourse rate shippers, while keeping the profits from above maximum rate transactions for themselves.”<sup>20</sup> The concerns raised by BGE, O&R, and Washington Gas about the specific application of the proposed language are thus best addressed in the general section 4 rate proceeding. Accordingly, the Commission will accept Columbia Gulf’s proposed tariff records listed in footnote No. 1 effective October 23, 2010.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

cc: All participants

---

<sup>19</sup> *Trunkline Gas Co.*, 90 FERC ¶ 61,017, at 61,087 and 61,096 (2000), describing the type of evidence the pipeline must submit to satisfy this burden.

<sup>20</sup> *WIC*, 117 FERC ¶ 61,150 at P 15.