

134 FERC ¶ 61,258  
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 Gas Transmission, LLC

Docket Nos. RP11-1822-000  
RP10-577-001  
RP10-401-001

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS, ESTABLISHING  
HEARING PROCEDURES, GRANTING REHEARING AND CONSOLIDATING  
DOCKETS

(Issued March 31, 2011)

1. On February 28, 2011, Columbia Gas Transmission, LLC (Columbia) filed tariff records reflecting its 2011 Transportation Cost Rate Adjustment (TCRA) rates to track costs it incurs for transportation of natural gas by other pipelines.<sup>1</sup> Columbia requests that this filing become effective April 1, 2011, and that the Commission consolidate this proceeding with Columbia's 2010 TCRA Filing in Docket No. RP10-401-000 and establish hearing and settlement procedures regarding the recovery of costs associated with capacity that Columbia holds on Millennium Pipeline Company, LLC (Millennium).<sup>2</sup> On April 30, 2010, two parties requested rehearing of the Commission's

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<sup>1</sup> See the attached Appendix for a listing of the tariff records.

<sup>2</sup> Columbia holds transportation capacity on Millennium under: (1) a fifteen-year lease of 25,400 Dth per day of capacity acquired to provide service to shippers that formerly were served through Columbia's A-5 Line in New York; and (2) its service agreement for 24,600 Dth per day of firm capacity under Rate Schedule FT-1 (Millennium FT-1 Capacity). The Commission issued Columbia a certificate to obtain the leased capacity in 2006 when Columbia abandoned its Line A-5 and needed the Millennium capacity to serve customers previously served through Line A-5. See *Millennium Pipeline Co., LLC, et al.*, 117 FERC ¶ 61,319 (2006). The focus of the  
(continued...)

March 31, 2010 order in Docket No. RP10- 401-000.<sup>3</sup> In that order, the Commission accepted tariff sheets comprising Columbia's 2010 TCRA filing subject to, *inter alia*, Columbia filing a Report on Operational Need for Millennium FT-1 Capacity (Report) concerning the disposition of capacity that Columbia holds on Millennium by May 4, 2010.

2. On May 28, 2010, Columbia filed for rehearing of the Commission's April 30, 2010 order in Docket No. RP10-577-000.<sup>4</sup> The Commission's April 30, 2010 order accepted tariff sheets subject to conditions filed by Columbia to revise section 48 of the General Terms & Conditions (GT&C) of its tariff to clarify among other things, the circumstances under which it may hold capacity on third party pipelines.

3. As discussed below, the Commission will accept the instant tariff records and suspends them subject to refund and the outcome of hearing procedures to be effective April 1, 2011. Also, the Commission grants the requests for rehearing in Docket No. RP10-401-001 in order to permit parties to address the concerns raised in that proceeding concerning Columbia's recovery of the Millennium capacity costs at the hearing to be established in the instant docket. The Commission will also consolidate the issues in Docket No. RP10-401-000 and Docket No. RP11-1822-000 for purposes of hearing. Finally, the Commission will grant rehearing in Docket No. RP10-577-001.

### **Background**

4. The Commission originally approved Columbia's TCRA mechanism in conjunction with Columbia's so-called "Global Settlement."<sup>5</sup> Subsequently, in filings to

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instant order is on the Columbia service agreement for 24,600 Dth per day of firm capacity of Millennium FT-1 Capacity.

<sup>3</sup> *Columbia Gas Transmission, LLC*, 130 FERC ¶ 61,265 (2010) (March 31, 2010 Order). The parties requesting rehearing are City of Charlottesville, Virginia and the City of Richmond, Virginia (Cities) and Orange and Rockland Utilities, Inc. (O&R).

<sup>4</sup> *Columbia Gas Transmission, LLC*, 131 FERC ¶ 61,093 (2010) (April 30, 2010 Order).

<sup>5</sup> *Columbia Gas Transmission Corp.*, 49 FERC ¶ 61,071 (1989), *order on reh'g*, 51 FERC ¶ 61,194 (1990). Utilizing this mechanism Columbia could periodically recover all of its upstream Account No. 858 costs without resorting to the filing of a full rate filing under section 4 of the Natural Gas Act (NGA).

comply with Order No. 636,<sup>6</sup> the Commission accepted Columbia's proposal that it be permitted to continue to track its unassigned upstream supplier Account No. 858 costs through this pre-existing TCRA mechanism.<sup>7</sup>

5. Specifically, section 36 of Columbia's GT&C provides for recovery of "Operational 858 costs" through a tracking mechanism. Section 36.1(a) defines Operational 858 costs as "costs incurred for the transmission and compression of gas by others . . . including amounts paid to upstream pipelines for contracts retained as a result of Transporter's Order No. 636 restructuring, or utilized in Transporter's post-restructuring operations." Section 36.2 requires Columbia to make an annual TCRA rate filing on or before March 1 of each year to be effective April 1. The TCRA rates include two components: (1) the "Current Operational TCRA Rate," which recovers Operational 858 costs Columbia projects it will incur during the April to March annual period the TCRA rate will be in effect; and (2) the "Operational TCRA Surcharge," which contemplates a true up mechanism to account for over- and under-recoveries during the preceding calendar year. Sections 36.4(a)(1) and (2) of Columbia's GT&C provide that each component of the TCRA rates shall be allocated to the applicable rate schedules "on an as-billed basis and in a manner consistent with Transporter's currently effective cost allocation and rate design." Section 34.4(b) requires Columbia to credit to its TCRA any revenues it receives from releasing its capacity on other pipelines.

6. On March 31, 2009, the Commission addressed tariff sheets comprising Columbia's 2009 TCRA filing. In accepting these tariff sheets, the Commission permitted Columbia to recover costs attributable to 24,600 Dth per day of firm capacity

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<sup>6</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

<sup>7</sup> *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,060, at 61,565-66 (1993) (Order on Compliance). In later filings to comply with Order No. 636, the Commission permitted Columbia to include stranded costs in its TCRA filings, provided it proved this capacity was no longer used and useful. *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,365, at 63,532-33 (1993) (Second Order on Compliance and Order on Rehearing); *Columbia Gas Transmission Corp.*, 65 FERC ¶ 61,344, at 62,736-37 (1993) (Third Order on Compliance and Second Order on Rehearing).

under Rate Schedule FT-1 that Columbia held on Millennium, under that pipeline's Rate Schedule FT-1. Millennium is Columbia's affiliate. The Commission directed Columbia to make such capacity available to its shippers on a primary firm basis when it was not using the capacity for operational purposes, or file a detailed explanation why it should not be subject to such a requirement.<sup>8</sup> Subsequently, on compliance, Columbia explained that it estimated that it would need 8,000 Dth per day of the Millennium capacity for operational purposes to support existing service obligations, but that it would offer the remaining 16,600 Dth per day to shippers on a primary firm basis.<sup>9</sup> In addition, Columbia stated that it would need to impose a one-year term limitation on this capacity, so that Columbia could evaluate its operational need for the capacity on an annual basis. The Commission accepted Columbia's compliance filing, subject to Columbia including a report on the continuing need for the term limitation, as well as updating the quantity of Millennium capacity available on a primary firm basis in the next annual TCRA filing and in an Electronic Bulletin Board posting for its customers to review Columbia's report.<sup>10</sup>

#### **Docket No. RP10-401-000 Requests for Rehearing**

7. On March 31, 2010, in Docket No. RP10-401-000, the Commission accepted tariff sheets comprising Columbia's 2010 TCRA filing<sup>11</sup> and granted Columbia additional time to file its Report on the operational need for Millennium FT-1 Capacity until May 4, 2010.<sup>12</sup> In its 2010 TCRA filing, Columbia again proposed to include the Millennium FT-1 Capacity costs. Some of Columbia's shippers protested that Columbia should be required to credit any revenues from its sale of the Millennium FT-1 capacity not used for operational purposes against the costs of the Millennium FT-1 capacity costs included in the TCRA.

8. With regard to the costs related to the Millennium capacity the Commission stated:

The Commission approves Columbia Gas proposed inclusion of the cost of the Millennium FT-1 Capacity in its TCRA, without any crediting of Columbia Gas revenues from the sale of such capacity against those costs.

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<sup>8</sup> *Columbia Gas Transmission, LLC*, 126 FERC ¶ 61,319, at P 19 (2009).

<sup>9</sup> *Columbia Gas Transmission, LLC*, 128 FERC ¶ 61,071 (2009).

<sup>10</sup> *Id.* P 20.

<sup>11</sup> *Columbia Gas Transmission, LLC*, 130 FERC ¶ 61,265 (2010).

<sup>12</sup> *Id.* P 33-34.

Columbia Gas has proposed to design both the Current Operational TCRA Rate and the Operational TCRA Surcharge based on its demand determinants projected to be [in] effect on April 1, 2010, and projected throughput levels for the 12-month period ending March 31, 2010. Those volumes include any volumes associated with the sale of the Millennium FT-1 capacity not required for operational purposes. The inclusion of those volumes in the design of the TCRA rates effectively allocates a portion of the costs of the Millennium FT-1 Capacity to Columbia Gas sales of the capacity not required for operational purposes, and therefore Columbia Gas is entitled to retain its revenues from those sales. Therefore, after reviewing the filing, the protests, and Columbia Gas' answer, we find that Columbia Gas has adequately justified the costs concerning the Millennium FT-1 Capacity.<sup>13</sup>

9. The Commission also conditioned its acceptance of Columbia's 2010 TCRA filing upon its review of Columbia's Report on Operational Need for Millennium FT-1 Capacity concerning the disposition of Rate Schedule FT-1 capacity that it holds on Millennium. The Commission granted Columbia's request for an extension until May 4, 2010 to file that report.<sup>14</sup>

10. On April 30, 2010, several parties requested rehearing of the March 31, 2010 Order. For example, Cities argue that the Commission erred in determining that Columbia is entitled to retain revenues from the sale of off-system capacity not required for operational purposes without crediting the revenues against the cost of the capacity through the TCRA. Cities argue that because Columbia recovers the cost of the Millennium FT-1 capacity through its TCRA rates, Columbia should not be entitled to retain its revenues from the sale of that capacity. Cities argue that to permit this will result in double recovery of Columbia's costs: once through the TCRA (paid by all transportation customers) and once through the sale of the off-system capacity (paid by customers using the off-system capacity). Cities recognize that the Commission generally permits pipelines to retain revenues from the sale of off-system capacity, but only because the pipeline is generally at risk for any under-recovery.<sup>15</sup> Cities, however, contend that in this situation, the risk is born by Columbia's existing customers, who pay

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<sup>13</sup> *Id.* P 19.

<sup>14</sup> *Id.* P 33-34.

<sup>15</sup> Cities' Request for Rehearing at p. 4, citing *Millennium Pipeline Co. L.L.C.*, 130 FERC ¶ 61,121, at P 11 n.8 (2010) (pipelines are at risk for the costs of offsystem capacity and may retain any revenue from such interruptible or secondary sales).

the TCRA charges. Cities state that requiring revenue crediting is consistent with Columbia's tariff, which expressly requires Columbia to credit against costs any amounts received through the release of its capacity on upstream pipelines.<sup>16</sup>

11. O&R argues that it demonstrated that Columbia proposes to retain two revenue streams associated with the Millennium FT-1 capacity, first, the costs of that capacity through its TCRA filing and second, 100 percent of the revenues received from its sales of that capacity. O&R contends that the March 31, 2010 Order only addressed one revenue stream and contends that whether the billing determinants used to allocate the Millennium capacity costs were accurate is irrelevant to O&R's double-collection argument.

### **Columbia's Report on Operational Need for Millennium FT-1 Capacity**

12. On May 3, 2010, Columbia filed the Report on its operational need for the Millennium FT-1 capacity required by the March 31, 2010 Order on Columbia's 2010 TCRA. Columbia stated:

Columbia has completed a full winter's operational experience after the retirement of Line A-5 and the in-service date of the new Millennium system. Based upon this operational experience, Columbia has determined that it can sell the remaining 8,000 Dth/day of capacity that it retained last winter for operational purposes. At the end of the 2010-2011 winter season, Columbia will re-evaluate its operational needs and determine whether it should retain any of the FT-1 capacity for the following winter. Columbia believes that there is an ongoing need for the one-year term limitation. Conditions continually change on the Columbia system and the ability to determine the operational need for some or all of the FT-1 capacity on an annual basis is invaluable to ensure that Columbia can periodically assess its future operational needs.

13. On May 17, 2010, Cities filed a protest to Columbia's Report filed May 3, 2010 and asserted that the Report reveals that the Millennium FT-1 capacity is not necessary for operational purposes. Cities argues that the Commission should require Columbia to provide evidentiary support for its Report and to explain in detail: (1) how it concluded that none of the 24,600 Dth per day of Millennium FT-1 capacity is needed for operational reasons; and (2) why Columbia should nonetheless continue to be authorized to recover the cost of such capacity through its TCRA mechanism.

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<sup>16</sup> *Id.* (citing Columbia Gas Tariff GT&C § 36.4(b)).

14. Baltimore Gas and Electric Company (BG&E) also protests Columbia's May 3, 2010 Report. BG&E asserts that Columbia now is incurring Account No. 858 costs for Millennium capacity that is not needed for operational purposes or to meet firm service obligations. BG&E argues that the Commission should factor this disclosure into a revisitation of the TCRA. BG&E requests that the Commission direct Columbia to: (1) offer the excess 16,600 Dth per day of Millennium capacity for capacity release and to credit to customers any capacity release revenues; (2) be at-risk for future excess capacity that it procures from Millennium; and (3) withhold making the TCRA tariff modifications previously opposed by BGE and other customers in Docket No. RP10-577-000.

15. On June 1, 2010, Columbia filed an answer to these protests. Columbia requests that the Commission reject the protestors' arguments concerning failure to show operational need for the Millennium FT-1 capacity as collateral attacks on prior findings. Columbia maintains that its shippers receive benefits from having access to Millennium FT-1 capacity, such as increased flexibility to manage Columbia's storage capacity and increased secondary flexibility.

16. Columbia maintains that BG&E and Cities fail to recognize that Columbia's operational evaluation is only for the upcoming year; and asserts that this does not mean that Columbia will not need more of the capacity next year. Columbia argues that there are numerous operational circumstances that can affect Columbia's need for the Millennium FT-1 capacity, particularly given that Millennium is not yet fully subscribed and is still a new pipeline system. Columbia asserts that it must have the flexibility to re-evaluate its operational need for the Millennium capacity as system conditions change on both Millennium and Columbia.

#### **Docket No. RP10-577-000 Rehearing Request**

17. On May 28, 2010, Columbia filed for rehearing of the Commission's April 30, 2010 Order in Docket No. RP10-577-000.<sup>17</sup> The Commission's April 30, 2010 Order accepted tariff sheets subject to conditions filed by Columbia to revise section 48 of its GT&C to clarify its obligations with respect to off-system capacity.

18. In general, Columbia proposed to clarify the circumstances under which Columbia may acquire capacity on third party pipelines. Columbia proposed three circumstances under which it could acquire such capacity: (1) for operational reasons; (2) to meet existing firm service commitments; or (3) to provide additional firm service to customers under Columbia's FERC Gas Tariff.

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<sup>17</sup> *Columbia Gas Transmission, LLC*, 131 FERC ¶ 61,093 (2010).

19. Some shippers protesting Columbia's filing contended that Columbia should be required to release off-system capacity prior to offering it on a primary firm basis. They argued that requiring Columbia to release the capacity would benefit Columbia's shippers because section 34.4(b) of Columbia's GT&C requires Columbia to credit any revenues from such capacity releases to its TCRA mechanism. The Commission rejected this contention stating:

If Columbia Gas does not release off-system capacity, then, as the Commission has already required, it must offer such capacity for sale under its own open access tariff to the extent such is not needed for the operational purpose for which it was acquired or to meet the existing firm obligations. The additional billing determinants resulting from such sales would be reflected in the design of Columbia Gas' TCRA rates, thus reducing Columbia Gas' per unit charges under its TCRA. In addition, the revenues from such sales would be reflected in the true-up component of the TCRA. Thus, any such capacity sales by Columbia Gas should benefit Columbia Gas' other shippers in a similar manner to any release of such capacity.<sup>18</sup>

20. On rehearing, Columbia argues that by stating that primary firm sales of off-system capacity by Columbia to Columbia's customers will be "reflected in the true-up component of the TCRA," the April 30, 2010 Order indicates that Columbia may be required to credit such revenues through its annual TCRA true-up filings. Columbia maintains that this is contrary to precedent and the terms of Columbia's tariff. Columbia asserts that the Commission requires it to offer to sell idle capacity held on off-system pipelines to its system customers on a primary firm basis.<sup>19</sup> Columbia states that its tariff requires it to credit its annual TCRA rates with any revenues it receives for releasing capacity held on off-system pipelines, but does not require Columbia to make any rate adjustments if it resells that capacity to its own shippers.<sup>20</sup>

21. Columbia argues that the Commission has also recognized the difference between crediting revenues from released capacity, and the resale of off-system pipeline capacity. For example, Columbia asserts that in addressing its 2009 TCRA filing the Commission

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<sup>18</sup> *Id.* P 34 (citing *Columbia Gas Transmission, LLC*, 126 FERC ¶ 61,319, at P 19 (2009)).

<sup>19</sup> Columbia Rehearing Request at p. 5 (citing *Columbia Gas Transmission, LLC*, 126 FERC ¶ 61,319, at P 19 (2009)).

<sup>20</sup> *See* Columbia GT&C § 36.4(b).

stated that Columbia would credit the revenues it receives from the “release” of off-system pipeline capacity to shippers in Columbia’s next annual TCRA filing.<sup>21</sup> However, in addressing Columbia’s 2010 TCRA filing, the Commission rejected requests that Columbia be required to credit the revenues from the resale of off-system pipeline capacity in an order issued one month before the April 30, 2010 Order.<sup>22</sup> Columbia argues that the Commission has authorized Columbia to acquire capacity on other interstate natural gas pipelines to serve its customers without requiring any crediting of revenues for the sale of the capacity.<sup>23</sup>

22. Columbia argues that if it was required to credit the revenues it receives from the resale of off-system pipeline capacity this would lead to Columbia under-recovering its costs while providing customers subsidized service. Columbia states that the Commission requires pipelines to offer any off-system capacity they hold for resale under their own tariffs, not the tariff or rate for service specified in the off-system pipeline’s tariff. Columbia states, for example, that a Columbia shipper may pay Columbia’s tariff rate of \$0.1998 per Dth to obtain capacity rights on the Millennium system for which Columbia pays Millennium’s tariff rate of \$0.6089 per Dth. Columbia states that if it credits the rate paid by the shipper to its TCRA customers it will lose the revenues from the service it provides for access to its system and the associated return on investment in the facilities it uses to provide that service. Under this example, the shippers receive access to the Millennium system at the much cheaper Columbia rate, and also gain access to the entire Columbia system. Columbia argues that requiring it to credit its TCRA rates with the revenues from resold off-system capacity would essentially force Columbia to provide subsidized, or free service, and to under-recover its costs between general rate cases.

23. Columbia states that the difference between the treatment of off-system capacity and capacity on Columbia’s system is justified. It states in the capacity release context, the replacement shipper takes service under the off-system pipeline’s tariff. Columbia

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<sup>21</sup> Columbia Rehearing Request at p. 6 (citing *Columbia Gas Transmission, LLC*, 126 FERC ¶ 61,319, at P 19 & n.11).

<sup>22</sup> *Id.* (citing *Columbia Gas Transmission, LLC*, 130 FERC ¶ 61,265, at P 19 (2010)).

<sup>23</sup> *Id.* (citing *Millennium Pipeline Co., LLC*, 130 FERC ¶ 61,121, at n.8 (2010); *Wyoming Interstate Co., Ltd.*, 120 FERC ¶ 61,162, at P 8 (2007)). *See also Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273, at 61,886 (2000) (remand order finding that pipelines may acquire off-system capacity for sale to others without case-by-case approval), *order on reh’g*, 94 FERC ¶ 61,139 (2001).

maintains that when it releases the off-system capacity there is no operational linkage between that capacity and service on the Columbia system, which means there is no operational benefit to Columbia or its system customers. In contrast, when Columbia resells off-system pipeline capacity under its own tariff, Columbia retains the operational benefits of that capacity to support its system, which enhances reliability and flexibility for all customers. Since all customers continue to benefit from the capacity, there is no justification for system customers to get those benefits for free through the crediting of all of the revenues from the resale of the off-system capacity.

24. Lastly, Columbia argues that any Commission requirement that Columbia must credit its revenues from resold off-system capacity to customers in its annual TCRA filings arising from the April 30, 2010 Order fails to recognize that in Docket No. RP10-577-000 Columbia did not propose any change to its annual TCRA rate recovery mechanism in section 36 of its GT&C. Therefore, Columbia argues that the Commission may modify that tariff provision, if at all, only by complying with the requirements of NGA section 5, and the Commission failed to comply with such requirements in the instant case and there is no evidence in the record to support a finding that section 36 of Columbia's FERC Gas Tariff is unjust and unreasonable, or that crediting revenues from the resale of off-system capacity is necessary to make the tariff just and reasonable.<sup>24</sup>

#### **Details of the 2011 TCRA Filing**

25. On February 28, 2011, Columbia filed its 2011 TCRA. Columbia asserts that its proposed TCRA rates consist of: (1) a Current Operational TCRA Rate, reflecting Columbia's projected Account No. 858 costs for the twelve-month period commencing on April 1, 2011; and (2) an Operational TCRA Surcharge, which is based on Columbia's unrecovered Account No. 858 costs during the period January 1, 2010 to December 31, 2010.

26. Columbia asserts that the current operational TCRA rate includes projected Account No. 858 costs of \$37,872,006 and that this amount is based upon the projected rates and respective billing determinants under Columbia's Account No. 858 contracts, as of April 1, 2011. Columbia states that it is including in the instant filing, the costs associated with firm and interruptible contracts on Algonquin Gas Transmission Company, Texas Eastern Transmission Corporation, National Fuel Gas Supply Corporation, Tennessee Gas Pipeline Company, and Millennium. Columbia asserts that

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<sup>24</sup> Columbia Rehearing Request at p.10 (citing *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1577-79 (D.C. Cir. 1993); *Pub. Serv. Comm'n v. FERC*, 866 F.2d 487, 491 (D.C. Cir. 1989); *Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 446, 454 (D.C. Cir. 1988); *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 187 (D.C. Cir. 1986)).

its Operational TCRA Surcharge reflects the reconciliation of TCRA amounts collected by Columbia during the period January 1, 2010 to December 31, 2010 with Account No. 858 costs actually incurred by Columbia during that period. The proposed Operational TCRA Surcharge reflects a net under-recovery, inclusive of interest, of \$3,993,081, which consists of an under-recovery of \$3,485,859 in commodity costs and an under-recovery of \$507,222 in demand costs.

27. Columbia requests that the Commission grant it a limited waiver of the requirement to report on its operational need for the Millennium capacity and update the quantity of Millennium capacity available on a primary firm basis, following the conclusion of the winter heating season. Columbia notes that in addressing its 2010 TCRA filing the Commission deferred the filing of such report until May 4, 2010 so that Columbia could comprehensively evaluate the operational needs for the Millennium capacity.<sup>25</sup> Columbia requests that the same waiver be granted in the instant case.

28. Columbia asserts that in accepting its 2009 TCRA filing in Docket No. RP09-397-000, the Commission held that Columbia was permitted to recover through the TCRA mechanism costs attributable to 24,600 Dth per day of firm capacity under Rate Schedule FT-1 that Columbia holds on Millennium.<sup>26</sup> Columbia also states that the Commission reaffirmed that these costs could be recovered through the TCRA, subject to the Commission's evaluation of a report to be filed by Columbia regarding the amount of Millennium capacity which should be factored into the TCRA filing in Columbia's 2010 TCRA filing in Docket No. RP10-401-000. Columbia states that it submitted its Report on May 3, 2010 but the Commission has not yet acted upon the Report so Columbia's recovery of the Millennium FT-1 costs remains subject to further Commission action.

29. Columbia states that it has included the Millennium capacity in the calculation of its proposed 2011 TCRA rates, but because the recovery of these costs is still pending Commission action, Columbia requests that the Commission consolidate this filing with

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<sup>25</sup> The original direction to Columbia to file a Report was issued on July 21, 2009 in Docket No. RP09-397-002, *Columbia Gas Transmission, LLC*, 128 FERC ¶ 61,071, at P 20 (2009). There, Columbia was directed to provide a Report on the continuing need for the term limitation as well as updating the quantity of Millennium capacity available on a primary firm basis in its next annual TCRA filing. In its 2010 TCRA filing on February 26, 2010, Columbia requested, and the Commission granted, an extension of time until May 4, 2010 to file the report. *Columbia Gas Transmission, LLC*, 130 FERC ¶ 61,265, at P 33-34 (2010).

<sup>26</sup> Columbia Transmittal Letter at p. 3 (citing *Columbia Gas Transmission LLC*, 126 FERC ¶ 61,319, at P19 (2009)).

Columbia's 2010 TCRA filing in Docket No. RP10-401-000, with respect to the recovery of the Millennium FT-1 costs, so that this issue can be addressed in a single proceeding. Columbia also requests that any such hearing be held in abeyance and that a settlement judge be appointed, so that a consensus may be reached on this issue.

### **Public Notice, Interventions, and Comments**

30. Public notice of Columbia's Docket No. RP11-1822-000 filing was issued with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2010). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2010), all timely filed motions to intervene and all unopposed motions to intervene out-of-time 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.

31. Protests, comments, request for partial summary disposition, and request for hearing procedures were filed by: (1) O&R; (2) BG&E; (3) Washington Gas Light Company (Washington Gas); (4) Piedmont Natural Gas Company, Inc. (Piedmont); (5) 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. (NiSource Distribution Companies); and (6) Cities.<sup>27</sup>

32. Cities state that Columbia requests recovery through its TCRA of \$5,467,104 in projected demand costs and \$2,850 in projected commodity costs under its firm FT-1 transportation contract with Columbia's affiliate, Millennium. Cities oppose such cost recovery and urge the Commission to exclude the Millennium costs from the TCRA rates. Cities do not agree that the issue of including the Millennium capacity costs needs to be set for hearing. Cities argue that based upon Columbia's assertions in the instant filing and in its prior revelations about the lack of operational use of the Millennium capacity, the Commission should rule summarily that the Millennium capacity costs are not eligible for inclusion in the TCRA.

33. Cities assert that under section 36.1(a) of Columbia's GT&C, recovery of costs under the TCRA is limited to "Operational 858 costs," which are defined as "amounts paid to upstream pipelines for contracts retained as a result of Transporter's Order No. 636 restructuring, or utilized in Transporter's post restructuring operations." Cities argue that the Millennium contract, which commenced in December 2008, is not an Order No. 636 vintage contract. Thus, Cities argue that to be eligible for recovery

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<sup>27</sup> The Easton Utilities Commission joined Cities in their protest to Docket No. RP11-1822-000.

through the TCRA, the contract must be utilized in post-restructuring operations. Cities point out that Columbia, in this filing as well as the information previously submitted in prior TCRA proceedings, shows that the Millennium capacity is not used by Columbia to provide operational support for its system but in reality is used to provide incremental service if it is used at all. Cities state that this was not the purpose relied upon for the acquisition of the capacity in the first place, and that the cost of that capacity should not be flowed through to customers in the TCRA mechanism. Moreover, Cities state the fact that Columbia declared in its May 3, 2010 FT-1 Capacity Report that it did not need to retain any of the Millennium capacity for operational purposes and could sell such capacity on a primary firm basis, coupled with the fact that there have been no amounts charged for commodity rates on throughput under the Millennium FT-1 contract at all in 2010, underscores the fact that the capacity is not utilized in Columbia's post-restructuring operations and should be found to be ineligible for recovery through the TCRA.

34. Cities point out that the Commission's policy is to place pipelines at risk for unrecovered costs of third-party capacity.<sup>28</sup> Cities argue that inclusion of capacity costs that are not used for operational reasons to support Columbia's system is contrary to the Commission's policy. Therefore, Cities argue that the Commission should summarily conclude that Columbia has not justified recovery of the Millennium capacity costs through the TCRA mechanism. Cities state that if the Commission does not summarily reject these costs, it should set the recovery of the costs for hearing and allow the parties to address the recoverability of all of Columbia's Account No. 858 costs. The Commission should further permit the parties to address whether the TCRA mechanism as currently configured is just and reasonable.

35. Washington Gas states that the costs attributable to the 24,600 Dth per day of firm capacity under Rate Schedule FT-1 that Columbia holds on its affiliate Millennium have not been shown to be appropriate costs for inclusion in the TCRA. Washington Gas states that it has not been shown that that this capacity is needed to serve the operational needs of Columbia's shippers. Therefore, Washington Gas states that the Commission should summarily reject Columbia's claim for the recovery of these costs and require the company to refile its TCRA to eliminate these costs from its rates in this and the prior TCRA proceedings. Washington Gas asserts that if the Commission determines to hold a hearing regarding what costs are appropriately included in the TCRA, the scope of such a hearing should not be limited to the one Millennium contract. Washington Gas does not suggest that other costs have been improperly included in Columbia's TCRA, but

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<sup>28</sup> Cities March 14, 2011 Protest at p. 11, citing *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273, at 61,882 (2000).

suggests that changed operating conditions on Columbia's system since restructuring may call for a fresh review in the context of a hearing on what capacity is really needed to meet the criteria of appropriate Account 858 costs.

36. O&R notes that Columbia has requested the Commission to establish hearing and settlement procedures regarding the recovery of costs associated with its Millennium capacity and it joins in that request. O&R also states that the instant filing lists contracts for which Columbia seeks discount adjustments in the calculation of the billing determinants used to calculate the proposed TCRA rates. O&R argues that GT&C section 36.4(a) which Columbia asserts as the authority for its 2011 TRACA filing, does not provide explicit authority for Columbia to make discount adjustments to its billing determinants in the TCRA filings. O&R also argues that Columbia does not assert that the contracts listed in Appendix D qualify for discount adjustments. Given these evidentiary failures, O&R requests that the Commission reject the proposed discount adjustments or, in the alternative, set the discount adjustment issue for hearing.

37. Piedmont states that it is unable to fully evaluate Columbia's TCRA filing without the information regarding the Millennium capacity required by the Commission which Columbia seeks to defer. Piedmont contends that the third-party transportation report, including information about Millennium capacity, is necessary to fully evaluate Columbia's 2011 TCRA filing in order to determine whether the proposed adjustment to Columbia's transportation costs is just and reasonable. Piedmont argues that if the Commission grants the waiver requested by Columbia, Columbia's 2011 TCRA filing should be made subject to further review and comments by interested parties and consideration by the Commission.

38. The NiSource Distribution Companies support Columbia's request to consolidate this proceeding with Docket No. RP10-401-000 for the purpose of considering the recovery of costs associated with capacity that Columbia holds on Millennium. The NiSource Distribution Companies assert that such a consolidation should save time and resources for all affected parties. The NiSource Distribution Companies also request that Columbia clarify its statement, appearing on page 3 of its transmittal letter, that its February 28, 2011 filing reflects an under-recovery of \$3,485,859 in demand costs and an under-recovery of \$507,222 in commodity costs. NiSource Distribution Companies argue that the data provided on Appendix B, page 2 of 9 of the February 28, 2011 filing, would suggest that those two numbers are reversed.

39. BG&E states that Millennium and Columbia are affiliates and that their parent, NiSource Gas Transmission & Storage, is transferring payments for the reservation of capacity on Millennium by Columbia. It argues that in this instance the reservation of capacity serves no purpose because the capacity is unneeded and unused. BG&E asserts that Columbia appears to recognize the deficiency in its filing because it has requested that the Commission set the Millennium flow-through request for a hearing. BGE states

that a paper hearing is all that is required because the facts are undisputed to prove that this expenditure would be an unjust and unreasonable reflection in rates.

40. BG&E states that the instant filing shows daily demand quantities of 24,600 Dth at a cost of \$5,467,104 and projects that 1,500,000 Dth will be transported. Appendix B, page 6 of the February 28, 2011 filing, shows Columbia paying Millennium demand charges every single month from January 1, 2010 to December 31, 2010. BG&E asserts that the same page shows that Columbia called upon no gas from Millennium on any day of calendar year 2010. BG&E states that these unnecessary charges cannot be justified. Moreover, BG&E notes that in a response to Question No. 1 of the Commission Staff's June 17, 2010 Data Request in Docket Nos. RP10-401 and RP10-577, Columbia showed that it needed none of this capacity in 2008, auctioned or sold 16,600 Dth per day in 2009, and only used a maximum of 8,000 Dth per day at maximum in the months of May and June 2009. Further, Columbia determined on May 3, 2010 in its Report on Operational Need for Millennium FT-1 Capacity that it could sell this remaining 8,000 Dth per day.

41. BG&E asserts that the Commission should disallow this recovery of intra-corporate transfers of cash for worthless capacity. If the Commission does not summarily dispose of this matter, BG&E requests that the February 28, 2011 filing be suspended for the maximum statutory period and that the rates be made subject to refund at the end of the suspension period on the basis of the hearing that Columbia has requested.

### **Discussion**

42. The Commission accepts the tariff records filed by Columbia in order to implement its 2011 TCRA filing<sup>29</sup> and suspends them, subject to refund, to be effective April 1, 2011. The Commission also consolidates Columbia's 2010 TCRA filing in Docket No. RP10-401-000 with its 2011 TCRA filing in Docket No. RP11-1822-000 and establishes a hearing to address the issues raised in both proceedings.

43. In both the 2010 and 2011 TCRA proceedings the parties have raised significant issues concerning the extent to which Columbia should be permitted to recover the costs of its Millennium FT-1 capacity in its TCRA. In Columbia's Order No. 636 restructuring proceeding, the Commission permitted Columbia to continue its TCRA in order to recover "Operational 858 costs." Section 36.1(a) of the GT&C defines those costs as "costs incurred for the transmission and compression of gas by others . . . including amounts paid to upstream pipelines for contracts retained as a result of Transporter's Order No. 636 restructuring, or utilized in Transporter's post-restructuring operations."

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<sup>29</sup> Those tariff records are listed in the attached Appendix.

The Commission accepted Columbia's 2010 TCRA subject to its review of Columbia's Report on the Operational Need for the Millennium FT-1 Capacity. In that Report, filed on May 3, 2010, Columbia stated that it had determined it would not need any of the Millennium FT-1 capacity for operational purposes during the period the 2010 TCRA was in effect. However, Columbia asserted it could need that capacity for operational purposes at some point in the future. Columbia's shippers question whether Columbia will ever have a significant need for the Millennium FT-1 capacity for operational purposes.

44. At the hearing, participants should address the factual issue of whether, and to what extent, Columbia may have a reasonable need for the Millennium FT-1 capacity for operational purposes at any time in the future. In addition, participants should address the issue of whether costs of Millennium FT-1 capacity not used for operational purposes are eligible for recovery through the TCRA mechanism, as currently configured. In addition, if the language in the existing TCRA is interpreted as permitting recovery in the TCRA of costs of the Millennium FT-1 capacity not used for operational purposes, parties may address whether the relevant provisions of the TCRA are just and reasonable, and, if not, how the TCRA should be modified to make it just and reasonable.<sup>30</sup> Further, the parties may explore whether Columbia's original purchase of the Millennium FT-1 capacity for operational purposes was prudent and whether discounting adjustment may be considered within the context of the TCRA. The Commission finds that the hearing established herein should include, but not be limited to such issues. The hearing should explore all issues related to Columbia's existing TRCA mechanism and the costs it recovers, and whether such mechanism should be modified or certain costs included or excluded.

45. Second, the Commission grants the requests for rehearing of the Commission's March 31, 2010 Order on Columbia's 2010 TCRA filing in Docket No. RP10-401-000 to the extent that order made merits determinations concerning Columbia's recovery of the costs of the Millennium FT-1 capacity. These requests for rehearing are granted solely for the purpose of permitting examination at hearing of all issues concerning Columbia's recovery of the Millennium FT-1 capacity costs, without any predetermination by the Commission of how the issues raised in those rehearing requests should be resolved on the merits.

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<sup>30</sup> For example, should the Commission permit Columbia to retain revenues from the sale of off-system capacity not required for operational purposes (such as the Millennium FT-1 capacity during certain time periods) without crediting the revenues against the cost of the capacity through the TCRA?

46. Columbia requests in its 2011 TCRA filing that the Commission grant it a waiver of the requirement to report on the continuing need for the term limitation and update the quantity of Millennium capacity available on a primary firm basis, following the conclusion of the winter heating season. As it did in the 2010 TRCA proceeding, the Commission will grant such waiver for good cause shown and finds that the information provided may benefit the parties in the hearing to be conducted in this proceeding.<sup>31</sup> The Commission will grant Columbia's request to defer the obligation to file the Millennium FT-1 Capacity Report until May 4, 2011.

47. Columbia also requests that any hearing established in the instant docket be held in abeyance and that a settlement judge be appointed, so that a consensus may be reached on this issue. The Commission agrees. The Commission is setting the issues discussed above for trial-type evidentiary hearing and we encourage the parties to make every effort to settle their dispute before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>32</sup> If the parties desire, they may, by agreement, request a specific judge as the settlement judge in the proceeding, otherwise the Chief Judge will select a judge for this purpose.<sup>33</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

48. Finally, the Commission grants Columbia's rehearing request in Docket No. RP10-577-001 in order to clarify how revenues from Columbia's sales through its own tariff of off-system capacity included in the TCRA are treated under the TCRA as it now exists. In its request for rehearing Columbia asserts that the Commission erred by suggesting that Columbia may be required to credit all its revenues from such sales against the costs included in the TCRA. Columbia asserts that such a suggestion was indicated by the statement in the April 30, 2010 Order that:

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<sup>31</sup> March 31, 2010 Order, 130 FERC ¶ 61,265 at P 33-34.

<sup>32</sup> 18 C.F.R. § 385.603 (2010).

<sup>33</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov/legal/adr/avail-judge.asp](http://www.ferc.gov/legal/adr/avail-judge.asp)).

In addition, the revenues from such sales would be reflected in the true-up component of the TCRA. Thus, any such capacity sales by Columbia Gas should benefit Columbia Gas' other shippers in a similar manner to any release of such capacity.<sup>34</sup>

49. The Commission clarifies that the only revenues from such off-system sales which must be reflected in the true-up component of the TCRA are amounts Columbia collects from the TCRA component of its rates. Section 36.4(a)(2) of Columbia's GT&C requires that it calculate the true-up component of the TCRA by determining the Operational 858 costs it incurred during the preceding year and then subtracting amounts collected by Transporter during that same Preceding Period under the Current Operational TCRA Rate.<sup>35</sup> Thus, if Columbia sells off-system capacity held for operational purposes through its own tariff, it must credit the TCRA revenues collected from the shipper against its Operational 858 costs. The only circumstances under which Columbia would have to credit other revenues from such sales to the TCRA are when it releases such capacity through the capacity release provisions of the upstream pipeline's tariff or when it receives refunds from an upstream pipeline. As Columbia points out, section 36.4(B) of Columbia's GT&C states:

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<sup>34</sup>*Columbia Gas Transmission, LLC*, 131 FERC ¶ 61,093, at P 34 (2010).

<sup>35</sup> This language states:

In each Annual TCRA Filing, Transporter shall calculate, and allocate to the Applicable Rate Schedules on an as-billed basis and in a manner consistent with Transporter's currently effective cost allocation and rate design, the Operational TCRA Surcharge applicable to unrecovered Operational 858 costs by: (i) ascertaining the Operational 858 costs comprising the total Transportation Costs actually incurred by Transporter during the preceding calendar year (Preceding Period); (ii) subtracting the amounts collected by Transporter during that same Preceding Period under the Current Operational TCRA Rate; and (iii) dividing the differences, respectively, whether positive or negative, by the estimated design determinants under the Applicable Rate Schedules for the 12-month period commencing on the effective date of that Annual TCRA filing.

In calculating the Transportation Costs Rate, as set forth in paragraph (a) above, Transporter shall credit against actual costs incurred any:  
(i) amounts received through the release of its capacity on upstream pipelines; and (ii) refunds received that are attributable to the transmission and compression of gas by others.

50. Therefore, the Commission agrees that, as Columbia's TCRA mechanism is currently configured, Columbia is not required to credit non-TCRA revenues from primary firm sales of off-system capacity by Columbia to Columbia's customers.<sup>36</sup> The Commission's language, "[I]n addition, the revenues from such sales would be reflected in the true-up component of the TCRA," is overly broad and was an attempt to capture the intent of section 36.4(a)(2) of Columbia's GT&C. To properly reflect this language the Commission should have stated that "TCRA revenues from such sales would be reflected in the true-up component of the TCRA." Accordingly, the Commission will grant Columbia's request for rehearing.

### **Suspension**

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

52. The Commission's policy regarding rate suspensions is that rate filings 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 that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on April 1, 2011, subject to the conditions set forth in this order and further review by the Commission.

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<sup>36</sup> Columbia Rehearing Request at p. 6, citing *Millennium Pipeline Co., LLC*, 130 FERC ¶ 61,121, at n.8 (2010); *Wyoming Interstate Co., Ltd.*, 120 FERC ¶ 61,162, at P 8 (2007); *see also Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273, at 61,886 (2000) (remand order finding that pipelines may acquire off-system capacity for sale to others without case-by-case approval), *reh'g denied*, 94 FERC ¶ 61,139 (2001).

The Commission orders:

(A) The tariff records as listed in the attached Appendix are accepted and suspended, to be effective April 1, 2011, subject to refund and conditions and the outcome of the hearing and settlement judge procedures established in this proceeding.

(B) As discussed in the body of this order Docket No. RP10-401-000 is consolidated with Docket No. RP11-1822-000 for the purpose of conducting a hearing regarding Columbia's TCRA mechanism and rates.

(C) As discussed in the body of this order, Columbia's request for rehearing in Docket No. RP10 -577-001 is granted.

(D) As discussed in the body of this order, the requests for rehearing in Docket No. RP10-401-001 are granted for the sole purpose of examination in the hearing proceeding established in Docket No. RP11-1822-000.

(E) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, a public hearing is to be held in Docket No. RP11-1822-000 concerning the lawfulness of Columbia's proposed TCRA mechanism and rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this Order.

(G) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(H) If the settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street,

NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Appendix**

**Columbia Gas Transmission, LLC  
Baseline Tariffs  
FERC NGA Gas Tariff**

**Tariff Records Accepted and Suspended, Effective April 1, 2011, Subject to Refund**

Currently Effective Rates, FTS Rates, 2.0.0  
Currently Effective Rates, FTS-APX Rates, 2.0.0  
Currently Effective Rates, NTS and NTS-S Rates, 2.0.0  
Currently Effective Rates, ITS Rates, 2.0.0  
Currently Effective Rates, GTS Rates, 2.0.0  
Currently Effective Rates, OPT Rates, 2.0.0  
Currently Effective Rates, TPS Rates, 2.0.0  
Currently Effective Rates, SST Rates, 2.0.0