

133 FERC ¶ 61,182
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 No. RP11-1435-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS SUBJECT TO
REFUND AND ESTABLISHING HEARING PROCEDURES AND A TECHNICAL
CONFERENCE

(Issued November 30, 2010)

1. On October 28, 2010, Columbia Gulf Transmission Company (Columbia Gulf) filed a request under section 4 of the Natural Gas Act (NGA) to implement a general rate increase. In its filing, Columbia Gulf submitted two sets of proposed tariff records with alternative rate structures for consideration by the Commission: actual tariff rates¹ as its Primary Case and *pro forma* tariff rates as its Preferred Case. The proposed tariff records reflecting Columbia Gulf's Primary Case includes Primary Rates based on the pipeline's current rate zone structure, new and revised tariff provisions related to its operations, and a new hourly firm service. Columbia Gulf proposes that the Primary Case tariff records be placed into effect on December 1, 2010 or at the end of any suspension period. The *pro forma* tariff proposal reflecting Columbia Gulf's Preferred Case includes Preferred Rates designed according to a revised zone structure that combines the pipeline's Mainline Zone and Onshore Laterals Zone into a new Market Zone. The Preferred Case rates also reflect an additional discount adjustment for transitional rate relief to its current Onshore Zone shippers. The Preferred Case also includes non-rate tariff proposals identical to those in the Primary Case. Columbia Gulf filed the *pro forma* Preferred Case on a prospective basis only.

2. For the reasons discussed below, the Commission will accept and suspend the tariff records listed in the Appendix to be effective on May 1, 2011, subject to refund and conditions, and the outcome of a technical conference and hearing procedures established herein. The Commission also directs that the *pro forma* rate-related proposal be explored further at the hearing established by this order.

¹ See Appendix.

I. Background

3. Columbia Gulf's interstate pipeline system extends from the Gulf of Mexico, offshore Louisiana and Texas, to an interconnection with Columbia Gas Transmission Corporation (Columbia Gas) at the Kentucky-West Virginia border. Columbia Gulf's current rates reflect three main rate zones, consisting of the offshore lateral lines zone (Offshore Zone), the onshore lateral lines zone in Louisiana and Texas (Onshore Zone), and the Mainline Zone from Rayne, Louisiana through Tennessee to the Leach interconnection with Columbia Gas at the Kentucky-West Virginia border. Columbia Gulf also operates discrete pipeline segments in Texas and Louisiana which are referred to as its Offsystem-Onshore Zone. These segments are physically and operationally segregated from Columbia Gulf's main facilities. Each zone has its own transportation recourse rates, and a separately calculated fuel retention percentage which is adjusted annually under Columbia Gulf's fuel tracking mechanism.

4. On October 21, 2010, Columbia Gulf filed applications to abandon service to the receipt and delivery points on its offshore facilities, because of minimal usage of the offshore facilities and lack of any firm contracts there. Those applications are pending in Docket Nos. CP11-13-000 and CP11-14-000.

5. Columbia Gulf states that its rates have not changed for nearly 13 years, since the settlement of its last general section 4 rate case in Docket No. RP97-52-004.² Columbia Gulf asserts that, during this period, increased shale gas production and the development of new pipeline infrastructure for transportation of shale gas and Rocky Mountain gas have affected how shippers use its capacity. Columbia Gulf describes such developments as challenging the demand for certain portions of its system, which was designed primarily to transport gas northward from the Gulf of Mexico. Columbia Gulf notes that its overall revenues have decreased significantly in recent years, and projects a 22 percent revenue decline from 2008 through the end of 2010. Columbia Gulf also represents that it has experienced increased costs, particularly labor and pension costs, environmental compliance costs, and maintenance and integrity management costs. Columbia Gulf explains that these circumstances require it to revise its rates to be competitive in the marketplace while creating the opportunity to recoup an increased cost of service, including a rate of return that will attract investment capital to its aging system.

² *Columbia Gulf Transmission Co.*, Docket No. RP97-52-004 (April 29, 1998) (delegated letter order) (order approving Columbia Gulf settlement).

II. Details of the Filing

A. Rate Proposals

6. Columbia Gulf's Primary and Preferred Cases are substantially similar, except that the Preferred Case includes a change in Columbia Gulf's rate zone structure and certain other related differences. Where these cases differ, it is specifically noted; otherwise, the items discussed with regard to Columbia Gulf's filing refer to both cases.

7. The proposed Primary Case rate design continues Columbia Gulf's current rate zone structure, whereas the *pro forma* Preferred Case rate design reflects a revised rate zone structure combining the current Mainline Zone and Onshore Zone into a single Market Zone with a postage stamp rate. Columbia Gulf states that the Preferred Case rate design will give shippers the flexibility to move shale gas sourced at a central point on its system in the proposed Market Zone in a north or south direction at postage stamp rates. Columbia Gulf believes that the Preferred Case rates more accurately represent the current and anticipated characteristics of its shippers' capacity usage, and will provide increased flexibility to shippers, thereby enabling the pipeline to retain and add throughput.

8. According to Columbia Gulf, its rates employ a straight fixed variable (SFV) rate design and reflect a total annual cost of service of \$159,072,909 based on actual costs during the base period, with adjustments for known and measurable changes during the adjustment period.³ The total revenue requirement includes a 10.54 percent overall rate of return with a 13.50 percent return on equity (ROE) and a capital structure of 43.7 percent debt to 56.25 percent equity.

9. Columbia Gulf asserts that it is proposing a new Enhanced Firm Transportation (EFT) service which will provide shippers with the flexibility to contract for non-uniform hourly takes on a firm basis. Columbia Gulf indicates that EFT service will be provided in the Mainline and Onshore Zones under the Primary Case, and in the Market Zone under the Preferred Case. Columbia Gulf proposes to derive the rate for each EFT contract by multiplying the applicable zone's reservation charge according to a formula that accounts for the length of the Hourly Delivery Period chosen by the shipper. Columbia Gulf believes that EFT service will generate only minimal incremental revenue because the service would supplant capacity otherwise available for FTS service.

10. In addition, Columbia Gulf proposes new short-term firm (STF) reservation rates for firm service with contract terms of less than one year. The maximum STF reservation

³ Columbia Gulf's filing uses a July 2009 through June 2010 base period, and a July 2010 through March 2011 adjustment period.

rate would equal 250 percent of the firm reservation rate in the applicable zone. Columbia Gulf states that, based on its base period experience, it has allocated \$1.2 million of its revenue requirement to STF transactions, and proposes a 50/50 revenue sharing mechanism that would be triggered once it recoups 100 percent of the total revenue requirement. According to Columbia Gulf, the STF proposal addresses a revenue shortfall caused by an increase, in recent years, of the proportion of marketers to local distribution companies in its customer base. Columbia Gulf argues that this change has resulted in shippers using more short-term firm or interruptible contracts during periods when the demand for capacity is highest. Columbia Gulf avers that this leaves portions of capacity either unsubscribed or unavailable for subscription on a year-round basis, resulting in a shortfall of revenues necessary to maintain the pipeline.

11. Columbia Gulf indicates that both the Primary Case and Preferred Case rate designs include discount adjustments reflecting its need to enter into competitively priced, discounted contracts with unaffiliated customers and negotiated rate contracts priced below the applicable recourse rate. Columbia Gulf states that the Preferred Case also includes an additional discount adjustment for transitional rate relief to current Onshore Zone shippers who would otherwise experience rate shock when such shippers become subject to the proposed Market Zone rates after their existing contracts expire.

12. Accordingly, under the Primary Case, the monthly Mainline Zone firm reservation charge⁴ would increase from \$3.1450 per Dth to \$5.4919 per Dth, and the Onshore Zone firm reservation charge would increase from \$1.0603 per Dth to \$2.0365 per Dth. The STF reservation rates for the Mainline and Onshore zones would be, respectively, \$13.7297 per Dth and \$5.0924 per Dth.

13. Under the Preferred Case, the monthly reservation charge for firm transportation service in the new Market Zone would be \$5.5033 per Dth and the STF Market Zone reservation charge would be \$13.7854 per Dth.

14. Finally, Columbia Gulf states that it did not file to change its Offshore Zone rates, nor did it project any revenues from this zone, because of its pending applications to abandon service in that zone.

B. Non-Rate Tariff Proposals

15. Under both the Primary Case and Preferred Case, Columbia Gulf proposes extensive revisions to its operations and business practices. Columbia Gulf claims, among other things, that such proposals will enable it to better manage its system in order to maintain reliable service, to provide greater flexibility to shippers, and thereby to

⁴ All rates referred to herein are maximum Part 284 recourse rates.

compete more effectively with other pipelines. Columbia Gulf states that when possible, the proposals model language previously approved by the Commission.

16. Our summary below of Columbia Gulf's proposed non-rate tariff changes highlight the most protested proposals. However, the Commission will examine all the non-rate tariff proposals in a technical conference. Unless otherwise indicated, tariff references that follow are to Columbia Gulf's General Terms and Conditions (GT&C).

17. Columbia Gulf states that the new Rate Schedule EFT, whose proposed rates are described in the previous section, will permit shippers to contract for non-uniform hourly takes on a firm basis, thereby satisfying their need for higher levels of non-ratable flows. Columbia Gulf contends that EFT shippers will be permitted to schedule their entire daily contract demand over a shorter time period, which may be between four and 20 hours, within maximum hourly delivery quantities (MHDQ) specified in one-hour increments. Columbia Gulf states that this service will encourage long-term transportation contracts similar to those offered by its competitors, provide flexibility to shippers, avoid imposition of penalties, support the accuracy of nominations, and reduce the potential for system disruptions. Columbia Gulf argues that an EFT shipper must give Columbia Gulf three hours prior notification of accelerated takes. Finally, Columbia Gulf claims that an EFT delivery point must have flow control equipment and electronic measurement equipment.

18. Columbia Gulf proposes a number of interrelated new and revised tariff provisions dealing with how it allocates available capacity. Columbia Gulf states that, under proposed Section 11.2(b), requests for changes in primary receipt and delivery points will be considered on a first-come, first-served basis. Columbia Gulf asserts that, if two or more requests to change to the same receipt or delivery point are received within a five-day business period, Columbia Gulf may award the capacity to the request with the highest Net Present Value (NPV) or hold an open season for the point shift.

19. In addition, Columbia Gulf states that revised Section 4.2(c)(2) (Auctions of Capacity that Becomes Available) would permit the pipeline to consider a non-creditworthy shipper's risk of default when evaluating the shipper's bid for capacity. Accordingly, Columbia Gulf asserts that it could adjust downward the NPV of a non-creditworthy shipper's bid using publicly available statistical information published by Standard and Poor's on the default risk of companies with specified credit ratings. Columbia Gulf believes this revision will enable it to attract and retain more creditworthy customers, thereby protecting the financial stability of the pipeline.

20. Under revised Section 4.2(c), Columbia Gulf will be permitted to notify shippers that it will evaluate the NPV of bids in a capacity auction using additional criteria other than term and price, including commencement date of service, prepayments, credit, and the cost of service associated with bids. Columbia Gulf states that revised Section

4.2(c)(1) would permit it to aggregate competing bids, and it would also allow shippers to submit bids that comprise multiple parcels of capacity.

21. Columbia Gulf proposes to revise renumbered Section 4.5 which permits it to reserve capacity for expansion projects. As indicated by Columbia Gulf, such revisions would, among other things: 1) clarify that it can reserve generally available capacity⁵ without an open season, but must hold an open season for any newly available capacity⁶ prior to reserving such capacity; and 2) remove language requiring Columbia Gulf to file a certificate application within one year of reserving capacity.

22. Columbia Gulf maintains that this proposal is consistent with Commission precedent requiring pipelines to hold an open season before awarding capacity for expansions. Columbia Gulf avows that it is consistent with this requirement because it will hold an open season before reserving any newly available capacity. Columbia Gulf further argues that its reservation of generally available capacity will not prevent shippers from obtaining capacity because the reserved capacity will already have been posted at least once for auction and then posted on Columbia Gulf's EBB prior to being reserved. Finally, Columbia Gulf asserts that it is reasonable to eliminate the requirement in its tariff to file a certificate application within one year of reserving capacity because the tariff still requires Columbia Gulf to hold an open season for the expansion project within one year.

23. Columbia Gulf's filing also includes a number of operationally-oriented tariff proposals that Columbia Gulf believes will prevent or reduce instances of unwanted shipper behavior related to flowing volumes. Columbia Gulf claims that such proposals will support its efforts to provide a well managed and competitive pipeline system.

24. Columbia Gulf represents that a new Unauthorized Overrun Penalty is needed to alleviate the problem of shippers delivering and taking gas in excess of their scheduled nominations. Therefore, in new Section 1.54, Columbia Gulf proposes to define

⁵ Under revised Section 4.1(b), generally available capacity is capacity that was subject to public bidding procedures under Section 4.2, but not awarded.

⁶ Columbia Gulf's use of the description "newly available capacity" is an apparent reference to capacity described in Section 4.1(a) which becomes available as a result of the termination of a service agreement, and for which there is 1) no previous commitment, 2) no exercise of any applicable right of first refusal (ROFR), and 3) remaining available facility capacity. Under Section 4.1(b), such capacity is subject to Section 4.2 bidding procedures and, if not awarded to a shipper with ROFR bid-matching rights or to a third-party bidder, is then posted as Generally Available Capacity.

“unauthorized overrun” as any volume of gas received or delivered that exceeds the volumes confirmed under a valid nomination for service.

25. Further, Columbia Gulf proposes a new Unauthorized Overrun Penalty in Section 19.4 to be assessed during critical and non-critical periods. For violations during a non-critical period, Columbia Gulf asserts that shippers will be subject to penalties for unauthorized overruns that exceed five percent of the volumes scheduled by Columbia Gulf. As a penalty, Columbia Gulf states it will purchase the unauthorized overrun volumes received by Columbia Gulf 100 percent of the lowest priced published weekly during the month, plus the first week of the succeeding month, by Natural Gas Week for “Columbia Gulf-Rayne” or “Columbia Gulf-Erath.” Columbia Gulf asserts that it will sell the above unauthorized volumes delivered by Columbia Gulf to the shipper at 100 percent of the highest priced published weekly during the month, plus the first week of the succeeding month, by Natural Gas Week for “Columbia Gulf-Rayne” or “Columbia Gulf-Erath.”

26. For unauthorized overruns during critical periods, Columbia Gulf states that shippers will be subject to penalties for unauthorized overruns exceeding three percent of the volumes scheduled by Columbia Gulf. As a penalty, Columbia Gulf asserts it will purchase the unauthorized overrun volumes received by Columbia Gulf 50 percent of the lowest priced published weekly during the month, plus the first week of the succeeding month, by Natural Gas Week for “Columbia Gulf-Rayne” or “Columbia Gulf-Erath.” Columbia Gulf asserts that it will sell the above unauthorized volumes delivered by Columbia Gulf to the shipper at 150 percent of the highest priced published weekly during the month, plus the first week of the succeeding month, by Natural Gas Week for “Columbia Gulf-Rayne” or “Columbia Gulf-Erath.”

27. Columbia Gulf also proposes to revise Section 4.2(e) (Binding Nature of Bids; Liquidated Damages) by imposing liquidated damages on a successful bidder in an auction of capacity that fails to execute a contract within five days (rather than the current 15 days) after Columbia Gulf tenders a contract. Columbia Gulf avers that the liquidated damages will be the difference between the value of the shipper’s bid and a subsequent contract, or if no other acceptable offers are submitted, up to the full value of the shipper’s bid.

28. In order to maintain the reliability of its system, Columbia Gulf states that it is proposing a new Hourly Scheduling Penalty in Section 19.6, which will be assessed during critical and non-critical periods. During critical periods, Columbia Gulf asserts that the proposed language requires a shipper to pay an hourly scheduling penalty for each Dth that Columbia Gulf delivers which varies by more than 1,000 Dth or by three percent (whichever is greater) from the shipper’s hourly flow rights. Columbia Gulf states that the hourly critical period penalty is equal to three times the midpoint range of an index price for each Dth in excess of the shipper’s hourly flow rights. During non-critical periods, Columbia Gulf asserts that the proposed language requires shippers to

pay an hourly scheduling penalty for each Dth that Columbia Gulf delivers that varies by more than 1,000 Dth or by five percent (whichever is greater) from the shipper's hourly flow rights. Columbia Gulf states that it needs this proposal in order to better control the pressure of its system, which can be severely affected when large, non-ratable volumes of gas are unexpectedly received by the pipeline or taken by shippers.

29. According to Columbia Gulf, revised Section 17 (Failure to Comply with a Critical Period Notice or Operation Flow Order (OFO)) would clarify the actions the pipeline can take when it issues a Critical Period Notice in response to operational conditions that threaten system integrity, system safety, efficient system operation, or its ability to provide reliable service. Columbia Gulf asserts that this proposal would enable it to more effectively mitigate operational conditions that could lead to the issuance of an OFO. Columbia Gulf argues that the revised language permits the pipeline to: require shipper adherence to specific tolerance levels for delivery variances and daily imbalances; make nominations that would reduce monthly imbalances of more five percent within a specific period; and conform to hourly flow restrictions in the tariff or shippers' contracts.

30. To enforce the revisions in Section 17, Columbia Gulf proposes to expand the application of the penalty in Section 19.3 to Critical Period Notices. Columbia Gulf states this section currently imposes a penalty of three times an indexed commodity price on all Dths delivered or taken only in violation of an OFO. Columbia Gulf has also added language to Section 19.3 expressly applying the penalty to hourly quantities taken in violation of the flow limitations in an OFO or Critical Period Notice.

31. Finally, Columbia Gulf proposes that, under revised Section 9.2(b) (Flow Control Equipment), it would be permitted to install flow control equipment at the expense of a shipper or point operator that commits certain described tariff violations related to flow requirements three or more times during a consecutive 12-month period, or affects the safe and reliable operation of the system by a violation of the tariff or its service agreement. Columbia Gulf will allocate such installation costs only to offending parties, and maintains that the proposal will provide a long-term solution to problems caused by offending actions, thereby ensuring the safety and reliability of the system.

III. Notice of Filing, Interventions and Protests

32. Public notice of Columbia Gulf's filing was issued October 28, 2010, with interventions and protests due as provided in section 154.210 of the Commission's regulations.⁷ Pursuant to Rule 214,⁸ all timely filed motions to intervene and any

⁷ 18 C.F.R. § 154.210 (2010).

⁸ 18 C.F.R. § 385.214 (2010).

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.

33. The following parties filed timely protests: Baltimore Gas and Electric Company (BGE); Suburban Natural Gas Company (Suburban); Mountaineer Gas Company (Mountaineer); AGC Flat Glass Company North America, Inc. (AGC); Sheldon Gas Company, Inc. (Sheldon); Arlington Natural Gas Company, Inc. (Arlington); Swickard Gas Company (Swickard); Duke Energy Kentucky, Inc. and Duke Energy Ohio, Inc. (collectively, Duke); EDF Trading North America, LLC, Gazprom Marketing & Trading USA, Inc., and Macquarie Energy LLC (collectively, Indicated Marketers); New Jersey Natural Gas Company (New Jersey Natural); Orange and Rockland Utilities, Inc. (Orange and Rockland); Tennessee Valley Authority (TVA); Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc. (collectively, Nisource Distribution Companies); and Washington Gas Light Company (WGL).

34. The following parties filed timely rate and specific non-rate tariff protests: Columbia Small Customer Group (CSCG); Lafayette Utilities System (Lafayette); UGI Utilities, Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. (collectively, UGI Distribution Companies); Easton Utilities Commission, the City of Lebanon, Tennessee, the City of Charlottesville, Virginia, and the City of Richmond, Virginia (collectively, Cities); Virginia Natural Gas, Inc. (VNG); and New York State Electric & Gas Corporation (NYSEG).

35. Total Gas & Power North America, Inc. (Total) filed a timely protest which included a request for summary rejection of Columbia Gulf's entire Primary Case.

36. Finally, the following parties filed timely rate and non-rate tariff protests as well as various requests for summary disposition, including rejection of Columbia Gulf's STF rate proposal: Anadarko Energy Services Company, BP Energy Company, BP America Production Company, Chevron U.S.A., Inc., ConocoPhillips Company, ExxonMobil Gas & Power Marketing Company, Interstate Gas Supply, Inc., Marathon Oil Company, and Shell Energy North America (US), L.P. (collectively, Indicated Shippers);⁹ Atmos Energy Corporation and Trans Louisiana Gas Pipeline, Inc. (Atmos Energy); Atmos Energy Marketing, LLC (Atmos Marketing); BG Energy Merchants, LLC (BGEM); Calpine Entergy Services, L.P. (Calpine); Sequent Energy Management, L.P. (Sequent); and Piedmont Natural Gas Company (Piedmont) (collectively, summary disposition parties).

⁹ Hess Corporation filed comments in support of the Indicated Shippers' protest.

37. On November 15, 2010, Columbia Gulf filed an answer to the protests and requests for summary disposition. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Columbia Gulf's answer because it has provided us with information that assists us in our decision-making process.

A. Protests and Requests for Summary Rejection of Rate Proposals

38. In general, the protesting parties object to the magnitude of the overall increase in the rates and revenue requirements proposed under both the Primary Case and Preferred Case. Among other things, they raise questions typical of general rate proceedings regarding Columbia Gulf's proposed rate of return, return on equity, cost of equity and debt, billing determinants and rate design. Several rate protestors believe that the rate design of the Preferred Case allocates costs inequitably to their own zonal customer group. A majority of protestors also argue that the expansive Market Zone in the Preferred Case does not actually correspond to the operational flow capabilities of Columbia Gulf, and consequently forces them to pay for capacity and flexibility that they do not need.

39. Protestors complain that Columbia Gulf's proposed rate design under both the Primary Case and Preferred Case relies too heavily on discount adjustments in an effort to make up for the pipeline's admitted decline in revenues. They argue that Columbia Gulf is attempting, through the proposed rate increases, to force remaining customers to unfairly absorb what the Commission would deem to be the pipeline's own financial burden and risk. Some protestors are also concerned that, under the Preferred Case, Columbia Gulf would make additional adjustments beyond the competitive discount adjustments to account for measures necessary to prevent existing Onshore Zone customers from experiencing rate shock as Market Zone shippers. Moreover, a protester questions whether the extent to which the adjustments account for negotiated rate contracts is consistent with Commission policy.

40. The protesting parties request that Columbia Gulf's rate application's effectiveness be suspended for the maximum period permitted by law, and made subject to refund. They also ask that the Commission establish an evidentiary hearing to examine the Primary Case and Preferred Case rates, as well as any factual issues concerning other tariff proposals not resolved after a technical conference.

41. In its protest, Total requests summary rejection of Columbia Gulf's entire Primary Case because Total contends that Columbia Gulf itself has advocated against its own Primary Case and instead, has provided a prima facie case in support of the revised rate design as proposed in its Preferred Case. Therefore, Total argues that the Commission should reject the Primary Case because it cannot find that Columbia Gulf has met its burden of proof in support of the Primary Case as the pipeline has failed to submit

evidence that its Primary Case rates are just and reasonable under the NGA and applicable Commission precedent.

42. In their respective protests, the summary disposition parties argue that Columbia Gulf's STF rate proposal should be summarily rejected because it is contrary to the rate design parameters established by the Commission in Order No. 637, which require term-differentiated or peak/off-peak rates. The summary disposition parties also maintain that summary rejection is appropriate because Columbia Gulf's STF proposal is not cost-based and contrary to Order No. 712 (wherein the Commission refused to allow pipelines, because of their natural market power, to offer short-term firm services at rates exceeding the applicable cost-based recourse rate cap).¹⁰ Moreover, one summary disposition party claims that Columbia Gulf's proposal to share STF revenues with shippers after it has met its total revenue requirement proves that the proposal is not cost-based.

43. Several protestors, namely Atmos Energy and Piedmont, request either rejection of or examination of Columbia Gulf's EFT service proposal in a technical conference. These protestors state that Columbia Gulf has not presented sufficient evidence of the need to implement Rate Schedule EFT service and has not justified its proposed cost allocation structure for that service. Atmos Energy further argues that firm customers are already paying for the same facilities, and thus the same flexibility that Columbia Gulf now proposes to charge for as EFT service. Finally, Atmos Energy and Piedmont question whether Columbia Gulf has allocated costs to the service, and structured the service to truly meet the operational needs of its presumptive customers, electric generators.

B. Non-Rate Tariff Proposals

44. In their respective protests, TVA and Piedmont request that the Commission consolidate the instant proceeding with RP11-24-000, which is a separate proceeding initiated by Columbia Gulf to implement a new firm daily delivery point scheduling service under Rate Schedule SVS (Scheduling Variance Service). The requesting parties state their preference to consolidate the two proceedings to assess more fully the impact of all Columbia Gulf's new, proposed services collectively.

45. Regarding the penalty provisions included in Columbia Gulf's non-rate tariff revisions, several of the protesting parties suggest that such changes are not just and reasonable and potentially duplicative of other existing penalty provisions. These protestors further object to language in several penalty proposals that they believe is

¹⁰ *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

overly broad, unclear, or that vests too much discretion in the pipeline. For example, several of the protesting parties believe the Columbia Gulf would have excessive discretion to determine what events would trigger its ability to require installation of flow control, or to issue a Critical Period Notice in order to maintain the efficiency of its system.

46. The protestors also generally express concerns regarding other non-rate proposals which they believe are, among other things, unsupported, unclear, unnecessary, and raise the potential for undue discrimination which should be subject to review by the Commission in a technical conference.

C. Columbia Gulf's Answer

47. In its Answer, Columbia Gulf states that, although it disagrees with the protestors' allegations regarding the rate and tariff proposals, it agrees, without waiving its rights, that the rate issues are best addressed in an evidentiary hearing, and questions regarding its non-rate tariff proposals are best resolved in a technical conference. Columbia Gulf also maintains that a blanket request for a technical conference or hearing filed by a party that does not raise any issue of material fact should not warrant further investigation. Columbia Gulf, therefore, requests that tariff changes not specifically challenged in protests become effective on December 1, 2010. Moreover, Columbia Gulf states that, due to the number of protests and in the interest of accommodating the statutory timeframe within which the Commission must issue an order, it reserves its right to respond in a hearing or technical conference to all of the protestors' allegations.

48. Columbia Gulf also states its opposition to various protestors' requests for summary rejection of the Primary Case and Preferred Case rate proposals. Columbia Gulf maintains that, in order to issue a summary rejection, the Commission must find that a hearing is unnecessary because there are no issues of material fact or that the filing is patently deficient or a violation of an applicable statute, regulation, or Commission policy.¹¹ Columbia Gulf maintains that the protestors have not made a prima facie showing that such circumstances exist here. Moreover, Columbia Gulf argues that it would not be appropriate to summarily reject its proposed STF rates because that proposal is sufficiently similar to other proposals for STF rates that have been set for hearing.¹²

¹¹ 18 C.F.R. § 385.217(b) (2010).

¹² *El Paso Natural Gas Co.*, 133 FERC ¶ 61,129 (2010).

49. Columbia Gulf argues that the STF rates are cost-based in that the cost of service allocated to the units of firm capacity and subject to contracts with a term of less than one year is annualized and presumed to be collected over a full twelve-month period. Columbia Gulf asserts that whether the STF rate proposal is just and reasonable will be determined only after a hearing on the specific facts relevant to its system as applied to the rate proposal.

50. Columbia Gulf argues that the Commission should deny Total's request to summarily reject its rates related to Columbia Gulf's entire Primary Case. Columbia Gulf states the Commission has long recognized that the pipeline has the right under section 4 of the NGA to propose rates to recover its costs.¹³ Columbia Gulf contends that Total attempts to use the submission of the Preferred Case as support for the proposition that Columbia Gulf somehow has advocated against its Primary Case. To the contrary, Columbia Gulf avers that both the Primary and Preferred Case rates are just and reasonable.

51. In addition, Columbia Gulf addresses TVA's and Piedmont's requests for consolidation of this proceeding with the proceeding in Docket No. RP11-24-000 on Rate Schedule SVS. Columbia Gulf points out that the Commission recently issued an order suspending the proposal for the maximum period until April 1, 2010, and further pleadings have been ordered. Columbia Gulf argues that neither party cites any authority or justification for consolidating the proceedings and that doing so will only delay the SVS proceeding. Columbia Gulf states that the above proceeding is on a faster track than the instant one so the Commission should not delay its decision in Docket No. RP11-24-000.

52. Columbia Gulf further requests that any non-rate tariff proposals not challenged be made effective December 1, 2010. According to Columbia Gulf, such proposals not challenged by the protestors include: 1) revisions to Section 4.5 that will allow it to reserve capacity for expansion projects; 2) the addition of a new Section 4.1(c) to give it the authority to enter into pre-arranged sales of capacity, subject to bidding requirements; 3) the addition of a new Section 4.1(b) that will eliminate the requirement to hold an auction for generally available capacity awarded at a discount currently contained in Section 4.1(c)(7); 4) a revision to Section 6 of certain *pro forma* service agreements to incorporate a credit annex for capital projects; and 5) other miscellaneous housekeeping tariff revisions.

53. Finally, Columbia Gulf states that it is prepared to place the Primary Case rates into effect either on May 1, 2011, or an earlier date.

¹³ *Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070 (1997); *Columbia Gulf Transmission Co.*, 79 FERC ¶ 61,351 (1997).

IV. Discussion

54. For the reasons discussed below, the Commission denies all requests for summary disposition.¹⁴ The Commission also sets the rate issues for hearing and establishes a technical conference to consider the non-rate issues.

A. Requests for Summary Disposition

55. A number of the protesting parties request that the Commission summarily reject portions of Columbia Gulf's filing. The Commission may summarily reject portions of a proposed filing if it determines that there are no material issues of fact in dispute and the filing is in clear violation of an applicable statute, regulation, or Commission policy.¹⁵ The Commission will deny the requests for summary rejection, as discussed below.

1. Short-Term Firm Rates

56. Several parties argue that Columbia Gulf's STF rate proposal should be summarily rejected because it is contrary to Commission regulations, policy and Order Nos. 637 and 712. We disagree. In Order No. 637, the Commission stated that pipelines may propose cost-based seasonal rates or term-differentiated rates, and the Commission set forth the basic parameters that such rates must satisfy.¹⁶ Columbia Gulf's proposal is similar to short-term rate proposals filed by other pipelines pursuant to Order No. 637.¹⁷ The Commission found that those proposals were not clearly contrary to the guidance set

¹⁴ In addition, where the Commission has not specifically addressed the parties' various requests for summary disposition, these requests are also denied.

¹⁵ *E.g., Northern Border Pipeline Co.*, 60 FERC ¶ 61,176, at 61,644 (1992) (*Northern Border*).

¹⁶ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 30,287-295, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002) *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

¹⁷ *See, e.g., El Paso Natural Gas Co.*, 124 FERC ¶ 61,124 (2008), *reh'g denied*, 133 FERC ¶ 61,129 (2010) (*El Paso*). *See also Gas Transmission Northwest Corp.*, 117 FERC ¶ 61,315 (2006) (*GTN*); *Northern Border Pipeline Co.*, 113 FERC ¶ 61,230 (2005) (*Northern Border*).

forth in Order No. 637,¹⁸ and therefore, did not warrant summary rejection. Similar to the other proposals, Columbia Gulf's proposal includes rates that are tied to the applicable cost-based recourse rate,¹⁹ a cost-sharing mechanism triggered when the pipeline's revenues equal its total annual cost of service,²⁰ and a parameter of one-year to differentiate the proposal's short-term contracts from other firm contracts.²¹

57. Whether or not this proposal is just and reasonable and complies with Order No. 637 and Order No. 712 includes factual issues appropriate for consideration by the ALJ at hearing. We believe that there are enough questions of fact surrounding the design of Columbia Gulf's STF rate proposal, including the level of costs allocated to the service, such that it is unwarranted to dismiss the proposal before a hearing. Therefore, consistent with our previous rulings, we will deny the parties' requests for summary disposition of this issue and will instead set Columbia Gulf's short-term rate proposal for hearing, subject to refund, so that the potential costs and benefits of the proposal can be addressed in light of the other cost-of-service issues. In addition, the protesting parties are free to again raise their arguments regarding the consistency of Columbia Gulf's STF rate proposal with the parameters set forth in Order No. 637 and before the ALJ. These issues include whether Columbia Gulf's 50/50 excess revenue sharing proposal is just and reasonable and whether all transactions of less than a year are properly considered short-term for purposes of Columbia Gulf's STF rate proposal.

2. EFT Service

58. With regard to Atmos Energy's and Piedmont's requests that the Commission summarily reject Columbia Gulf's proposed EFT service, the Commission similarly denies such requests for summary dismissal. Neither party has provided sufficient grounds for summary rejection of the proposed service. Indeed, one of the parties'

¹⁸ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002) *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

¹⁹ *See, e.g., El Paso*, 133 FERC ¶ 61,129 at P 19-20.

²⁰ In *Northern Border*, 113 FERC ¶ 61,230, the pipeline's *pro forma* proposal included a mechanism to share such excess revenues on a 50/50 basis.

²¹ *Id.*

proffered arguments regarding whether Columbia Gulf has justified sufficiently the need for the EFT service is an issue of fact for consideration at hearing. Therefore, we will deny their requests.

3. Primary Case

59. Finally, the Commission also denies Total's request for summary rejection of Columbia Gulf's entire Primary Case. We do not find credible Total's argument that Columbia Gulf, by submitting an alternative rate proposal in the form of a Preferred Case, has somehow advocated against approval of its own Primary Case. Columbia Gulf has stated in its October 28, 2010 rate application that both proposals are just and reasonable. The Commission determines that both rate proposals will be submitted to the ALJ for consideration to determine if Columbia Gulf has met its burden of proof under section 4 of the NGA.

B. Requests to Consolidate

60. TVA and Piedmont each filed a request that the Commission consolidate this proceeding with Docket No. RP11-24 in which we are considering Columbia Gulf's request to implement a new firm daily delivery point scheduling service under Rate Schedule SVS. We deny these consolidation requests. The Commission notes that we have already issued an order in the above matter on October 28, 2010 which accepted and suspended the tariff sheets to become effective April 1, 2011, subject to refund and further review.²² We have already established a schedule in the proceeding whereby Columbia Gulf must respond to the issues raised in protest to the filing within 20 days of the date of the order.²³ We also note that these issues can be determined in separate proceedings and do not require consolidation. Therefore, we will not disrupt the existing schedule of Docket No. RP11-24-000 by consolidating it with this case at this time.

C. Columbia Gulf's Request to Place Unchallenged Proposals into Effect

61. We also deny Columbia Gulf's request to place into effect on December 1, 2010, the non-rate tariff proposals that have not been challenged by protestors. A number of parties maintain that due to the complexity and interrelatedness of the various proposals, they have not been able to perform a comprehensive analysis of the filing. Under these circumstances, the fact that they have not challenged a provision does not mean that they should not have an additional opportunity to question it at the technical conference. This is equally true for the numerous miscellaneous tariff proposals Columbia Gulf

²² *Columbia Gulf Transmission Company*, 133 FERC ¶ 61,095 (2010).

²³ *Id.*

characterizes as housekeeping changes, some of which others may see in a different light. In addition, Columbia Gulf has not alleged that it will be substantially harmed from the inclusion of all non-rate tariff proposals for potential discussion at the technical conference.

D. Hearing and Technical Conference Procedures

62. Columbia Gulf's filing raises many typical rate case issues that warrant further investigation. Accordingly, the Commission will establish a hearing to explore the issues set forth in the protests regarding cost of service, cost allocation, and rate design for the existing and new services. The Commission finds that it is appropriate to examine these issues in the context of a hearing where a factual record can be developed by the parties.

63. The Commission will set all other issues related to the proposed services and terms and conditions in the Primary Case for technical conference. Columbia Gulf should be prepared to discuss any of its non-rate tariff proposals at the technical conference. Any questions of fact related to such issues that remain after the technical conference will be subject to further examination in the hearing.

E. Suspension

64. Based upon review of the filing, the Commission finds that the proposed transportation rates have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept and suspend the effectiveness of the proposed transportation rates for the period set forth below, subject to the conditions set forth in this order.

65. The Commission's policy regarding tariff filings is that they generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.²⁴ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.²⁵ Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records listed in the Appendix to be effective May 1, 2011 or an earlier date set forth in a subsequent

²⁴ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

²⁵ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

order, subject to refund and the outcome of the hearing established herein. Further, any issues of fact unresolved by the technical conference may be considered in the hearing.

66. Columbia Gulf must adhere to section 154.303(c)(2) of the Commission's regulations which provides that at the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service or for which certificate authority is required but has not been granted.

The Commission orders:

(A) The proposed Primary Case tariff records listed in the Appendix are accepted and suspended effective May 1, 2011, subject to refund and the outcome of the hearing and technical conference established in this order.

(B) The *pro forma* Preferred Case tariff records are moot and of no effect. However, the rate proposals in the Preferred Case will be considered in the hearing established herein.

(C) Columbia Gulf must file its revised rates to reflect the removal of the costs of any facilities not in service at the close of the suspension period.

(D) The Commission Staff is directed to convene a technical conference to explore the non-rate issues raised by the filing, and to report the results of the conference to the Commission within 120 days of the issuance of this order.

(E) Pursuant to the authority of the Natural Gas Act, and the Commission's rules and regulations, a public hearing shall be held in Docket No. RP11-1435-000 concerning the lawfulness of Columbia Gulf's proposed rates.

(F) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall hold the hearing (and the litigation time track) in abeyance pending the outcome of the issues set for technical conference. Nevertheless, the parties may commence discovery on all issues while technical conference issues are under review. Upon completion of the technical conference and issuance of a Commission order regarding the issues discussed therein, the Administrative Law Judge shall convene a prehearing conference in this proceeding in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and

consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Columbia Gulf Transmission Company Columbia Gulf Tariffs FERC NGA Gas Tariff

Primary Case Tariff Records filed as Option A are Accepted and Suspended, Subject to Refund, effective May 1, 2011.

Table of Contents Vol. 1, 2.0.0	A
Gen. Terms and Conditions, Operating Conditions, 2.0.0	A
Table of Contents Vol. 2, 2.0.0	A
Gen. Terms and Conditions, Capacity Allocation, 2.0.0	A
Preliminary Statement, 1.0.0	A
Miscellaneous Forms, Request for Service, Revise Receipt and Delivery Points, 1.0.0	A
Currently Effective Rates, FTS-1 Rates, 4.0.0	A
Miscellaneous Forms, Request for Service, Increase in Quantity, 2.0.0	A
Currently Effective Rates, FTS-2 Rates, 4.0.0	A
Miscellaneous Forms, Form of Electronic Contracting Agreement, 1.0.0	A
Currently Effective Rates, ITS-1 Rates, 4.0.0	A
Gen. Terms and Conditions, Flexible Primary and Secondary Receipt and Delivery Points, 1.0.0	A
Currently Effective Rates, ITS-2 Rates, 4.0.0	A
Gen. Terms and Conditions, Nominating, Scheduling and Monitoring, 2.0.0	A
Currently Effective Rates, PAL Rates, 1.0.0	A
Gen. Terms and Conditions, Service Agreement and Electronic Contracting, 1.0.0	A
Currently Effective Rates, IMS Rates, 1.0.0	A
Service Agreement Forms, Non-Conforming Service Agreements, 5.0.0	A
Currently Effective Rates, Retainage Rates, 3.0.0	A
Service Agreement Forms, FTS, EFT and ITS, 1.0.0	A
Currently Effective Rates, EFT Rates, 0.0.0	A
Service Agreement Forms, FTS-1 and FTS-2 Appendix, 1.0.0	A
Rate Schedules, Rate Schedule FTS-1, 4.0.0	A
Service Agreement Forms, EFT Appendix, 0.0.0	A
Rate Schedules, Rate Schedule FTS-2, 4.0.0	A
Service Agreement Forms, PAL, 1.0.0	A
Rate Schedules, Rate Schedule ITS-1, 4.0.0	A
Service Agreement Forms, Auto PAL, 1.0.0	A
Rate Schedules, Rate Schedule ITS-2, 4.0.0	A
Miscellaneous Forms, Bid for Capacity Release, 2.0.0	A
Rate Schedules, Rate Schedule AS-Gulf, 1.0.0	A
Miscellaneous Forms, Request for Service, New Agreement, 2.0.0	A
Rate Schedules, Rate Schedule IPP-Gulf, 1.0.0	A

Miscellaneous Forms, Request for Service, Name or Address Change, 1.0.0 A
Rate Schedules, Rate Schedule PAL, 1.0.0 A
Gen. Terms and Conditions, Maximum Daily Obligation, 1.0.0 A
Rate Schedules, Rate Schedule IMS, 1.0.0 A
Gen. Terms and Conditions, Auctions of Available Firm Service, 1.0.0 A
Rate Schedules, Rate Schedule EFT, 0.0.0 A
Gen. Terms and Conditions, Release and Assignment of Service Rights, 2.0.0 A
Gen. Terms and Conditions, 4.0.0 A
Gen. Terms and Conditions, Interruptions of Service, 2.0.0 A
Gen. Terms and Conditions, Definitions, 2.0.0 A
Gen. Terms and Conditions, Operational Flow Orders, 2.0.0 A
Gen. Terms and Conditions, Electronic Bulletin Board, 1.0.0 A
Gen. Terms and Conditions, Imbalances, 1.0.0 A
Gen. Terms and Conditions, Requests for Service, 1.0.0 A
Gen. Terms and Conditions, Penalties, 2.0.0 A
Gen. Terms and Conditions, Discounting, 2.0.0 A
Gen. Terms and Conditions, Operational Purchases & Sales, 1.0.0 A
Gen. Terms and Conditions, Complaint Resolution Procedure, 1.0.0 A
Gen. Terms and Conditions, Construction of Laterals, 1.0.0 A
Gen. Terms and Conditions, Compliance with 18 CFR Sec 284.12, 2.0.0 A
Gen. Terms and Conditions, Transportation Retainage Adjustment, 5.0.0 A
Gen. Terms and Conditions, Negotiated Rates, 1.0.0 A
Gen. Terms and Conditions, Annual Charge Adjustment, 1.0.0