135 FERC ¶ 61,106
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gulf Transmission Company

Docket Nos. RP11-1435-000
RP11-24-000
(consolidated)

ORDER ON TECHNICAL CONFERENCE

(Issued April 29, 2011)

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 (October 28 filing). As part of its October 28 filing, Columbia Gulf submitted revised tariff records to propose or modify provisions related to the non-rate provisions of its existing tariff record regarding, among other things, operations, sales of capacity, penalties, and a new transportation service. On November 30, 2010, the Commission accepted and suspended the tariff records to be effective on May 1, 2011, subject to refund and conditions, and the outcome of a technical conference on the non-rate tariff proposals and hearing procedures.[1]

2. On January 18, 2011, Commission Staff convened a technical conference in this matter. In this order, the Commission accepts, subject to condition, the tariff records

[1] *Columbia Gulf Transmission Co*., 133 FERC ¶ 61,182 (2010) (November 30 Order). On February 22, 2011, in Docket No. RP11-24-000, the Commission consolidated Columbia Gulf's Scheduling Variance Service proceeding with Docket No.RP11-1435-000. *See Columbia Gulf Transmission Co*., 134 FERC ¶ 61,082 (2011) ("The Commission consolidates this proceeding with Columbia Gulf's general section 4 rate filing in Docket No. RP11-1435-000 for purposes of considering the justness and reasonableness of the rate proposed by Columbia Gulf for this service and the extent to which costs should be allocated to this service in designing Columbia Gulf's other rates.").

listed in the Appendix, to be effective May 1, 2011 as requested by Columbia Gulf. The tariff record identified as "Currently Effective Rates, Retainage Rates, 3.0.0" is rejected.[2]

I. Background

3. In its October 28 filing, Columbia Gulf submitted two sets of proposed tariff records with alternative rate structures for consideration by the Commission: actual tariff records as its Primary Case and *pro forma* tariff records as its Preferred Case. The proposed tariff records reflecting Columbia Gulf's Primary Case include 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.

4. Under both the Primary Case and Preferred Case, Columbia Gulf proposed extensive non-rate tariff revisions to its operations and business practices. Columbia Gulf claimed, 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 compete more effectively with other pipelines. Columbia Gulf stated that, when possible, the proposals model language previously approved by the Commission.

5. Public notice of Columbia Gulf's rate filing was issued on October 28, 2010. There were a large number of intervenors who protested and requested that the Commission convene a technical conference on Columbia Gulf's October 28 filing. The Commission issued the November 30 Order, among other things, directing Commission Staff to convene a technical conference on the non-rate issues.

6. On December 15, 2010, the Commission issued notice that the technical conference would be held on January 18, 2011. Along with Columbia Gulf and Commission Staff, numerous parties attended the technical conference. Based on the comments, questions and concerns raised by the parties and Commission Staff, Columbia Gulf agreed to submit a filing clarifying some of the issues discussed at the technical conference on February 4, 2011. Finally, the parties agreed to submit initial comments on technical conference by February 22, 2011 and reply comments by March 8, 2011.

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[2] This tariff record is being rejected because it has been superseded by the Commission's recent decision on Columbia Gulf's annual Transportation Retainage Adjustment in Docket No. RP11-1820-000. *See Columbia Gulf Transmission Co.*, 134 FERC ¶ 61,254 (2011).

7. On February 4, 2011, Columbia Gulf filed its clarifying comments (February 4 Clarification). On February 22, 2011, Columbia Gulf, Indicated Intervenors,[3] Sequent Energy Management, L.P. (Sequent), Cities, NiSource Distribution Companies (NiSource), Laclede Energy Resources, Inc. (Laclede), Indicated Shippers,[4] Piedmont Natural Gas Company, Inc., Tennessee Valley Authority (TVA), North Carolina Utilities Commission (NCUC), and CSCG filed initial comments. On March 8, 2011, Sequent, Columbia Gulf, Cities, WGL, Indicated Shippers, BGE, Virginia Natural Gas, Inc. (VNG), Piedmont Natural Gas Company, Inc. (Piedmont), and NCUC filed reply comments.

II. Procedural Matters

A. Motion to File Comments Out-of-Time

8. On March 25, 2011, or approximately 31 days after initial comments were due and 17 days after reply comments were due, Anadarko Energy Services Company (AESC) filed a request for leave to file comments out-of-time along with its comments. AESC states that it is already a party to the proceeding and a firm shipper on Columbia Gulf's system. AESC argues that comments filed by the other parties to the proceeding and Columbia Gulf raise issues that it would like to address to assure a more complete record for the Commission. AESC asserts that it does not seek to disrupt the Commission as it considers the comments and will accept the record as developed by the Commission to date in this proceeding. Finally, AESC states that acceptance of its comments will not

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[3] The Indicated Intervenors joining in the pleading are: Baltimore Gas and Electric Company (BGE); Cities of Charlottesville, Virginia and Richmond, Virginia (Cities); Columbia Small Customer Group (consisting of The Arlington Natural Gas Company, Delta Natural Company, Pike Natural Company, Richmond Utilities Board, Kentucky, and Waterville Gas & Oil Company) (CSCG); The East Tennessee Group; Easton Utilities Commission; Mountaineer Gas Company; Orange and Rockland; UGI Distribution Companies; South Jersey Resources, Group, LLC; Virginia Natural Gas, Inc.; and Washington Gas Light Company (WGL).

[4] The Indicated Shippers joining in the pleading are: BP Energy Company, BP America Production Company, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, Interstate Gas Supply, Inc., Marathon Oil Company; and Shell Energy North America (US), L.P.

prejudice any other party to the proceeding or create an undue burden on the Commission in its deliberations.[5]

9. Columbia Gulf objected to the filing stating that AESC provides no justification for its failure to adhere to the procedural schedule established by Commission Staff for initial and reply post-technical conference comments. Columbia Gulf argues that AESC's reliance on *Colorado Interstate* as precedent for its late comments is misplaced. Columbia Gulf claims that, in *Colorado Interstate,* the Commission accepted initial comments that were filed only one day out-of-time.[6] However, in this case, Columbia Gulf avers that AESC's comments were filed without explanation or excuse 31 days after the date set for initial comments and 17 days after the date set for reply comments. Moreover, Columbia Gulf contends that AESC disregards the Commission's warning in Colorado Interstate that it "expect[s] parties to live up to agreed-upon filing dates."[7]

10. Columbia Gulf argues that Commission precedent does not permit a party to ignore filing deadlines and then opine at its leisure on timely-filed comments.[8] Columbia Gulf avers that, most importantly, AESC has not demonstrated that consideration of its late-filed comments will not unduly prejudice any party. Further, Columbia Gulf maintains that AESC's comments do not provide any evidence or facts which will contribute to the record in this proceeding.[9] Consequently, Columbia Gulf argues that the Commission should deny AESC's request; in the alternative, if the Commission elects

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[5] *Colorado Interstate Gas Co*., 128 FERC ¶ 61,117, at P 19, n.18 (2009) (*Colorado Interstate*) (undue prejudice does not result from accepting comments out of time because technical conferences are informal proceedings intended to develop a complete record upon which to make an informed decision).

[6] *Id*.

[7] *Id.*

[8] *Southern Company Service, Inc*., 111 FERC ¶ 61,146, at P 9-10 (2005) (rejecting comments filed 15 days out-of-time); *Midwest Independent Transmission System Operator, Inc*., 108 FERC ¶ 61,143, at P 12, 14, 16 (2004) (rejecting comments filed 14 days out-of-time); *Columbia Gas Transmission Corp*., 64 FERC ¶ 61,365, at 63,493, n.6 (rejecting untimely reply comments).

[9] For example, Columbia Gulf asserts that AESC requests that points covered by an Operational Balancing Agreement (OBA) be exempt from hourly scheduling penalties; however, Columbia Gulf contends that it has already agreed to this request.

to allow the comments, then so as not to unduly prejudice other parties, Columbia Gulf requests that the Commission allow other parties to respond to AESC's comments.

B. **Commission Decision**

11. Upon consideration of AESC's motion and comments and Columbia Gulf's reply, we reject AESC's motion and will not consider its comments in our decision. While AESC relies on *Colorado Interstate* as precedent for the Commission's acceptance of untimely filed comments in response to issues discussed at a technical conference, we reject those similarities. In *Colorado Interstate*, the Commission accepted comments that were filed only a day out-of-time; however, in that decision, we also noted that the Commission expects parties to adhere to previously agreed upon filing dates.[10] Moreover, the Commission stated that Indicated Shippers were active parties to the technical conference and provided information which created a more complete record. In this case, AESC's comments were filed approximately three weeks after the March 8, 2011 date for reply comments. AESC did not provide any justification for such a long delay nor did it provide any information that could assist us in creating a more complete record.[11] Accordingly, we reject AESC's request to file comments out-of-time.

III. **Discussion**

12. In filings after the technical conference, Columbia Gulf agreed to or submitted sua sponte a number of changes to its October 28, 2011 non-rate proposals in this proceeding to address the concerns of the parties. As discussed below, the Commission generally accepts Columbia Gulf's non-rate tariff proposals, as revised after the technical conference. However, the Commission finds that Columbia Gulf has not satisfied its burden under NGA section 4 to show that its proposed hourly scheduling penalties are just and reasonable, and therefore, the Commission rejects that tariff proposal.

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[10] *Colorado Interstate*, 128 FERC ¶ 61,117 at P 19, n.18.

[11] For example, AESC recommended modifications and submitted questions regarding the operation of Columbia Gulf's liquidated damages proposal for the failure to timely execute Columbia Gulf's service agreements. ASEC's comments and concerns are similar to comments already expressed by Indicated Intervenors in its February 22, 2011 initial comments filed in the proceeding.

A. <u>Critical Period Notice</u>

1. <u>Columbia Gulf's Proposal</u>

13. Section 17 of the General Terms and Conditions (GT&C) of Columbia Gulf's current tariff permits it to issue Operational Flow Orders (OFO) requiring shippers and point operators to take specified actions to alleviate conditions that could jeopardize reliable service. Section 19.3 imposes a penalty on shippers who take or deliver gas in violation of an OFO. The penalty is equal to three times an indexed commodity price. Section 19.10 permits Columbia Gulf to declare a Critical Day when it determines that operating conditions are such that it faces a threat to its system integrity or to its ability to meet its firm service obligations. The declaration of a Critical Day permits Columbia Gulf to impose the higher unauthorized overrun and scheduling penalties applicable during Critical Days. If Critical Day penalties fail to impose sufficient system discipline to address the operational conditions threatening Columbia Gulf's firm service obligations, Columbia Gulf may implement an OFO.

14. In its October 28 filing, Columbia Gulf stated that its current tariff does not authorize it to impose operational restrictions in connection with the issuance of a Critical Day Notice. Therefore, it proposed to modify Sections 17 and 19 of its GT&C to allow it to require shippers to take certain actions that alleviate system conditions during critical periods prior to the issuance of an OFO. It asserted that this authority would help reduce the need for and duration of OFOs.

15. Specifically, Columbia Gulf proposed to replace the term "Critical Day" previously used in Section 19.10 with the term "Critical Period," as threats to system integrity often last for more than a single day. Next, Columbia Gulf proposed a new Section 17.1 providing that Critical Period Notices will be issued first, followed by an OFO if the operational issues have not be alleviated. Proposed Section 17.2(a) provided that Columbia Gulf may issue a Critical Period Notice if it determines "(based on criteria such as weather forecasts, line pack, storage conditions, pipeline pressures, horsepower availability, system supply and demand, and other operational circumstances) that operating conditions pose a threat to the integrity, safety or efficient operation of Transporter's system, and/or to Transporter's ability to meet its firm service obligations." Section 17.2 also provided that if Columbia Gulf issues a Critical Period, it may:

(1) require that scheduled delivery quantities vary from actual delivered quantities by no more than 1,000 Dth or by 3%, whichever is greater;

(2) require that daily imbalances be less than 1,000 Dth or 5%, whichever is greater;

(3) require Shippers with a cumulative monthly imbalance of more than 5% to make nominations to reduce such imbalance to no more than 5% within a specified period contained in the notice (which shall not be less than three days); and

(4) require Shippers to conform to the hourly flow requirements set forth in Section 9 of the General Terms and Conditions or Shipper's Service Agreements.

16. Finally, to enforce the revisions in Section 17, Columbia Gulf proposed to expand the application of the OFO penalty in Section 19.3 to Critical Period Notices. Columbia Gulf 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.

17. After the technical conference, in the February 4 Clarification, Columbia Gulf submitted several modifications to its proposal. First, it proposed to revise Section 17.2(a) to require Columbia Gulf to limit Critical Period Notices to the smallest possible segment of its system (as it does with OFOs). Second, it proposed to add language to Section 17.2(b) specifying how it would inform shippers of Critical Period Notices, the timing of such notices, and what information such notices would include. Columbia Gulf stated that it believed these revisions, which are consistent with its notice provisions applicable to OFOs, should ensure that shippers will be provided with timely and specific information regarding Critical Periods on Columbia Gulf's system.

2. <u>Post-Technical Conference Comments</u>

18. In their post-technical conference comments, several parties (protesting parties) argue that, notwithstanding its February 4 Clarification, Columbia Gulf's proposal to implement Critical Periods remains overly broad and inappropriate and should be revised to ensure that it is limited only to operating conditions that jeopardize system integrity and firm service. Specifically, these parties state that, among the triggering events for a Critical Period set out in Sections 17.1 and 17.2(a), is a determination by Columbia Gulf in its reasonable discretion that operating conditions impose a threat to "efficient operation" of its system. These parties assert that, taken literally, any act that causes even minor disruption of Columbia Gulf's operational efficiency could give rise to the declaration of a Critical Period and an immediate and substantial increase in exposure to Columbia Gulf's numerous and costly penalties. Therefore, they contend that the Critical Period Notice provision should be modified by: 1) eliminating "efficient operation" as a standard for implementing a Critical Period; 2) refining its scope to include only operating conditions that can be objectively measured; and 3) limiting it to conditions that actually threaten the safety and reliability of the system and service to firm shippers.

19. In addition, Indicated Shippers argue that the Commission should direct Columbia Gulf to incorporate some form of updating requirement if the Critical Period extends beyond a week. Finally, NiSource asserts that, while it appreciates the Columbia Gulf's modifications to its proposed Critical Period Notice revisions, it believes that a Critical

Period Notice (when first issued) should not be permitted to disrupt a portion of a Gas Day nomination cycle.

20. In its reply comments, Columbia Gulf states that, with the modifications proposed in its February 4 Clarification, it believes the majority of concerns raised by shippers have been addressed. Columbia Gulf asserts that the remaining protests appear limited to the: 1) issuance of a Critical Period Notice related to the protection of the efficient operation of the system; 2) duration of Critical Periods; and 3) impact of Critical Periods on nominations. Columbia Gulf proposed further revisions to GT&C Section 17 to address these concerns.

21. Regarding shippers' concerns that Columbia Gulf's proposal to declare a Critical Period for operating conditions that pose a threat to the "efficient operation" of its system would grant the pipeline too much discretion over the issuance of a Critical Period, Columbia Gulf proposes to remove the language regarding "efficient operations" from its proposal. Next, Columbia Gulf states that, in response to Indicated Shippers' concern that customers be provided with an update if a Critical Period will extend beyond one week, it will revise Section 17 to include a requirement to notify shippers if a Critical Period will last longer than one week. Columbia Gulf asserts that it will notify shippers through both an Electronic Bulletin Board (EBB) posting and through Electronic Data Interchange (EDI) notification and such notice will also set forth any updates on the conditions necessitating the issuance of the Critical Period, as well as its anticipated duration.

22. Lastly, with regard to NiSource's specific concern that Columbia Gulf not be allowed to declare a Critical Day that would disrupt an ongoing nomination cycle, Columbia Gulf affirms that it intends to utilize its Critical Period authority as a preventive measure. Columbia Gulf, therefore, proposes to revise Section 17.2 to clarify that Critical Period Notices will only be applied prospectively, in the nomination cycle following their issuance. Columbia Gulf contends that, if system conditions would require shippers to take action during an ongoing nomination cycle, it will issue an OFO.

3. **Commission Decision**

23. Order No. 637 requires a pipeline to take all reasonable actions to minimize the issuance and adverse impacts of OFOs or other measures taken to respond to adverse operational events on its system.[12] The Commission has also allowed pipelines to

[12] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,091 (2000) (Order No. 637), *order on rehearing,* Order No. 637-A, FERC Stats. & Regs., Regulations Preambles July 1996-

(continued…)

implement pre-OFO procedures in order to control the behavior of shippers, provide flexibility to the pipeline, and mitigate operating conditions which could lead to the issuance of an OFO by the pipeline.[13]

24. Columbia Gulf's current tariff does not contain language giving it the authority to impose operational restrictions in connection with a Critical Period; with the revisions, Columbia Gulf seeks to clarify the actions it can take when it declares a Critical Period on its system. Columbia Gulf's proposed revisions to its original proposal in its February 4 Clarification and its March 8, 2011 reply comments address the concerns of the protesters. Accordingly, the Commission will accept Columbia Gulf's proposed changes to its tariff regarding a Critical Period Notice subject to the amendments submitted in its February 4 Clarification and its March 8, 2011 reply. Columbia Gulf is directed to submit a compliance filing within 30 days of the date of this order with the revised language.

25. In addition, consistent with our rejection of Columbia Gulf's proposed hourly scheduling penalties discussed below, all references to those penalties must be removed from Columbia Gulf's proposed Critical Period Notice provisions.

B. Flow Control

1. Columbia Gulf's Proposal

26. Section 9.2 of Columbia Gulf's GT&C requires shippers to tender gas at receipt points in quantities that conform to scheduled amounts and flow at a uniform hourly rate throughout the day and take gas in quantities that conform to scheduled daily deliveries and flow in accordance with Section 12 of the GT&C. That section governs a shipper's maximum daily entitlement to service at receipt and delivery points and allows Columbia Gulf to issue OFOs establishing hourly receipt point flow obligations. Section 9.2 also authorizes Columbia Gulf to require the installation of flow control devices, if the shipper violates "applicable flow requirements or the requirements set forth in section 12" of Columbia Gulf's GT&C.

December 2000 ¶ 31,099 (2000) (Order No. 637-A), and *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000) (Order No. 637-B), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Association of America v. FERC*, 285 F.3d 18 (D.C. Cir. Apr. 5, 2002), o*rder on remand*, 101 FERC ¶ 61,127 (2002) (Order No. 637).

[13] *See Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,352, at 62,314-62,317 (2001).

27. In its October 28 filing, Columbia Gulf proposed a new Section 9.2(b) (Flow Control Equipment) which would clarify Columbia Gulf's authority to install flow control equipment, including the circumstances under which flow control may be required. Columbia Gulf stated that its proposed revisions will: 1) serve as an economic incentive for shippers to conform to the requirements of the tariff and the applicable rate schedule; 2) provide a long-term solution to the problems caused by the offending actions; and 3) help ensure the safety and reliability of Columbia Gulf's system.

28. Specifically, Columbia Gulf's proposal authorizes Columbia Gulf to install flow control equipment at the shipper's or point operator's sole expense if the shipper or point operator, on three or more separate occasions during a consecutive twelve-month period: 1) violates one or a combination of the applicable flow requirements set forth in GT&C Section 9 or the shipper's service agreement; 2) violates the maximum daily or hourly obligations set forth in GT&C Section 12 or the shipper's service agreement; 3) incurs unauthorized overruns; or 4) violates any of the other terms or conditions of Columbia Gulf's tariff, or the shipper's or point operator's service agreement or rate schedule, that affect the safe and reliable operation of Columbia Gulf's system.

29. Columbia Gulf asserted that, during the past several years, there have been a number of instances in which shippers and point operators either have delivered gas onto Columbia Gulf's pipeline without nominations or over-delivered gas in excess of their scheduled nominations. Although Columbia Gulf's current practice is to require the installation of flow control at all new interconnects and points of receipt and delivery, Columbia Gulf stated that flow control is not installed at all existing points. Where flow control has not been installed, Columbia Gulf asserted that frequent receipts or deliveries in excess of scheduled quantities or transportation demand can jeopardize the safety and reliability of Columbia Gulf's system.

30. Columbia Gulf stated that it would submit a report to the Commission within 30 days detailing the reasons for any required installation of flow equipment. Columbia Gulf asserted that the proposed language will enable it to maintain control of its system when penalties have not been sufficient to deter shipper behavior reasonably anticipated to threaten system integrity or firm service obligations. Columbia Gulf noted that this provision would be applicable to operators at every point currently without flow control irrespective of whether the point is subject to an OBA. Lastly, Columbia Gulf maintained that this proposal is reasonable because it is aimed only at repeated behavior that threatens system integrity or reliability.

31. In its February 4 Clarification, Columbia Gulf stated that the purpose of its proposed revisions to Section 9.2(b) is to allow it to maintain physical control of its system when penalties have been insufficient to deter harmful shipper behavior. However, Columbia Gulf stated that, in order to respond to comments made by the parties at the technical conference in this proceeding, it proposes to revise Section 9.2(b),

in two respects. First, it proposed to clarify what conduct by the point operator will trigger Columbia Gulf's right to install flow control equipment.

32. As revised, Section 9.2(b) would permit Columbia Gulf to install flow control equipment at the expense of a point operator that: 1) on three or more separate days during a consecutive twelve-month period incurs hourly variances in excess of 10 percent of hourly "nominated" volumes; or 2) violates any of the other terms and conditions of the tariff, the service agreement, or Rate Schedule in a way that affects the safe and reliable operation of Columbia Gulf's system. Second, Columbia Gulf proposed to clarify that the costs of installation will be borne by the point operator, as the point operator is the party responsible for controlling the physical flow of gas through the meter.

33. Columbia Gulf stated that this revision will ensure that this provision will only be applied to points where shippers and point operators have engaged in repeated behavior that can reasonably be expected to threaten the reliability of service on Columbia Gulf's system if left unchecked. Because flow control will only be imposed for activities that have a clear potential and detrimental impact on Columbia Gulf's ability to maintain system integrity and its firm service obligations, Columbia Gulf stated that it was not proposing any exemptions at points covered by an OBA.

2. Post-Technical Conference Comments

34. Nearly all parties objected in one manner or another to the proposed tariff language describing events that would trigger Columbia Gulf's right to install flow control equipment. For example, Cities states that permitting the installation of flow control equipment if there are "hourly variances in excess of 10% of nominated volumes" leads to several problems because of the vagueness of the language. Moreover, Cities asserts that, assuming flow control could be imposed if receipts or deliveries are more than 10 percent above the hourly flow limits in Section 9.2(a), there is no nexus between such small flow rate variations and conditions that adversely affect Columbia Gulf's operations. Cities argues that the failure to limit the right to install flow control at the point operator's expense to situations that significantly and adversely impact Columbia Gulf's operational integrity is a flaw in the revised tariff language.

35. Piedmont states that Columbia Gulf's proposal is overly strict in nature and provides Columbia Gulf with rights to inflict costs on point operators for hourly flow transactions on Columbia Gulf's system that may be out of the point operator's control. Piedmont asserts that the limitations triggering Columbia Gulf's right to install flow control equipment are too low. Piedmont argues that Columbia Gulf's own evidence establishes that the average hourly variability over the course of a year for seven self-selected (but otherwise anonymous) points on Columbia Gulf's system was 28 percent. Piedmont states that this means that, if these points are representative of hourly

variability on Columbia Gulf's system, they indicate average hourly variability at a rate almost three times the level needed to trigger flow control liability.

36. Piedmont and NCUC assert that Columbia Gulf has not justified that its system integrity is threatened by point operators that engage in transactions which would violate the new 10 percent hourly variability standard or that the imposition of flow control costs and requirements is otherwise necessary. Indicated Intervenors add that a point operator could exceed 5 percent hourly flow requirements and have no discernable impact given that Columbia Gulf flows a billion cubic feet per day. Indicated Shippers maintain that Columbia Gulf has not shown that the burdens it seeks to impose on point operators under this proposal are warranted by operational necessity. Indicated Shippers assert that Columbia Gulf's triggering event threshold, even as modified, is still far too low to be considered calibrated to an operational need.[14]

37. The protesting parties also raise issues with regard to the cost and ownership of the equipment. Cities argues that Columbia Gulf proposes to add the ongoing costs of operating and maintaining flow control equipment to the costs of installing such equipment. Cities avers that this is a single item cost tracker which the Commission does not favor and that the cost of operating its system is embedded in Columbia Gulf's jurisdictional rates. Cities asserts that adding recovery of operating costs through a new flow control provision would potentially allow Columbia Gulf to over recover its cost of service. Further, Indicated Intervenors argue that Columbia Gulf has not stated which party – the point operator or Columbia Gulf – will own the equipment. Indicated Intervenors assert that arguably, Columbia Gulf should own, operate, and maintain the new facilities. They state that Columbia Gulf has provided no explanation of what costs would be included within the definition of "operation and maintenance of flow control equipment" and no explanation of what costs would be shifted to the point operator. Indicated Intervenors argue that, if Columbia Gulf owns the equipment, it should pay the expenses itself. Indicated Intervenors aver that, if Columbia Gulf has received

[14] In this same vein the Small Customer Group points out that, in the February 4 Clarification, the proposal stated that installation of such devices would be necessary "[i]f a Point Operator on three or more separate Days during a consecutive twelve-month period incurs hourly variances in excess of 10% nominated volumes." The Small Customer Group asserts that there is no provision in Columbia Gulf's tariff requiring that a shipper must nominate in hourly quantities. Rather, Columbia Gulf's tariff explicitly requires nomination of daily quantities for the Gas Day. The Small Customer Group states that Columbia Gulf has not shown that hourly variations would imperil system operations.

reimbursement from a third party for the cost of flow control equipment, it should be precluded from recovering such expenses twice.

38. The parties also raise concerns regarding the manner in which the flow control equipment will be used by Columbia Gulf once the flow control equipment has been installed. Cities argues that Columbia Gulf's tariff language does not address when and how Columbia Gulf may utilize flow control equipment once it is in place. It states that there are no limits on how the flow control can be utilized by Columbia Gulf. TVA does not oppose Columbia Gulf's proposal to institute flow controls. However, TVA opposes flow control without adequate shipper protection and compensation. NCUC states that Columbia Gulf's tariff proposal lacks any provisions specifying when the pipeline can use the flow control equipment and clarifying that the pipeline will be liable for the negligent operation of the flow control equipment. Therefore, NCUC states that the Commission should require Columbia Gulf to include language in its tariff specifying when the pipeline can use the flow control equipment and stating that the pipeline will be liable for negligent operation of flow control equipment. In sum, Indicated Intervenors argue that, as currently proposed, there are no limitations on Columbia Gulf's discretion as to when and how to operate flow control that may be installed under this provision. Indicated Intervenors argue that these flow control revisions should be rectified and Columbia Gulf should be required to properly tender them for processing in accordance with the NGA.

39. In its initial comments, Columbia Gulf reiterates its contentions in support of the proposal.

40. In their March 8, 2011 replies, the protesting parties state that the flow control provisions are unsupported. For example, Piedmont argues that Columbia Gulf has provided no operational analysis or data that establishes the need for this provision or even demonstrates operational threats to the Columbia Gulf system resulting from operators moving gas through their points at hourly variability levels in excess of 10 percent of nominated volumes. Sequent adds that Columbia Gulf has provided no data to show: 1) how many of its currently uncontrolled points would have triggered the proposed flow control standard over the last year; and 2) what were the operational consequences to Columbia Gulf and the other shippers at the times the flow control threshold would have been violated.

41. Secondly, the parties again focus on the "trigger" language contained in Columbia Gulf's February 4 Clarification for the imposition of flow control equipment. For example, NCUC argues that the Commission must require Columbia Gulf to remove proposed tariff language that would allow Columbia Gulf to require flow control if a Point Operator "on three or more separate Days during a consecutive twelve-month period incurs hourly variances in excess of 10% of nominated volumes." Cities asserts

that a standard which allows flow control to be installed if a shipper experiences a 10 percent variation above a nominated quantity for three days in a year is far too attenuated from actual system harm to serve as a bona fide trigger for the installation of flow control equipment. Piedmont adds that the limitations that establish Columbia Gulf's right to install flow control at a point operator's expense are unrealistically low. This sentiment is echoed by the Indicated Shippers' argument that flow control equipment should not be mandated for an "infraction" as minor as an hourly flow exceeding 4.1666 percent on three separate days of the year. Sequent states that Columbia Gulf's proposed "trigger" for the imposition of flow control devices gives Columbia Gulf the unfettered discretion to install flow control at every point on its system without these devices. Sequent asserts that this is because it is a virtual certainty that every point experiences non-ratable hourly flow variances every day, let alone three times a year.

42. The parties also object that Columbia Gulf has not proposed sufficient safe guards concerning its use of the flow control devices. NCUC argues that the Commission must require Columbia Gulf to include language in its tariff specifying when the pipeline can use the flow control equipment and stating that the pipeline will be liable for negligent operation of flow control equipment. Cities states that the proposed tariff language omits important standards for when flow control may be used by Columbia Gulf once it is in place, and omits an obligation the Commission has imposed on other pipelines to notify shippers before flow control equipment is used to restrict flows. Cities argues that each of these flaws must be remedied before Columbia Gulf's flow control proposal may be found just and reasonable.

43. Lastly, Sequent states that Columbia Gulf has proposed to impose the operating and maintenance costs of the flow control devices directly to the operator. Sequent states that this gives the pipeline carte blanche to impose and recover some indeterminate level of capital and O&M costs directly from the operator, outside of a general rate case and without prior approval by the Commission. Sequent states that, if the Commission accepts the instant proposal, it must require Columbia Gulf to seek prior approval of each flow control installation, so the Commission and the affected operator will have an opportunity to evaluate the justness and reasonableness of each individual installation. Sequent also adds that the Commission should require the pipeline to file an annual report detailing all flow control O&M charges.

44. In its March 8, 2011 reply comments, Columbia Gulf asserts that its proposal to require shippers to pay for the installation of flow control where the shipper's behavior has posed a threat to system integrity or Columbia Gulf's ability to meet its firm service obligations is consistent with the Commission's holding in *El Paso Natural Gas Company*, where the Commission explained that "the cost of installing flow control

equipment is rightly borne by the operator causing the operational problem. This approach prevents non-offending shippers from bearing these costs and is consistent with the principle of cost-causation."[15]

45. Columbia Gulf states that the parties concerns with its proposal center on two points: 1) whether the proposed "triggers" for the installation of flow control are just and reasonable; and 2) the protections that will be available to shippers regarding the use of flow control equipment. Columbia Gulf proposes to modify its proposal in a subsequent compliance filing to address both of these concerns.

46. Columbia Gulf proposes to revise its flow control provision to provide for a "trigger" that is based on daily scheduling variances, rather than hourly scheduling variances. Specifically, Columbia Gulf proposes language consistent with that approved for other pipelines,[16] to provide that the installation of flow control may be required if a shipper's daily receipts or deliveries exceed 10 percent of the shipper's scheduled volumes for any five days per calendar month. In addition to being consistent with provisions approved for other pipelines, Columbia Gulf maintains that the proposed revision will ensure that flow control will only be required where there is a demonstrable and repetitive violation of daily scheduling requirements.

47. Second, Columbia Gulf avers that it "recognizes that shippers have valid concerns over the circumstances under which flow control will be utilized." Accordingly, Columbia Gulf states that, assuming the Commission accepts its proposed flow control provisions, Columbia Gulf will make a compliance filing to introduce tariff language to address the use of flow control, including the issue of liability for the improper use of flow control, that is consistent with provisions previously approved by the Commission, such as those set forth in the tariff of El Paso Natural Gas Company.[17]

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[15] Reply Comments of Columbia Gulf at 44, *citing El Paso Natural Gas Co*., 129 FERC ¶ 61,036, at P 26 (2009) (*El Paso 2009*).

[16] *Id*., *citing* Gulf South Pipeline Company, FERC Tariff, 7th Rev. Vol. No. 1; Section 6.7.8, Version 0.0.0; *Gulf South Pipeline Co.*, Docket No. RP00-340-008, *et al*. (Sept. 30, 2003) (unpublished letter order).

[17] Reply Comments of Columbia Gulf at 44, *citing* El Paso Natural Gas Company, FERC Gas Tariff, 3rd Rev. Vol. No. 1, Section 4.11, Version 0.0.0.

3. Commission Decision

48. The Commission will accept Columbia Gulf's proposal as modified in its comments set forth above subject to several conditions. The Commission has found just and reasonable similar tariff provisions permitting pipelines to install flow control at the point operator's expense, where the operator has repeatedly engaged in unauthorized receipts and deliveries of natural gas.[18] Columbia Gulf's proposed revisions to its proposal in its March 8, 2011 reply address the parties' concerns about various aspects of the proposal.

49. First, many parties opposed Columbia Gulf's proposed tariff language allowing it to require flow control if a point operator "on three or more separate Days during a consecutive twelve-month period incurs hourly variances in excess of 10% of nominated volumes." Columbia Gulf has agreed to modify this proposal so that hourly variances would not trigger its right to install flow control equipment. Rather, Columbia Gulf would only have the right to install such equipment if a shipper's *daily* receipts or deliveries exceed 10 percent of the shipper's scheduled volumes for any 5 days per calendar month. This is an acceptable "trigger" for Columbia Gulf to take such actions which will ensure that flow control will only be required where demonstrable and repetitive violations have occurred. Moreover, the Commission finds that Columbia Gulf's proposal to report to the Commission within 30 days detailing the reasons for any installation of flow control equipment will permit the Commission and the parties an opportunity to review and or comment on any action taken by Columbia Gulf.

50. Second, several parties have raised issues relating to the costs of the flow control equipment and its operation. As pointed out by Columbia Gulf, the Commission has found that "the cost of installing flow control equipment is rightly borne by the operator causing the operational problem. This approach prevents non-offending shippers from bearing these costs and is consistent with the principle of cost-causation."[19] In addition, concerns related to that an over recovery of costs may be expressed at the time Columbia Gulf files its report that it has installed flow control equipment. Moreover, parties may raise at the hearing on Columbia Gulf's proposed rate increase all issues related to whether Columbia Gulf's proposal might result in a double recovery of costs incurred in the installation and operation of flow control equipment.

51. Third, parties to the instant proceeding have correctly pointed out that Columbia Gulf's proposal is lacking with regard to the operation of the flow control devices once

[18] *El Paso 2009*, 129 FERC ¶ 61,036.

[19] *Id*. P 26.

installed. Columbia Gulf itself has recognized the legitimacy of such concerns and offered that, assuming the Commission accepts its proposed flow control provisions, it will make a compliance filing to introduce tariff language to address the use of flow control, including the issue of liability for the improper use of flow control,[20] that is consistent with provisions previously approved by the Commission, such as those set forth in the tariff of El Paso Natural Gas Company.[21] Accordingly, the Commission will accept Columbia Gulf's proposal, subject to its filing tariff language addressing its use of the flow control devices and the concerns of the parties expressed here regarding this issue.

C. Hourly Scheduling Penalties

1. Columbia Gulf's Proposal

52. Section 9.2 of Columbia Gulf's GT&C currently requires that a shipper "shall: (i) tender gas . . . in quantities that conform to its Scheduled Daily Receipt Quantity and that flow at uniform hourly rates throughout the Day; and (ii) take gas . . . in quantities that conform to its Scheduled Daily Delivery Quantity and that flow in accordance with Section 12" of the GT&C. Sections 12.1 and 12.2 require that a shipper's maximum daily entitlement to service at each of its primary delivery and receipt points be set forth in its service agreement. Section 12.3 provides that if Columbia Gulf determines that hourly flow restrictions are necessary to protect the integrity or performance capability of its system, "Transporter shall issue . . . an Operational Flow Order pursuant to which Transporter's Maximum Hourly Receipt Obligation, within the area(s) subject to such Order shall be, and the Shipper's maximum hourly receipts within those areas shall not exceed those quantities specified in" a schedule set forth in Section 12.3. That schedule requires that in any one hour a shipper's receipts may not exceed 120 percent of 1/24 of the shipper's maximum daily demand at that receipt point. A shipper violating this OFO requirement would be subject to Columbia Gulf's OFO penalty. While, as described above, Columbia Gulf has daily scheduling penalties at its physical delivery points, its current tariff does not include any hourly scheduling penalties.

53. In its October 28 filing, Columbia Gulf proposed to implement hourly scheduling penalties at its delivery points during both non-critical and critical periods in a new Section 19.6 of its GT&C. In its February 4 Clarification and its March 8, 2011 reply,

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[20] *Id*. (requiring the pipeline to modify the liability provisions of its flow control tariff provision).

[21] Reply Comments of Columbia Gulf at 44, *citing* El Paso Natural Gas Company, FERC Gas Tariff, 3rd Rev. Vol. No. 1, Section 4.11, Version 0.0.0.

Columbia Gulf proposed that, during a non-critical period, it will assess a penalty equal to its effective ITS-1 rate on each Dth taken by a shipper that varies by more than the greater of: 1) for each hour - 10.0 percent either above or below "the hourly flow rights in the shipper's service agreement or in the tariff," or 2) for cumulative hourly variances during the day, 1,000 Dths.[22] For variances during a critical period, Columbia Gulf proposed that the hourly percentage tolerance will be 3.0 percent, and the penalty per Dth will be equal to three times the midpoint of the range of prices reported for "Columbia Gulf, Louisiana" as published in *Platts Gas Daily* price survey. The penalties will not be assessed at delivery point interconnections where an OBA is in effect. Finally, revenues from the penalties will be credited to non-offending shippers pursuant to Columbia Gulf's existing penalty revenue crediting mechanism.

54. As discussed further below, in this rate case Columbia Gulf is proposing an Enhanced Firm Transportation (EFT) Rate Schedule. For EFT shippers, the hourly scheduling penalties would apply only to hourly receipt or delivery quantities under Rate Schedule EFT that exceed the shipper's Maximum Hourly Receipt Quantity (MHRQ) or Maximum Hourly Delivery Quantity (MHDQ). Columbia Gulf stated that this proposal will help EFT shippers avoid hourly scheduling penalties.

55. In its February 4 Clarification, Columbia Gulf stated that some parties had contended that Section 9.2 of its existing GT&C only requires uniform hourly flows at receipt points and not at the delivery points where Columbia Gulf proposed to impose the hourly flow penalties. In response to those contentions, Columbia Gulf proposed to revise Section 9.2(a) to expressly require that shippers take deliveries at a uniform hourly rate of flow throughout the day. Columbia Gulf explained that its existing tariff obliged shippers both to receive and deliver gas at uniform rates, and that this proposal was intended to "(1) reflect that EFT shippers will have different hourly flow obligations, and (2) more clearly define a shipper's hourly flow obligation at delivery points."[23] Columbia Gulf included this proposal in the text of the February 4 Comments in the form of the following redlined/strikeout version of current GT&C Section 9.2(a):

> (a) Uniform Rates and Quantities. Except as otherwise provided in Shipper's Service Agreement, Shipper shall: (i) tender gas . . . in quantities that conform to its Scheduled Daily Receipt Quantity and that flow at uniform hourly rates throughout the Day; and (ii) take gas . . . in quantities that conform to its Scheduled Daily Delivery Quantity and that flow ~~in~~

[22] In the October 28 filing, Columbia Gulf proposed a non-critical percentage tolerance of 5.0 percent, but in its reply comments increased the tolerance to 10.0 percent.

[23] Columbia Gulf February 4 Clarification at 18.

> ~~accordance with Section 12 (Maximum Daily and Hourly Obligation at Both Delivery Points and Receipt Points) of the G[T&C]~~ at uniform hourly rates throughout the Day, unless deviations for those receipt and delivery quantities are necessary for balancing purposes and are undertaken by Shipper at Transporter's request or following notice to, and approval by, Transporter in accordance with the applicable provisions of the [GT&C].

56. To provide operational support for the hourly scheduling penalties, Columbia Gulf appended charts to its February 4 Clarification showing the size, on percentage basis, of hourly scheduling variances during 2010 at seven points on its system where local distribution companies (LDC) take direct deliveries. According to Columbia Gulf, such data proved that certain shippers or their asset managers incur wide hourly swings. Columbia Gulf pointed out that the average hourly delivery variance across the seven points was 28 percent, and at one point exceeded 70 percent for seven months out of the year. Columbia Gulf also noted that particularly high hourly variances occurred in January 2010 and June 2010 at one delivery point, exceeding 550 percent between the actual flowing volumes and volumes that would have flowed had shippers taken gas ratably. Columbia Gulf contended that, as it attracts new customers (particularly power plants with temperature-sensitive loads), it will become increasingly less able to accommodate similarly large and unplanned hourly non-ratable takes.

2. Post-Technical Conference Comments

57. The protesting parties oppose both Columbia Gulf's proposed hourly scheduling penalty at its delivery points and its proposed revision of Section 9.2(a) to expressly require that shippers take deliveries at a uniform hourly rate of flow throughout the day. They contend that Columbia Gulf's characterization of its revision to Section 9.2(a) as a clarification of shippers' existing obligation to take delivery on a uniform hourly basis is a "smokescreen" intended to conceal a fundamental and unjustified change to shippers' existing service rights.[24] They contend that a shipper's hourly flow rights under

[24] Some of the protesting parties also object to the proposed revision of Section 9.2(a) on procedural grounds stating that it is violation of: 1) the notice provision in Section 4(d) of the NGA, which states, in pertinent part: [u]nless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public; and 2) section 154.205 of the Commission's Regulations (18 C.F.R. § 154.205), which prevents withdrawal of or changes to a proposed tariff during the suspension period. Because the Commission is rejecting Columbia Gulf's proposed revision and its Hourly Scheduling penalty, we will not address these procedural arguments in our decision.

Columbia Gulf's tariff are defined in Section 9.2(a), and that section only requires shippers to tender gas on a uniform hourly basis at receipt points. They point out that existing Section 9.2(a) only requires that they take gas "in quantities that conform to its Scheduled Daily Delivery Quantity" and nothing in the tariff language says anything about hourly delivery quantities. They further point out that the existing tariff does not expressly address maximum hourly delivery requirements, either in Section 9.2(a) or in Section 12, which is referenced in Section 9.2(a). Instead, they contend that the proposal, rather than simply clarifying existing tariff language, fundamentally changes Columbia Gulf's long-standing practice of accommodating shippers' non-ratable takes that do not threaten system integrity or reliability of service.

58. Columbia Gulf explains that it proposed to delete the reference to Section 12 in the proposed Section 9.2(a), because although Section 12 addresses shippers' obligations to flow receipts on an hourly basis under an OFO, it is silent regarding shippers' obligations to flow deliveries on an hourly basis. Columbia Gulf believes the existing language in Section 9.2(a) thus may be open to too much interpretation.

59. Columbia Gulf also argues that it is reasonable to interpret the language in current Section 9.2(a) as requiring shippers to take deliveries at uniform hourly rates because that section also currently requires shippers to ensure that tenders of gas onto the system "flow in uniform hourly rates throughout the Day." Columbia Gulf reasons that once gas is received into the system, it will only flow ratably if gas is taken from the system on a ratable basis.

60. In addition, Columbia Gulf points out that for the past 50 years, it has designed its system based on a steady state flow model that assumes receipts and deliveries flow at a uniform rate during the day. Columbia Gulf also notes that this model has been the basis for Commission approval of its system design, and is used by Columbia Gulf to model its FTS-1 and FTS-2 services.

61. Columbia Gulf further explains that, under section 284.7 of the Commission's regulations, it cannot sell capacity that is subject to a prior claim by another customer.[25] Thus, when a customer is sold firm capacity based on a steady state model, shippers do not have a firm right to take more than 1/24 of their MDQ in any hour. Columbia Gulf maintains that, on a design day on a fully subscribed system, a shipper who does so is infringing on other shippers' rights.

62. Columbia Gulf points out that it has no storage and a limited quantity of linepack (400,000 Dth) to accommodate hourly and daily flexibility on a system with 2.156 Bcf

[25] 18 C.F.R. § 287.7 (2010).

per day of certificated mainline capacity. It states that without limits on hourly rights, one shipper could consume all of its system's flexibility, effectively imposing ratable takes on the remainder of its shippers.[26]

63. The protesting parties state that the pipeline's reliance on a steady state flow model as a basis for system design does not mean that firm services cannot accommodate non-uniform deliveries during non-critical periods. They maintain that, historically, shippers' rates are based on daily maximum billing units and full use of pipeline facilities, which includes the flexibility that Columbia Gulf has historically accommodated.

64. The protesting parties also contend that it is not true that the current tariff does not recognize that shippers have a right to use available flexibility on the system. For example, they note that GT&C Section 6.2(h)(2) states that "tenders or takes during any 8 hour period may not exceed 40% of shipper's Transportation Demand." They point out this provision would not be necessary unless both Columbia Gulf and the shipper recognized and accepted hourly variances.[27] Finally, one commenter notes that, in Columbia Gulf's restructuring proceeding, the Commission warned Columbia Gulf that it cannot impose hourly flow restrictions on its firm shippers absent a compelling showing of a need for doing so.[28]

65. In response, Columbia Gulf argues that the gas industry has changed so much since its restructuring proceeding that the Commission's factual analysis then is no longer relevant, and should be updated to reflect current operating conditions.

66. Columbia Gulf also argues that a shipper taking more gas per hour than its entitlement degrades the flexibility of service historically available to other shippers. Therefore, establishing reasonable and clearly defined flow rights through its proposals in this proceeding will allocate limited system flexibility equitably among all shippers so that deliveries taken by an upstream shipper cannot use up all flexibility on the system.

67. Regarding the proposed hourly scheduling penalties, Columbia Gulf maintains that they are consistent with the requirements underlying the Commission's penalty policy set

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[26] Indicated Shippers state that Slide 12 of Columbia Gulf's technical conference presentation is ambiguous regarding the amount of Columbia Gulf s linepack, indicating that it may have up to 1 Bcf to manage hourly variations.

[27] Indicated Shippers Reply Comments at 6.

[28] *Columbia Gulf Transmission Co.*, 64 FERC ¶ 61,060, at 61,591-92 (1993).

forth in Order No. 637, in particular that a pipeline may include transportation penalties in its tariff only to the extent necessary to prevent impairment of reliable service. Columbia Gulf notes that, since delivery variances at OBA points would be exempt from the penalties, the scope of their application would be appropriately narrow, and therefore consistent with this principle.

68. Columbia Gulf also points out that the Commission recognizes pressure irregularities caused by uncontrolled hourly load variances have the potential to impact system reliability,[29] and that a pipeline does not have to show actual harm prior to proposing reasonable measures to ensure system reliability.[30] Columbia Gulf believes that the data in the February 4 Clarification shows that such variances occur on its system. Further, Columbia Gulf asserts that the Commission has already determined that hourly scheduling penalties may be imposed to protect system integrity during critical periods,[31] and are appropriate to encourage scheduling accuracy and prevent system abuse during non-critical periods.[32]

69. The protesting parties argue that Columbia Gulf should not be able to rely on the Commission's statements in *El Paso 2006* without providing operational support for its own penalty proposal. The protesting parties point out that the determination in *El Paso 2006* was made in the context of a record clearly showing that hourly delivery variances threatened service reliability. They maintain that such operational circumstances have not been shown to exist on Columbia Gulf's system, and therefore *El Paso 2006* is distinguishable.

70. In particular, the protesting parties point out that, unlike Columbia Gulf, El Paso had performed studies demonstrating that there were severe constraints on laterals serving its generation load. Also unlike Columbia Gulf, El Paso's laterals did not function primarily as feeders to a downstream pipeline. Thus, they contend that, unlike Columbia Gulf, El Paso was not insulated from swings associated with direct deliveries. They note that El Paso's laterals were chronically constrained whereas Columbia Gulf is

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[29] Columbia Gulf Reply Comments at 9 and 19-20, *citing El Paso Natural Gas Co.*, 114 FERC ¶ 61,305, at P38-40 (2006) (*El Paso 2006*).

[30] *Id.*

[31] Columbia Gulf Reply Comments at 25, *citing Algonquin Gas Transmission, Co.*, 62 FERC ¶ 61,132 (1993).

[32] Columbia Gulf Reply Comments at 26, *citing El Paso 2006*, 114 FERC ¶ 61,305 at P 125.

undersubscribed and its throughput appears to be in decline. Finally, they note that**,** unlike Columbia Gulf, El Paso did not have a daily scheduling penalty in its tariff when it proposed the hourly scheduling penalty. Therefore, they state that El Paso's shippers, unlike Columbia Gulf's shippers, were not faced with the difficulty of trying to avoid two overlapping scheduling penalties.

71. In this regard, they assert that, although the general Commission policy is not to require pipelines to provide operational support for non-critical period daily scheduling penalties, they point out that subsequently in *El Paso 2007*,[33] the Commission declined to apply the general policy because doing so would have made it difficult, if not impossible, for El Paso's shippers to avoid being penalized by either the proposed non-critical daily scheduling penalty or an already existing non-critical hourly scheduling penalty in El Paso's tariff. The Commission then found that the evidence showed there would be no harm to service reliability by leaving in place existing tariff mechanisms that were implemented to address the previously demonstrated adverse impact of hourly swings on service reliability. They argue that approval of Columbia Gulf's proposed non-critical hourly scheduling penalty, in combination with its existing non-critical daily scheduling penalty, would subject Columbia Gulf's shippers to a similar "catch-22" penalty exposure.

72. The protesting parties believe that Columbia Gulf has not provided any operational evidence that would outweigh this flaw in its proposal. Specifically, they maintain that conditions on Columbia Gulf have not changed so much that hourly scheduling penalties are needed to prevent impairment of reliable service. Among other things, they point out that in 2010, 86 percent of nominations in the Mainline zone were made to the Leach interconnection with Columbia Gas, where delivery variances are subject to an OBA and would therefore be exempt from the proposed hourly scheduling penalties. The protesting parties note that while the charts appended to Columbia Gulf's February 4 Clarification might show an average hourly variance of 28 percent at seven points directly connected to LDCs, Columbia Gulf has not revealed: 1) the actual amount of Dths involved, 2) how the variances compared in size to total system volumes flowing at the time, or 3) whether the variances adversely impacted operations. They assert that, contrary to Columbia Gulf's theoretical arguments, Columbia Gulf has not shown that such variances could have any impact on system operations.

73. Therefore, the protesting parties surmise that delivery variances associated with the remaining 14 percent of mainline delivery nominations are not large enough to impair reliable service, and that such variances have historically been accommodated by Columbia Gulf. They believe that current conditions on Columbia Gulf's system have

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[33] *El Paso Natural Gas Co.,* 121 FERC ¶ 61,265 (2007) (*El Paso 2007*).

not changed from historical conditions in this regard, so that Columbia Gulf cannot rely on changed circumstances as a reason to implement the proposed penalties.

74. In a related argument, some protesters point out that Columbia Gulf has not submitted any studies or data showing the level of flexibility it has historically tolerated for deliveries to LDCs, nor whether delivery variances significantly higher than the proposed tolerances would have an impact on the system. They suggest that if shippers other than LDCs incur more drastic variances than the LDCs directly connected to Columbia Gulf, then the tolerances of hourly scheduling penalties could be crafted to such non-LDC shippers.

75. The protesting parties also state that there have been no reported operational problems on the system caused by non-uniform takes, nor has Columbia Gulf issued an OFO to limit non-uniform takes. Finally, they note that because Columbia Gulf's throughput and subscribed capacity has trended downward in recent years, Columbia Gulf has ample unsubscribed capacity and operational flexibility to accommodate variable hourly deliveries.

76. According to Indicated Shippers, the proposed hourly scheduling penalties violate a second requirement of penalty policy under Order No. 637, which is that penalty revenues must be credited to non-penalized shippers. Indicated Shippers argue that this principle is supposed to make the pipeline financially indifferent to the penalties. However, they argue that the financial linkage between EFT service and the hourly scheduling penalties violates this requirement, since shippers would have to contract for EFT service (discussed further below) to avoid the penalties, which benefits Columbia Gulf financially.

77. The protesting parties assert that the hourly scheduling penalty proposal would also violate a third requirement set forth in Order No. 637 that a pipeline must provide as much timely information as possible about the imbalance and overrun status of each shipper, and the imbalance of the pipeline's system. They note that Columbia Gulf does not address and cannot satisfy this requirement because currently, it reports available capacity to its shippers on a daily, not hourly basis. They also maintain that such lack of transparency could lead to undue discrimination.

78. The protesting parties note that, pursuant to Order No. 637 and section 284.12(b)(2)(iii) of the Commission regulations,[34] pipelines must provide shippers with adequate imbalance management services to avoid penalties. Indicated Intervenors argue that Columbia Gulf has not shown that EFT service would be an effective tool for penalty

[34] 18 C.F.R. § 284.12(b)(2)(iii) (2010).

avoidance, and Indicated Shippers assert that EFT service is not proposed as a balancing service. BGE provides calculations to show that, in the February 4 Clarification, Columbia Gulf significantly understated the amount of EFT service a hypothetical shipper would have to obtain in order to avoid scheduling penalties. Similarly, Indicated Intervenors and Piedmont suggest that the actual amount of required EFT service would be cost prohibitive. Finally, Indicated Shippers note that at the technical conference, Columbia Gulf did not appear to be receptive to permitting shippers use of third-party imbalance management services, as suggested by shippers.

79. Columbia Gulf states that shippers will have adequate tools to avoid both daily and hourly scheduling penalties by contracting for the proposed EFT service and/or for the recently approved Scheduling Variance Service (SVS). Columbia Gulf also offered to make a compliance filing to revise Rate Schedule SVS to permit shippers to contract for hourly scheduling variances.

80. Columbia Gulf points out that it only has 400,000 Dth of linepack to provide flexibility, which is roughly 18 percent of its certificated capacity of 2.2 Bcf. Columbia Gulf reasons that subtracting its 10 percent non-critical penalty tolerance leaves less than 10 percent retained system flexibility to manage unexpected changes in system conditions. Columbia Gulf states that it reasonably expects its electric generation load to increase, consistent with a trend in the gas industry recognized by the Commission. Columbia Gulf claims that its hourly scheduling penalty proposal is an adaptation to current market conditions.

81. Columbia Gulf believes that, although it is not required to show that actual harm has occurred on its system to justify its penalty proposal, it believes it has met its burden to show a reasonable need for the penalties by asserting its lack of system flexibility and its need to attract more directly connected load to its system.

82. Indicated Intervenors and similarly, Cities, point out that in *Texas Eastern*,[35] the Commission approved the pipeline's proposed enhanced hourly flexibility service at delivery points, while requiring the pipeline, in part, to render the new service so as "to avoid any reduction in the existing hourly flexibility provided to other shippers."[36] They urge the Commission to subject Columbia Gulf to the same requirement before examining further its Rate Schedule EFT proposal.

[35] *Texas Eastern Transmission, LP*, 134 FERC ¶ 61,068 (2011).

[36] *Id*. P 22.

83. Columbia Gulf disagrees with the protesting parties' interpretation of *Texas Eastern.* According to Columbia Gulf, the main point of *Texas Eastern* is that each pipeline must protect the historic flexibility of shippers within the context of its own operational capabilities. Columbia Gulf asserts that its current tariff does not offer such protection. However, Columbia Gulf believes the proposed hourly scheduling penalties would protect shippers' flexibility consistent with the fact that its system is operationally distinct from Texas Eastern's, which has 75 Bcf of storage with which to manage system flexibility. Therefore, the requirement to protect shippers' historic flexibility needs to be viewed in the context of the operational circumstances on its own system.

3. Commission Decision

84. Order No. 637 set forth three requirements pipelines must abide by to implement transportation penalties, one of which is that a pipeline may include transportation penalties in its tariff only to the extent necessary to prevent the impairment of reliable service.[37] In Order No. 637, the Commission explained that penalties can limit "efficiency in the short-term market by restricting shippers' abilities to effectively use their transportation capacity."[38] For that reason, Order No. 637 required pipelines to "narrowly design penalties to deter only conduct that is actually harmful to the system."[39] In addition, in Order No. 637-A, the Commission stated that, when it permitted pipelines to develop and utilize OFOs and penalties as system management tools in Order No. 636, it recognized that the purpose of penalties was to protect the reliability of service for all shippers. Therefore, the Commission stated, Order No. 637's requirement that pipelines impose penalties only to the extent necessary to prevent the impairment of service "simply reflects a formalized requirement that pipelines use penalties for their intended purpose."[40]

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[37] The first principle is that a pipeline may include transportation penalties in its tariff only to the extent necessary to prevent the impairment of reliable service. Second, a pipeline must credit to shippers all revenues from all penalties net of costs. Third, a pipeline must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system as a whole. *See* Order No. 637 and 18 C.F.R. § 284.12(b)(2)(v) (2010).

[38] Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,307.

[39] *Id*. at 31,314.

[40] Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 at 31,608.

85. We find that Columbia Gulf has not satisfied its burden under NGA section 4 to show that its proposed tariff changes which require uniform hourly takes at delivery points and the assessment of penalties for violations of that requirement are just and reasonable. In Columbia Gulf's Order No. 636 restructuring proceeding, it proposed to include in Section 9 of its GT&C a provision containing an express schedule of hourly flow restrictions at both its receipt and delivery points. That schedule limited a shippers' hourly flow during any single hour at both receipt points and delivery points to 120 percent of 1/24 of the shipper's maximum daily demand at that receipt or delivery point. In the Commission's first order on Columbia Gulf's restructuring proposal, the Commission held that Columbia Gulf had failed to provide adequate justification for the imposition of hourly flow restrictions and required Columbia Gulf either to justify the need for these provisions or remove them.[41] The Commission's order on Columbia Gulf's compliance filing held that it had still not justified these restrictions and required Columbia Gulf to remove them from its tariff.[42] As described above, Section 12.3 of the GT&C currently permits Columbia Gulf to issue an OFO to impose the same schedule of hourly flow restrictions at receipt points, but Section 12.3 contains no similar provision concerning hourly takes at delivery points. In its reply comments in this proceeding, Columbia Gulf "acknowledges that it has historically accommodated hourly flow variations."[43]

86. It is thus clear that Columbia Gulf's proposal in this proceeding to impose a blanket requirement that all non-EFT shippers take gas on a uniform hourly basis and be penalized for non-uniform hourly takes above the proposed tolerance levels represents a significant new restriction on the shippers' ability to use their transportation service to meet their requirements. Moreover, while the Commission has approved daily scheduling penalties for many pipelines, including Columbia Gulf, the Commission has approved hourly scheduling penalties for only a couple of pipelines, primarily in *El Paso 2006*.[44] Restrictions on hourly takes and penalties for violating such hourly restrictions are significantly more burdensome on shippers than a daily scheduling penalty. That is because they limit the ability of shippers to react to variations during a day in their need for gas without incurring a penalty. Therefore, consistent with Order No. 637's goal of ensuring that penalties do not unnecessarily restrict the ability of shippers to use their

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[41] *Columbia Gulf Transmission Co*., 64 FERC ¶ 61,060, at 61,591-61,592 (1993).

[42] *Columbia Gulf Transmission Co*., 64 FERC ¶ 61,365, at 63,589-12 (1993).

[43] Columbia Gulf Reply Comments at 9.

[44] Columbia Gulf Reply Comments at 9, *citing El Paso 2006*, 114 FERC ¶ 61,305 at P 38.

transportation capacity efficiently, the Commission will only approve hourly scheduling penalties where a pipeline makes a convincing and fully supported showing of a need for such penalties to protect system integrity. Columbia Gulf has failed to make such a showing.

87. Columbia Gulf contends that, despite the fact its system has safely operated since its Order No. 636 restructuring proceeding without hourly scheduling penalties, circumstances have changed and now such penalties are required. However, it has failed to provide operational or other evidence demonstrating such a change in circumstance or showing that shippers' unratable takes either currently or in the foreseeable future are likely to have an adverse impact on its service reliability. Columbia Gulf relies primarily on the charts of delivery variances during 2010 incurred by LDCs at seven unidentified points on its system that were appended to its February 4 Clarification. However, as noted by protesting parties, such charts do not reveal the size in volumetric terms of the variances, nor the operational conditions existing at the time such variances occurred, including total volumes flowing on the system. Therefore, it is impossible to determine what impact, if any, such variances had on system operations. However, it appears that any impact would have been minimal, since there is no evidence that Columbia Gulf issued an informational notice or OFO addressing hourly variances during 2010. Moreover, Columbia Gulf did not present any comparable evidence concerning hourly flow variations in earlier years. Therefore, there is nothing in the record to show that the hourly flow variations in 2010 were any greater than in any earlier year, including at the time of Columbia Gulf's Order No. 636 restructuring in 1993.

88. Columbia Gulf's prepared direct testimony does not support a finding that it currently needs the hourly scheduling penalties. Throughout this proceeding, it has repeatedly expressed concern about how unratable takes primarily by two customer groups, LDCs and power plants, can adversely impact its system operations. However, there is information in the testimony that could indicate, at least indirectly, that the probability of negative impacts from both groups' delivery nominations is currently minimal. Exhibit No. CGT-83 shows that, from 2004 to 2010, there was a decline in the percentage of contract demand on its system held by both types of customers. LDC contract demand declined from 62.2 percent in 2004 to 47.4 percent in 2010, and power plant contract demand declined from 14.9 percent to 9.2 percent during the same period. It is reasonable to surmise that nominations from entities within these customer groups that are directly connected to Columbia Gulf would have much less of an impact than indicated by the contract demand data, considering that only 14 percent of total delivery nominations on the system are to points other than the Leach interconnection where an OBA is in effect.

89. This supposition is consistent with the following statement in Exhibit No. CGT-82 at 11-12: "There are only a few metropolitan areas that can be directly served by Columbia Gulf's system. Nashville, Tennessee is the only one that is a relatively large

municipality. The only other major customers that are directly connected to Columbia Gulf are five power plants . . ." This statement also calls into question the value of the charts appended to the February 4 Clarification in showing that unratable takes of LDCs at seven points on the system could impair Columbia Gulf's reliability of service. Finally, Columbia Gulf does not assert that unratable takes by these power plants have caused a problem on the system.

90. The direct prepared testimony also does not indicate that Columbia Gulf's long-term business strategy for increasing demand on its system will lead to operational problems making hourly scheduling penalties necessary. Columbia Gulf states that it has added a significant amount of delivery capacity, approximately 960 MMcf per day, at interconnections with downstream pipelines serving gas-consuming markets in Florida and other Southeastern states.[45] Columbia Gulf also indicates that more than 86 percent of the growing Florida market consists of power generation. Thus, although Columbia Gulf has targeted the power plant market as a major growth opportunity, it appears that it will access a significant portion of that market through interconnections with downstream pipelines that are subject to OBAs, and therefore not subject to the hourly scheduling penalties. This could also indicate that proportionally, the amount of delivery nominations to downstream pipelines will be not be significantly different than at present, nor will the minimal impact of directly connected customers on operations be any different.

91. We also find that, in the context of overall conditions on Columbia Gulf's system, it is unlikely that such variances could adversely impact reliability of service. Throughput and subscriptions to capacity on Columbia Gulf's system have declined significantly in recent years, and yet Columbia Gulf is required to maintain the physical plant, including compression facilities, at the levels needed to transport its certificated capacity. Therefore, it appears that Columbia Gulf has ample flexibility to accommodate the swings of directly connected shippers. In this regard, we note that such shippers' delivery nominations constitute only 14 percent of total mainline nominations, with the remainder of deliveries being nominated to the Leach interconnection with Columbia Gas, and therefore subject to adjustment of variances under an OBA.

92. In order to support what it states is a reasonable limit on hourly flows and hourly flow penalties Columbia Gulf relies on the Commission's statements in *El Paso 2006* that

[45] Exhibit No. CGT-82 at 37-38.

"[w]hen shippers take gas at non-uniform rates, system reliability may be impacted,"[46] and that:

> a pipeline is not required to show that serious disruptions have already occurred on its system in order to propose reasonable measures to ensure system reliability. A pipeline need not wait for a system failure, but may act proactively to ensure that firm service remains reliable. Commission precedent demonstrates that, even where a pipeline has not yet experienced operational problems that result in firm service curtailment, service changes in order to ensure firm primary delivery point rights are just and reasonable.[47]

93. However, as already discussed, hourly scheduling penalties are significantly more restrictive than daily penalties and therefore the Commission will only approve hourly scheduling penalties where a pipeline makes a convincing and fully supported showing of a need for such penalties to protect system integrity. While Columbia Gulf correctly states the Commission's findings that a pipeline may not need to wait for a system failure before it acts,[48] this does not translate into a simple need to claim a problem may exist to be permitted to fashion any desired remedy. In *El Paso 2006*, the pipeline made a detailed factual showing to justify its operational need.[49] The Commission also stated the pipeline faced severe capacity constraints and firm service reliability problems on its

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[46] Columbia Gulf Reply Comments at 9, *citing El Paso 2006,* 114 FERC ¶ 61,305, at P 38.

[47] Columbia Gulf Reply Comments at 9, *citing Id.* P 40.

[48] In this same vein, Columbia Gulf points to the Commissions action in *Millennium Pipeline Co.*, 130 FERC ¶ 61,074, at P 18 (2010), for support for its proposal. However, that proceeding involved a daily scheduling penalty, not an hourly penalty. Also, the Commission's action in *Millennium* was based upon the growing demand on the system. No such demand had been shown to exist on the Columbia Gulf system.

[49] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC Stats. and Regs., Preambles July 1996- December 2000 ¶ 31,091, at 31,314 (2000), *order on reh'g*, Order No. 637-A, FERC Stats. & Regs., Preambles July 1996 – December 2000 ¶ 31,099 (2000), *order on reh'g*, 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).

system.[50] However, in the instant case, Columbia Gulf has not shown capacity constraints to the extent faced by the Commission on the El Paso system, nor has Columbia Gulf presented the Commission with any assertion of reliability problems. In *El Paso 2006,* the Commission found that the pipeline, through its filed evidence, had shown that it had increasingly operated on an hourly basis with larger variation of flows. The Commission found that the pipeline had responded to these changes by making adjustment to its services to meet competitive needs.[51] The Commission relied on substantial evidence in finding that El Paso's services were just and reasonable.[52] Columbia Gulf, for its part, states merely that it is experiencing a high level of hourly flow variations at certain points on its system and that at one point the average hourly

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[50] *See El Paso Natural Gas Co.*, 99 FERC ¶ 61,244 (2002), *aff'd, Arizona Corporation Comm. v. FERC,* 397 F.3d 952 (D.C. Cir. 2005). Moreover, in *El Paso 2006* after stating that the pipeline need not wait for system failure to act. The Commission explained, "[f]irm service reliability has been a problem on the El Paso system and the Commission has taken action to restore the reliability of service on El Paso. In view of the measures already taken by the Commission to restore reliable service on El Paso's system, El Paso's proposed new services appear to be reasonable as a means of assuring reliability of service." *El Paso 2006*, 114 FERC ¶ 61,305 at P 40 (footnote omitted).

[51] *El Paso 2006,* 114 FERC ¶ 61,305 at P 40.

[52] For example, the Commission stated that:

> El Paso's testimony, and the operational data appended to the testimony, demonstrate that shippers that incur large daily and hourly imbalances have an increasingly significant and potentially harmful impact on El Paso's system and on its other shippers. El Paso has also shown that some shippers currently engage in extensive hourly swings and that hourly swings by several shippers and delivery points have exceeded 300 percent of their average daily usage under shippers' current contracts. One extreme case shows hourly deliveries at a single point in excess of 2000 percent of average usage rates. Charts representing California shippers show significantly less variation on hourly and daily bases. El Paso has also demonstrated that the occurrence of an extreme weather front resulting in simultaneous peaking by major shippers could substantially affect system reliability. *El Paso 2006,* 114 FERC ¶ 61,305 at P 38 (footnotes omitted).

variance exceeded 70 percent for seven out of 12 months of the year, while swings at another point exceeded 550 percent.[53]

94. Finally, Columbia Gulf will have multiple tools to forestall any threat to reliability from hourly scheduling variances in the form of the Critical Period Notice penalty and Unauthorized Gas penalty we are approving herein, its new right to require the installation of flow control equipment, its current OFO and critical period penalties, and its optional contractual tools that shippers can utilize, including the EFT service approved herein, and its current SVS and Park and Loan (PAL) services.

D. Unauthorized Gas Penalty[54]

1. Columbia Gulf Proposal

95. In its October 28 filing, Columbia Gulf proposed what it described as an "unauthorized overrun penalty." It proposed to define an "unauthorized overrun" in its GT&C as "any volume of gas received or delivered by Columbia Gulf that exceeds the volumes confirmed under a valid nomination for service." It proposed to include in GT&C Section 19.4 separate penalties for such overruns, depending upon whether they occurred during non-critical or critical periods. During non-critical periods, shippers would be subject to a penalty for any "unauthorized overrun" exceeding five percent of scheduled volumes or 1,000 Dth, whichever is greater. Columbia Gulf would purchase any "unauthorized overrun volumes it received at a price equal to 100 percent of the lowest price 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." Similarly, Columbia Gulf would sell any "unauthorized overrun" volumes it delivered at a price equal to 100 percent of the highest weekly index price.

96. During critical periods, the tolerance level would be reduced to three percent of scheduled volumes or 1,000 Dth, whichever is greater. Columbia Gulf's purchases would be at a price equal to 50 percent of the lowest weekly index price and its sales would be at a price equal to 150 percent of the highest weekly index price. Any purchase or sale under Columbia Gulf's proposed non-critical or critical period penalties would be

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[53] Columbia Gulf Initial Comments at 10 (footnote omitted).

[54] Columbia Gulf initially titled the penalty an "Unauthorized Overrun" penalty; however, after the technical conference, comments and replies, it now refers to the penalty as an "Unauthorized Gas" penalty.

deemed a purchase or sale from Columbia Gulf's Cash Pool and would be subject to crediting in accordance with GT&C Section 19.8.

97. Columbia Gulf also proposed that a shipper or point operator may transfer an "unauthorized overrun" to a PAL service agreement to avoid the penalty, subject to PAL availability and applicable PAL and transportation charges, if the offending party notifies Columbia Gulf of its election within two business days of the unauthorized overrun violation. Columbia Gulf stated that the PAL charges would be assessed from the date of the violation. Columbia Gulf also stated that volumes subject to an "unauthorized overrun" penalty cannot also be subject to the monthly Cash-out Mechanism under GT&C Section 18.8 because, once purchased under Section 19.4 or transferred to a PAL account, such volumes will not be included in a shipper's end of month imbalance.

98. Columbia Gulf represented that its proposed "unauthorized overrun" penalty was needed to alleviate the problem of shippers delivering and taking gas in excess of their scheduled nominations. Columbia Gulf argued that, unlike other pipelines, it has very limited line pack. With respect to unauthorized receipt volumes, Columbia Gulf averred that these penalties are necessary because it does not currently have any mechanism to deter shippers from delivering gas into its system without a valid nomination. As a result, Columbia Gulf contended that shippers under its no charge pooling services (Rate Schedule IPP or AS) can dump gas onto its system to sell at the pool without a valid nomination. Columbia Gulf asserted that these unauthorized receipts have enabled shippers to avoid Columbia Gulf's capacity allocation and scheduling rules and take advantage of spreads between its cash-in/cash-out prices and market prices. Moreover, Columbia Gulf averred that, if these volumes are not properly nominated, it can affect Columbia Gulf's ability to meet its firm service obligations because, without a valid nomination, these volumes are not included in the capacity allocation process since they are not visible to the system until it is too late to prevent gas from being received into the pipeline.

99. At the technical conference and in post-technical conference comments, parties raised a number of concerns with Columbia Gulf's proposal, which have resulted in Columbia Gulf significantly modifying the proposal in both its February 4 Clarification filing and its March 8, 2011 reply. For example, several parties pointed out that Columbia Gulf has improperly characterized its proposed penalty on receipts and deliveries in excess of scheduled quantities as an "unauthorized overrun" penalty. These parties correctly averred that, under Commission precedent, unauthorized overrun penalties apply only to takes in excess of maximum contract demand and not to takes in excess of volumes scheduled under a valid nomination, as Columbia Gulf has proposed. In response to these comments, Columbia Gulf has agreed to call the penalty an "unauthorized gas" penalty, rather than an "unauthorized overrun" penalty.

100. The protesting parties also pointed out that Columbia Gulf already has a daily delivery point scheduling penalty. Under that penalty, shippers whose takes at a physical delivery point vary from scheduled amounts by 1,000 Dth or five percent or more during non-critical periods must pay a penalty equal to Columbia Gulf's interruptible transportation rate. During critical periods, shippers whose takes at a physical delivery point vary from scheduled amounts by 1,000 Dth or three percent or more must pay a penalty equal to three times the midpoint of a range or prices reported by Columbia Gulf-Louisiana by Platts Gas Daily. The existing scheduling penalty does not apply to deliveries into Columbia Gulf's virtual pooling points. Protesting parties contended that, to the extent Columbia Gulf proposed to apply its new "unauthorized overrun" penalty to deliveries in excess of scheduled amounts, the penalty is duplicative of the existing daily delivery point scheduling penalty that Columbia Gulf is already allowed to charge. The protesting parties also raised a number of other objections to the application of the "unauthorized overrun" penalty to deliveries in excess of scheduled amounts.

101. In response to those comments, Columbia Gulf agreed to revise its renamed "unauthorized gas" penalty so that it would apply only to receipts of gas in excess of scheduled amounts. Thus, during non-critical periods, if a shipper tenders to Columbia Gulf volumes that exceed scheduled amounts by more than 1,000 Dth or five percent, whichever is greater, Columbia Gulf will purchase that amount at a price equal to 100 percent of the lowest applicable weekly index price. During critical periods, if a shipper tenders to Columbia Gulf volumes that exceed scheduled amounts by more than 1,000 Dth or three percent, whichever is greater, Columbia Gulf will purchase that amount at a price equal to 50 percent of the lowest applicable weekly index price. In both instances, Columbia Gulf will credit the purchase price to the shipper's invoice. The shipper will also have the option to avoid the penalty by transferring the unauthorized gas to a PAL Service Agreement, subject to the availability of that service. In order to exercise this option, the shipper must nominate the transfer of the unauthorized gas within two days from the date the gas was received.

102. In light of Columbia Gulf's revisions to its proposed unauthorized gas proposal, in this order the Commission will only address comments relevant to the revised proposal.

2. <u>Post-Technical Conference Comments</u>

103. Protesting parties assert that Columbia Gulf's proposed unauthorized gas penalty is a scheduling penalty and, as such, the proposed penalty during non-critical periods is inconsistent with Commission precedent. They state that the Commission has held that penalties for scheduling variances during non-critical periods should be nominal and no

higher than the pipeline's maximum interruptible transportation rate.[55] They therefore argue that Columbia Gulf's proposal to purchase unauthorized gas at the lowest of five weekly index prices violates that policy.

104. With regard to Columbia Gulf's assertion that the penalty is necessary to deter shippers from delivering gas into a pool without a valid nomination, Indicated Shippers state that it is unclear how service under Rate Schedule IPP, a paper (non-physical) service, could experience an unauthorized overrun. Indicated Shippers argue that Rate Schedule IPP must be scheduled in balance daily. Indicated Shippers assert that Rate Schedules IPP and AS permit Columbia Gulf to adjust shippers' scheduling nominations for service into and out of the pool, so that the quantities scheduled for delivery into the pool and out of the pool will be equal. Indicated Shippers aver that Columbia Gulf's February 4 Clarification did not explain how an IPP shipper could schedule gas out of a pool without having scheduled gas into the pool. Therefore, Indicated Shippers argue that it is unclear what conduct Columbia Gulf proposes to penalize and why this conduct is not addressed by the existing tariff.

105. VNG states that, if Columbia Gulf wants to target unauthorized gas on the system, it has the ability to craft a proper unauthorized gas penalty because many other pipelines have such a mechanism.[56] VNG avers that Columbia Gulf's proposal is ill-conceived and overbroad, because there is no attempt to limit the definition to Rate Schedule IPP service.

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[55] Indicated Intervenors argue the Commission has ruled repeatedly that scheduling penalties during non-Critical Periods should be no more than the maximum interruptible transportation rate. *Natural Gas Pipeline Co. of America*, 103 FERC ¶ 61,174, at P 63 (2003) ("The Commission's policy is that for non-peak periods a daily scheduling penalty should be no greater than the IT rate."); *Williams Gas Pipelines Central, Inc*., 100 FERC ¶ 61,232, at P 21 (2002) ("the Commission has held that pipelines may impose nominal penalties on shippers, not to exceed the pipeline's interruptible rate, for flowing a different amount on the pipeline than the shipper nominated"); *Guardian Pipeline, L.L.C.*, 101 FERC ¶ 61,271, at P 27 (2002) ("The Commission directs Guardian to revise its tariff to set the maximum scheduling penalty at Guardian's interruptible tariff rate.").

[56] *See* Dominion Transmission, Inc., FERC Gas Tariff, General Terms and Conditions Section 29 (Unauthorized Gas); *see also* Transcontinental Gas Pipe Line Co., LLC, FERC Gas Tariff, Fifth Revised Volume No. 1, General Terms and Conditions, Section 56 (Unauthorized Receipts).

106. Columbia Gulf responds that, with respect to unauthorized receipts, its proposed penalties are tailored to address operational problems caused by nominations that deliver to its pools. Columbia Gulf states that a significant portion of its customer nominations utilize one of the two pools on Columbia Gulf's system, the Mainline Pool and Onshore Pool. Columbia Gulf argues that, in both 2009 and 2010, approximately 46 percent of the scheduled nominations (excluding pool-to-pool) on its Mainline and Onshore Zones designated one of the pools as a receipt point. Columbia Gulf argues that, rather than path their gas from physical receipt point to physical delivery point, customers simply nominate into one of its no charge pools. Columbia Gulf avers that shippers under Rate Schedule IPP do not have defined transportation demand and their ability to move gas under the rate schedule is subject only to credit and system limitations. Because it has no system in place to deter customers from delivering excess gas into the pools through these IPP-Gulf nominations, Columbia Gulf claims that customers may simply dump gas onto the system in quantities that significantly exceed a valid nomination. Columbia Gulf asserts that this action significantly impacts its ability to provide reliable firm service.

107. Columbia Gulf contends that its proposal is similar in nature to the "unauthorized gas" penalty approved by the Commission in *Gulf South Pipeline Company*, finding that the cash-out of these unauthorized volumes "reasonably address the problem [Gulf South] identified of operators delivering gas into [Gulf South's] system without contracts or nominations, or drastically in excess of scheduled nominations."[57] Columbia Gulf argues that the Commission also found that, by delivering unauthorized gas and gas in excess of nominations into Gulf South's system, operators avoid capacity allocation and scheduling rules, take advantage of differences between cash-in/cash-out prices, and disadvantages customers following existing tariff procedures.[58] Columbia Gulf avers that its proposed gas penalty seeks to deter the same behavior at issue in *Gulf South I*. Moreover, Columbia Gulf argues that its proposed cash-out price for unauthorized gas volumes, at 100 percent of the lowest applicable index priced during non-critical periods, is more lenient than the penalty approved in *Gulf South I* and its proposed applicable index mechanism for the proposed penalty is also fully consistent with *Gulf South I*. Therefore, Columbia Gulf argued the Commission should approve the penalty provision as just and reasonable.

[57] *Koch Gateway Pipeline Co*., 77 FERC ¶ 61,098, at 61,406 (1996). Gulf South Pipeline Company is the successor in interest of Koch Gateway (*Gulf South I*).

[58] *Id*.

3. **Commission Decision**

108. The Commission accepts Columbia Gulf's unauthorized gas penalty as revised in its March 8 reply, subject to one modification. Columbia Gulf has reasonably demonstrated that its revised penalty proposal is necessary to address the problem that Columbia Gulf has identified of customers delivering gas onto its no charge pooling services without contracts or nominations, or drastically in excess of nominations. The Commission agrees with Columbia Gulf that, during critical periods, these types of unauthorized receipts onto the system may threaten the operational integrity of the pipeline. These gas volumes may also impair Columbia Gulf's to ability to deliver firm service to its customers who have scheduled their nominations and followed normal tariff procedures because of the unauthorized gas being delivered into Columbia Gulf's pools. When this gas is delivered into the pool and not included in Columbia Gulf's capacity allocation procedure, it can affect the overall pressure of Columbia Gulf's gas pipeline, which in turn may affect the service of all firm customers.[59] In addition, Columbia Gulf's proposed unauthorized gas penalty for non-critical periods is an acceptable method of providing shippers an incentive not to tender gas onto Columbia Gulf's system without authorization.

109. However, as revised, Columbia Gulf's penalty proposal would apply to all excess receipts onto its system, regardless of whether the gas is delivered into a pool. Columbia Gulf has only contended that such excess receipts cause problems when they are delivered into a pool, and Columbia Gulf's existing daily scheduling penalty at its physical delivery points already provides a disincentive to shippers placing gas onto Columbia Gulf's system and taking delivery at a physical delivery point without a scheduling nomination. Therefore, the Commission requires Columbia Gulf to clarify its proposed unauthorized gas penalty to limit it to receipts in excess of scheduled volumes which are delivered into a pool.

110. The Commission further determines that Columbia Gulf's revised proposal is consistent with Commission precedent. Columbia Gulf's revised penalty proposal is similar to the one approved by the Commission in *Gulf South I*.[60] In *Gulf South I*, the

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[59] Indicated Shippers asserted that Rate Schedules IPP and AS permit Columbia Gulf to adjust shippers' scheduling nominations for service into and out of the pool, so that the quantities scheduled for delivery into the pool and out of the pool will be equal. However, such equalization of scheduled nominations into and out of the pool does not address the problem of shippers tendering onto Columbia Gulf's system and delivering into the pool amounts in excess of the equalized scheduling nominations.

[60] *Gulf South I*, 77 FERC at 61,408; *see also Gulf South Pipeline Co., LP*, 120 FERC ¶ 61,285 (2007) (*Gulf South II*).

pipeline proposed a similar penalty to address unauthorized deliveries of gas onto its system without a scheduled nomination or in excess of 120 percent of scheduled nomination on any day or month.[61] Gulf South contended, as does Columbia Gulf here, that the unauthorized gas and gas significantly in excess of nominations onto its system, operators can avoid capacity allocation and scheduling rules and also disadvantage those customers who follow its tariff procedures.[62] The Commission determined that Gulf South's penalty proposal "will create an economic disincentive for operators to deliver unauthorized and under-nominated gas into [Gulf South's] pipeline."[63]

111. Although we originally approved Gulf South's unauthorized gas delivery penalty in 1996, the Commission reviewed it again in 2002 for consistency with our new policies concerning penalties adopted in Order No. 637. During our review, the Commission found that Gulf South's "treatment of unauthorized gas purchases is a reasonable penalty mechanism and should serve to reduce cash pool costs, which are allocable to all customers."[64] We believe that Columbia Gulf's revised penalty proposal does the same thing and note that the penalty at issue here is more lenient in some respects that the one approved by us in Gulf South. Moreover, as proposed in the revised unauthorized gas penalty, Columbia Gulf's customer may be able to avoid the penalty by transferring the unauthorized gas to a PAL service agreement subject to the availability of PAL service.

112. With respect to the protesters' arguments against Colombia Gulf's proposed penalty, the Commission notes that the majority of protests relate to Columbia Gulf's original penalty proposal in its October 28 filing or the revised one in its February 4 Clarification. However, one party, VNG did state that, if Columbia Gulf wanted to target the problem of unauthorized gas on its system, it should do so using as a template the penalty provisions approved by other natural gas pipelines.[65] In this case, Columbia Gulf has, as discussed above, revised its proposed penalty such that it is similar to the one approved by the Commission for Gulf South.

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[61] *Id*. 77 FERC at 61,405.

[62] *Id*. 77 FERC at 61,406.

[63] *Id*.

[64] *Gulf South Pipeline Co*., 98 FERC ¶ 61,278 at 62,183 (2002), *reh'g denied*, 104 FERC ¶ 61,160 (2003).

[65] VNG March 8, 2011 Reply Comments at p 4-5.

E. Enhanced Firm Transportation Service

1. Columbia Gulf's Proposal

113. In Columbia Gulf's October 28 filing, the pipeline proposed a new service, EFT, which allows shippers to contract for non-uniform hourly takes on a firm basis. Columbia Gulf stated that the service will augment the firm transportation service options currently available on Columbia Gulf's system and provide Columbia Gulf the means to respond to the hourly needs of customers requiring higher levels of non-ratable flows.

114. Columbia Gulf argued that, at present, GT&C Section 9.2 requires all shippers to take deliveries at uniform hourly rates of flow during each hour of the day. In order to provide for greater service flexibility, Columbia Gulf stated that Rate Schedule EFT will enable shippers to schedule their entire transportation demand over a shorter period of time (Hourly Delivery Period), which may vary between four and 24 hours, with a MHDQ specified in one-hour increments. Columbia Gulf asserted that a shipper's MHDQ will be determined by dividing its transportation demand by the Hourly Delivery Period elected in its service agreement. Columbia Gulf avers that it has determined that this range of hourly flow rates represents the range of flexibility that is operationally and administratively feasible for the pipeline to provide under Rate Schedule EFT. Columbia Gulf contended that it does not have the operational or administrative capacity to allow flow variances to be spread across an entire gas day and the Commission has previously accepted similar restrictions on hourly firm transportation rate schedules in light of similar constraints on pipelines.[66]

115. Columbia Gulf asserted that the EFT service will increase reliability on its system and encourage long-term transportation contracts, which will allow Columbia Gulf to compete with other pipelines offering similar services,[67] maximize throughput, and allow shippers to avoid hourly restrictions and associated penalties. Columbia Gulf stated that service under Rate Schedule EFT will be scheduled at primary points on a firm basis.[68] Columbia Gulf argued that Rate Schedule EFT Service also will be allocated on a pro rata basis along with all of Columbia Gulf's other firm transportation shipper, as set forth in Section 7 of Columbia Gulf's GT&C. Further, Columbia Gulf maintained that

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[66] Columbia Gulf October 28 filing at 23 *citing Millennium Pipeline Co.*, 127 FERC ¶ 61,309, at P 23 (2009) (*Millennium*).

[67] *Id. citing, e.g., Vector Pipeline, L.P.*, 103 FERC ¶ 61,391 (2003) (*Vector*); *see also Gulfstream Natural Gas System, L.L.C.*, 91 FERC ¶ 61,119 (2000) (Gulfstream).

[68] *Id. citing El Paso 2006*, 114 FERC ¶ 61,305 at P 40.

nominations under Rate Schedule EFT will not bump nominations under other firm services that have been scheduled by Columbia Gulf.

116. Columbia Gulf averred that the implementation of this new service will not have any adverse impact on its existing service. Columbia Gulf asserted that it will not subscribe any firm capacity to Rate Schedule EFT shippers that has already been subscribed to other firm service shippers. Columbia Gulf stated that interruptible and overrun services will not be affected as capacity sold under Rate Schedule EFT would otherwise be available to be subscribed under other firm services. Columbia Gulf contended that the new service will not otherwise adversely affect existing services as to receipt and delivery point flexibility, nominating or scheduling priorities, allocation of capacity, operating conditions, or interruptions of firm service.

117. Columbia Gulf claimed that, prior to granting a request for EFT service, it will determine whether it has the operational flexibility to provide the service at the specific receipt and delivery points requested. Moreover, Columbia Gulf stated that Section 2(f) of Proposed Rate Schedule EFT provides that Columbia Gulf's obligation to provide the service is subject to receipt of confirmation from the applicable upstream and/or downstream operators. Columbia Gulf stated that this requirement will allow it to maintain as much flexibility as possible in determining whether it can accommodate a level of hourly service based on the arrangements the shipper has with its upstream and downstream transporters, thereby helping it maintain system integrity.[69] Finally, Columbia Gulf asserted that service provided under Rate Schedule EFT will have the same scheduling and curtailment priority as all other firm services provided under Columbia Gulf's tariff and will be subject to all applicable NAESB standards.

118. Columbia Gulf stated that the proposed reservation charge for Rate Schedule EFT service is a derivative of Columbia Gulf's currently effective Rate Schedule FTS-1 rate. Columbia Gulf argued that the proposed charge is set at a level to reflect the value of the enhanced service, i.e. the accelerated deliveries of gas during the gas day. Columbia Gulf asserted that the commodity charge for Rate Schedule EFT service will be the same as the commodity charge applicable to FTS-1 service, and will be subject to the same surcharges and retainage charges. Finally, Columbia Gulf stated the reservation rate for the proposed EFT service will be determined by multiplying the currently effective

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[69] Section 2(f) of the proposed Rate Schedule EFT provides that Columbia Gulf's obligation to provide service is subject to receipt of confirmation from the applicable upstream and/or downstream operators. In addition, this section requires that shippers deliver gas to Columbia Gulf at the receipt point(s) at the same rate at which it is received at the delivery point(s), consistent with provisions approved for other pipelines.

maximum FTS-1 rate by the number of hours in a gas-day (24), divided by the Hourly Delivery Period reflected in the shipper's service agreement.

119. In its February 4 Clarification, Columbia Gulf provided a hypothetical purporting to show how a firm shipper, by converting a portion of its FT transportation demand to EFT service, could avoid subjecting any variable hourly takes to the Hourly Delivery Point Scheduling penalties proposed by Columbia Gulf in its October 28 filing.

2. Post-Technical Conference Comments

120. Most parties state that they do not oppose the idea of creating a new EFT service; but, they protest Columbia Gulf's proposed EFT service as unjust and unreasonable. The protesting parties argue the nexus between Columbia Gulf's EFT service, Flow Control and Hourly Scheduling penalties cannot be overlooked because Columbia Gulf, in its October 28 filing, is proposing to increase or create new penalties on its existing firm shippers to enhance these shippers to sign up for the much higher-priced EFT service. Some of the parties aver that, if the Commission approves the EFT service, the Commission should allow parties to examine the proposed EFT rates in the evidentiary hearing on the rate issues scheduled in this proceeding. Finally, the protesting parties further contend that, while Columbia Gulf maintains that the new EFT service will have no impact on existing shippers, they argue that EFT service as proposed degrades firm service for existing customers.

121. With regard to specific concerns expressed by parties, NiSource requests that the proposal be modified to ensure that the new EFT service does not adversely affect existing firm transportation customers. Therefore, NiSource suggests that either: 1) the language of proposed Rate Schedule EFT be modified to provide that this service is available only upon a finding by Columbia Gulf that the service will not have an adverse impact on existing firm transportation customers; or 2) that other language be added to the tariff providing an equivalent assurance to that effect.

122. Piedmont states that EFT service should not be approved because: 1) Columbia Gulf's discretion as to if, how, and when to provide EFT service is overbroad; 2) the proposed rates are not cost-based; 3) imposition of matching hourly restrictions for receipts and deliveries is not controllable by a subscribing shipper; 4) the negative cost and operational impacts on all shippers from EFT service; and 5) the discrimination inherent in excluding EFT shippers from hourly variance penalties associated with delivering less than ratable hourly takes.

123. In its initial comments, Columbia Gulf asserts that its proposed EFT service will, for the first time, allow shippers to contract for the firm right to non-uniform hourly takes. Columbia Gulf argues that this service is designed to meet the needs of shippers with variations in their hourly gas demands, such as electric generators and local distribution companies. Consequently, Columbia Gulf states that EFT service is

consistent with the Commission's policy encouraging pipelines to "offer special services . . . that will better fit the profile of gas fired generation.[70]

124. Columbia Gulf argues that the Commission has consistently found that services like Rate Schedule EFT, which provides shippers with additional hourly flexibility, are just and reasonable.[71] In *Gulfstream Natural Gas System, LLC (Gulfstream)*, Columbia Gulf states the Commission approved hourly transportation rates that allowed shippers to take their maximum daily contract quantity over a period of 12.5 to 20 hours, holding that:

> [H]ourly firm transportation service is a new and innovative service designed to meet the peaking needs of electric generation customers. The service will allow Gulfstream to respond quickly to customer needs, especially in the electric generating industry whose requirements can vary during the day. Further, such firm hourly service will allow Gulfstream the flexibility and control necessary to compete with other fuels that serve electric generating plants.[72]

Columbia Gulf argues that, in its case, not only will electric generators benefit from the flexibility built into the proposal, but LDCs will also be able to better tailor their service requirements to reflect usage patterns in their service areas.

125. The protesting parties reply that Columbia Gulf erroneously argues that existing firm shippers service will not be degraded by the new EFT service and that its existing shippers have no firm right to hourly variances. They state that Columbia Gulf's argument is incorrect based on the plain language of its tariff and the prior Commission

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[70] Initial Comments of Columbia Gulf at p. 3, *citing Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, 130 FERC Stats. & Regs. ¶ 31,307, at P 27 (2010).

[71] *Id. citing Millennium*, 127 FERC ¶ 61,309 (approving a new hourly firm transportation service); *Great Lakes Transmission L.P*., 120 FERC ¶ 61,105 (2007) (*Great Lakes*); *Vector*, 103 FERC ¶ 61,391 at 17 (holding that proposed Rate Schedule FT-H, which allows shippers to take their contract quantity over four to 24 hours, "will provide greater shipper flexibility"); and *Panhandle Eastern Pipe Line Co*., 90 FERC ¶ 61,119 at 61,360 (*Panhandle I*), *order on reh'g*, 91 FERC ¶ 61,174, *reh'g granted*, 93 FERC ¶ 61,211 (2000) (*Panhandle II*) (approving Rate Schedule HFT that will "complement [Panhandle's] other firm services rather than displacing them).

[72] *Id. citing Gulfstream*, 91 FERC ¶ 61,119 at 61,464.

interpretations of this tariff. The protestors claim that Columbia Gulf is seeking to rewrite its tariff through the submission of unsupported revisions to Section 9.2 of its GT&C regarding a shipper's hourly flow rights as a means to market its EFT service. They also argue that the sale of the new EFT can absorb and lock up the existing flexibility of Columbia Gulf's system.

126. The protesting parties further claim that the cases used by Columbia Gulf as precedent for its new EFT service are distinguishable from this proceeding. The protestors state that, when the Commission has approved such services in the past, the new service has been an add-on and new penalties are not imposed on existing shippers if they decide not to contract for the new service.[73] They aver that, even in *El Paso 2006* which is relied upon by Columbia Gulf in its comments, where the pipeline did propose penalties along with new services, the pipeline offered new hourly firm services without new limits being imposed on existing customers' rights because the Commission had ruled previously that shippers on El Paso's system were generally obligated to take gas at a uniform flow rate. Likewise, the protesting parties avow that the Commission has recently rejected attempts by pipelines implementing new hourly firm services to degrade the firm service of existing shippers.[74]

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[73] *Millennium*, 127 FERC ¶ 61,309 at P 21 (accepting hourly firm transportation service proposed at the request of shippers where the pipeline does not have an hourly scheduling penalty or otherwise impose new restrictions on the service rights of existing shippers); *Great Lakes* 120 FERC ¶ 61,105 at P 2, 20 (accepting hourly firm service on a pipeline where service otherwise is expressly limited to uniform hourly flow rates throughout the day); *Vector*, 103 FERC ¶ 61,391 at P 7, 12, 17 (accepting hourly firm service offered in response to shipper suggestions that provided additional flexibility without restricting flexibility of current services); *Panhandle I*, 90 FERC ¶ 61,119 (accepting an hourly firm transportation service where the pipeline already provided an hourly service but where existing services did not provide the degree of hourly flexibility, and where existing services were not restricted in conjunction with the provision of the new service).

[74] *Texas Eastern Transmission, L.P.*, 134 FERC ¶ 61,068 (2011) (*Texas Eastern*) (Commission accepted enhanced hourly flexibility proposal with the proviso that all existing firm shippers retain their current hourly flow flexibility.); *Portland Natural Gas Transmission Sys.*, 106 FERC ¶ 61,289 (2004) (*Portland*) (Pipeline sought to implement a hourly reserve service that permitted shipper to contract for specified hourly flow rights to have their MDQ delivered at an accelerated rate over a specified number of hours. The Commission permitted the pipeline to implement the new service but expressly rejected

(continued…)

127. Columbia Gulf replies that the Commission should approve its new EFT service and that specific elements incorporated into EFT service have been found by the Commission to be just and reasonable in similar instances. Columbia Gulf states that the new EFT service: 1) will, for the first time, give shippers the option to contract for hourly flexibility on a firm basis; 2) is consistent with the Commission's policy that costs should follow causation; 3) is consistent with similar services previously approved by the Commission; and 4) is designed to allow shippers to tailor their service to their individual service needs. Columbia Gulf replies that it will not grant a request for EFT service if it would adversely impact Columbia Gulf's ability to meet its existing firm service obligations. Accordingly, Columbia Gulf argues that the Commission should approve the new EFT service as just and reasonable.

3. Commission Decision

128. Based on the comments submitted by the intevenors regarding the new EFT service, the protesters concerns appear related to: 1) the proposed costs of the new EFT service; 2) the potential degradation of service to existing firm shippers with the establishment of the new EFT service; and 3) the relation of EFT service to Columbia Gulf's proposed Hourly Scheduling penalties and Flow Control.

129. The Commission notes that a hearing on the rate issues was ordered in the November 30 Order and we will, therefore, not address these concerns here.[75] However, parties are free to raise all concerns and issues regarding the proposed rates and costs of the new EFT service during the hearing on Columbia Gulf's general rate proceeding.

130. With regard to the non-rate issues surrounding Columbia Gulf's new EFT service, the Commission determines that the provisions of Columbia Gulf's proposed EFT service are generally consistent with similar proposals approved by the Commission; consequently, we approve the proposed EFT service and the terms and conditions under which Columbia Gulf proposes to provide that service. Accordingly, the tariff records for Rate Schedule EFT are accepted to become effective May 1, 2011, subject to refund and conditions and the outcome of proceedings to be held.

131. The Commission has previously approved several pipelines' requests to offer hourly firm transportation services that provide increased flexibility to its customers over the objection of shippers so as long as such services do not degrade the services of the

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the limitations the pipeline proposed on the rights of existing customers to exceed uniform hourly flows.).

[75] November 30 Order, 133 FERC ¶ 61,182.

pipeline's existing shippers.[76] With regard to shippers' protests that the new EFT service will degrade the existing service of Columbia Gulf's existing firm customers, we do not find these protests to be persuasive. In its October 28 filing, Columbia Gulf has stated that its new EFT service will not affect the service of its existing shippers. In support of this statement, Columbia Gulf has sufficiently detailed both the scheduling priorities of its various services and arrangements a potential EFT shipper must make with upstream and downstream operators. Columbia Gulf affirms that it will not subscribe any firm capacity to Rate Schedule EFT shippers that has already been subscribed to other firm service shippers. Columbia Gulf states that service provided under Rate Schedule EFT will have the same scheduling and curtailment priority as other firm services provided under its tariff and also it will be subject to all applicable NAESB standards. Columbia Gulf has also confirmed that, before approving any request for EFT service, it will ascertain whether it has the operational ability to offer the service at the specific receipt and delivery points requested. Finally, Columbia Gulf maintains that nominations under Rate Schedule EFT will not bump nominations under other firm services that have been scheduled by Columbia Gulf.

132. As it relates to protesters' concerns that Commission approval of Columbia Gulf's new EFT service along with approval of Columbia Gulf's proposed Hourly Scheduling penalties will cause a degradation in existing service and force existing shippers into the much higher EFT service, the Commission has rejected Columbia Gulf's proposed Hourly Scheduling penalties above in this order and any determination on the just and reasonableness of Columbia Gulf's proposed rates will be made after a hearing on the testimony and evidence.

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[76] *See, e.g.*, *Texas Eastern*, 134 FERC ¶ 61,068 (Commission accepted enhanced hourly flexibility proposal with the proviso that all existing firm shippers retain their current hourly flow flexibility.) (*Texas Eastern*); *Portland*, 106 FERC ¶ 61,289 (Pipeline sought to implement a hourly reserve service that permitted shipper to contract for specified hourly flow rights to have their MDQ delivered at an accelerated rate over a specified number of hours. The Commission permitted the pipeline to implement the new service but expressly rejected the limitations the pipeline proposed on the rights of existing customers to exceed uniform hourly flows.); *Vector*, 103 FERC ¶ 61,391 (accepting hourly firm service offered in response to shipper suggestions that provided additional flexibility without restricting flexibility of current services); *Panhandle I*, 90 FERC ¶ 61,119 (accepting an hourly firm transportation service where the pipeline already provided an hourly service but where existing services did not provide the degree of hourly flexibility, and where existing services were not restricted in conjunction with the provision of the new service).

F. Capacity Auctions: Evaluation of Bids

1. Columbia Gulf's Proposal

133. In the October 28 filing, Columbia Gulf proposed to revise the provisions in GT&C Section 4 governing its auctions of available firm capacity. These changes will allow Columbia Gulf to, inter alia, consider additional criteria in determining net present value (NPV) of bids. Currently, Columbia Gulf's tariff only authorizes it to consider a bid's rate and term in determining their NPV. Columbia Gulf proposed to revise Section 4.2(c)(1) of its GT&C to permit it to also consider: 1) the volume of the bid, 2) the date on which the requested service will start, and 3) the cost of service attributable to facilities required by Columbia Gulf to provide the service. That section would also permit Columbia Gulf to aggregate two or more bids from different shippers to arrive at the highest NPV. Revised Section 4.2(c) would permit Columbia Gulf to adjust the NPV of bids from shippers that do not satisfy the creditworthiness criteria in Section 9.5 of its GT&C. Columbia Gulf would do this by evaluating the difference between the probability of default by the non-creditworthy shipper and a creditworthy shipper for the same term, using Standard and Poor's most recent Cumulative Average Default Rate table. Columbia Gulf stated that the applicable NPV criteria for any auction will be posted before the bidding process begins.[77]

134. Columbia Gulf also proposed to add Section 4.1(c) permitting it to enter into a prearranged service agreement with a shipper for available capacity. Columbia Gulf would post the prearranged service agreement for bidding by third parties. If Columbia Gulf received a bid with a higher NPV, the prearranged shipper would have an opportunity to match that bid.

135. In its February 4 Clarification, Columbia Gulf provided two clarifications with respect to its NPV tariff proposal. First, Columbia Gulf clarified that its proposed tariff language would allow it to aggregate partial bids, as well as whole bids, in order to obtain the highest possible NPV. Columbia Gulf also clarified its proposal in GT&C Section 4.2(c)(2)(ii) that a non-creditworthy shipper may reduce its risk of default factor if it indicates in its bid that it will provide the credit assurance within five days of any award of capacity. Columbia Gulf recognizes that there may be instances were a shipper is not

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[77] For example, in newly proposed Section 4.1(c), Columbia Gulf states that:

> Transporter will post any Prearranged Agreements on its EBB for bidding prior to finalizing any award for capacity. The net present value of any bids for Prearranged Agreements will be determined in accordance with Section 4.2(c).

aware at the time of submitting its bid that it will need additional assurance. Accordingly, Columbia Gulf proposed to revise Section 4.2(c)(2)(ii) as follows:

> A Shipper's Risk of Default Factor may be reduced if Shipper ~~indicates~~ notifies Transporter in its bid or at any time prior to the close of the auction or open season that it will provide, within five (5) days of any award of capacity, a letter of credit or cash deposit equal to all or part of the difference between the adjusted net present value of sShipper's bid and the net present value of the same bid for a creditworthy Shipper (Additional Assurance).

2. Post-Technical Conference Comments

136. Indicated Shippers state that Columbia Gulf's clarifications in its February 4 filing appears to have addressed its concerns. Sequent requested clarification of Columbia Gulf's proposal concerning prearranged service agreements. It stated that proposed Section 4.1(c) provides that Columbia Gulf will determine the NPV of any bids for prearranged service agreements using the same NPV bid evaluation methodology that it has proposed in Section 4.2 for evaluating bids in its other auctions of available capacity. However, Sequent points out that proposed Section 4.1(c) does not expressly provide that Columbia Gulf will also apply to auctions of prearranged deals the generally-applicable, graduated bidding timeline established in Section 4.2(a).[78] Therefore, Sequent suggests the Commission require Columbia Gulf to revise newly proposed Section 4.1(c), "Prearranged Awards of Capacity," as follows:

> Transporter will post any Prearranged Agreements on its EBB for bidding in accordance with Section 4.2(a) prior to finalizing any award for capacity.

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[78] Section 4.2(a) states:

> (a) EBB Posting Procedure. Capacity that becomes available will be posted by Transporter for bidding on its EBB (or other auction program) for at least the following periods:
>
> (1) five business days for firm capacity that will be available for a term of twelve months or longer;
>
> (2) three business days for firm capacity that will be available for a term of at least five but less than twelve month[s]; and
>
> (3) one hour ending at 9:00 a.m. (C.T.) for firm capacity that will be available for a term of less than five months.

> The net present value of any bids for Prearranged Agreements will be determined in accordance with Section 4.2(c).

137. Columbia Gulf agreed in its reply comments to make the changes to Section 4.1(c) suggested by Sequent.

3. **Discussion**

138. Columbia Gulf's proposed revisions allowing greater discretion in the calculation of NPV are consistent with similar bid evaluation methods approved for other natural gas pipelines.[79] Columbia Gulf's proposal to combine multiple whole or partial bids to achieve the greatest NPV is also consistent with Commission policy that awarding capacity to the highest valued use to maximize the efficient use of the pipeline system to bring the largest amount of gas to the market.[80] By allowing aggregation, smaller customers have the potential to compete with larger customers for available capacity because a combination of smaller bids may produce a higher NPV than the larger bid. Columbia Gulf's revisions permitting it to consider creditworthiness in its evaluation of bids and to enter into prearranged service agreements are also consistent with similar proposals by other pipelines which the Commission has accepted. Therefore, we accept as just and reasonable Columbia Gulf's proposed revisions regarding its NPV calculations effective May 1, 2011, subject to the changes listed in its February 4 Clarification and its March 8, 2011 reply comments. Finally, we direct Columbia Gulf to include the above changes in the compliance filing ordered by the Commission in the instant order.

G. **Time Requirements for Execution of Service Agreements**

1. **Columbia Gulf's Proposal**

139. GT&C Section 4.2(e) currently provides that, when Columbia Gulf conducts an auction for the sale of capacity, the winning bidder must execute a service agreement

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[79] *See Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,075, at 61,521-61,522 (1996), *order on compliance and reh'g*, 79 FERC ¶ 61,297 (1997), *order on reh'g*, 82 FERC ¶ 61,008 (1998), *appeal granted sub nom*. *Process Gas Consumer Group v. FERC*, 177 F.3d 995 (D.C. Cir. 1999), *remand order*, *Tennessee Gas Pipeline Co*., 91 FERC ¶ 61,053 (2000); *see also Texas Gas Transmission Corp.*, 64 FERC ¶ 61,083 (1993).

[80] *See Texican North Louisiana Transport, LLC v. Southern Natural Gas Co*., 132 FERC ¶ 61,167, at P 23 (2010); *see also Natural Energy & Trade, LP v. Texas Gas Transmission, LLC*, 121 FERC ¶ 61,064, at P 50-51 (2007).

within 15 days after the service agreement is tendered to the shipper. If that shipper fails to execute the service agreement within 15 days, Columbia Gulf will award the capacity to the next acceptable bidder. In its October 28 filing, Columbia Gulf proposed to shorten the time period by which service agreements must be executed to five calendar days. In addition, Columbia Gulf stated that currently its only remedy when a shipper fails to execute a service agreement after submitting a successful bid is to remove the shipper from its approved bidder's list. Therefore, in the October 28 filing, Columbia Gulf proposed to revise Section 4.2(e) to add a requirement that the shipper pay liquidated damages for failure to execute a service agreement within the required time frame. Columbia Gulf stated that the liquidated damages will be the difference between the revenues Columbia Gulf would have received from that shipper under its bid through the term of the bid, and the revenues received under any subsequent award of that capacity to another shipper. If no other acceptable offers are submitted, Columbia Gulf may require the first shipper to pay up to the full amount the pipeline would have received under the shipper's bid.

140. In addition, Columbia Gulf proposed to revise GT&C Section 4.3(e)(4) so that a shipper holding a right of first refusal (ROFR) has five calendar days to match an offer on its terminating capacity-versus the current 15 days-or lose the capacity upon contract termination. Columbia Gulf also proposed a similar liquidated damages provision for a shipper failing to execute its ROFR rights as proposed for bidders on available capacity. Finally, Columbia Gulf stated that the Commission has allowed similar provisions holding shippers responsible for any losses that the pipeline suffers as a result of a shipper failing to execute a service agreement after a valid award of capacity.[81]

141. In its February 4 Clarification, Columbia Gulf proposed to revise its modification to GT&C Section 4.2(e) in order to retain the existing 15-day deadline for executing a service agreement for service agreements with terms of one year or more. Columbia Gulf

[81] *Texas Gas Transmission, LLC*, Docket No. RP10-366-000 (March 2, 2010), (unpublished letter order) (*Texas Gas*) (approving a provision requiring customers to execute service agreements within two days of capacity being awarded under agreements that are less than one year in duration, or within five days for agreements that are one year or longer in duration, and stating that failure to do so makes the shipper liable to Texas Gas for difference between the amount Texas Gas would have received under the shipper's bid and the amount the capacity is subsequently sold for); *see also Gulf South Pipeline Co*., 100 FERC ¶ 61,180, at P 4 (2002) (*Gulf South*) (approving a provision stating that the winning bidder who fails to execute a contract would be responsible for the difference between the contract rate and the rate Gulf South ultimately receives for the capacity).

also proposed to require that contracts of less than a year be executed within five business days. Columbia Gulf did not suggest any other change to its original proposal. Thus, it continued to propose that a shipper require with a ROFR match a third party offer for its capacity within five days.

2. Post-Technical Conference Comments

142. Several parties argue that the Commission should approve the revisions to the Section 4.2(e) submitted by Columbia Gulf in its February 4 Clarification. However, these parties also contend that Columbia Gulf should make the same change with respect to the deadline for shippers with a ROFR to match a third party bid for their capacity in order to retain the existing 15-day deadline. They contend that the decision whether to match a third party bid in the ROFR process is a similarly significant business decision concerning a long-term contractual commitment. Cities argue that municipal entities should be allowed to keep the original 15-day deadline for both short-term and long-term agreements due to the operational delays experienced by governments that have detailed contract approval processes.

143. Indicated Intervenors allege that it is not unreasonable for a pipeline to impose a sanction for a shipper's failure to honor its commitment to execute a service agreement, or to compensate Columbia Gulf for the "lost opportunity costs" when fully qualified alternative bidders were in fact available at the time of the first auction but no longer present. Indicated Intervenors, however, argue that it is not clear whether Columbia Gulf's tariff revision is so targeted or appropriately limited. In particular, Indicated Intervenors state the following concerns exist: 1) whether this sanction is available to Columbia Gulf in all cases, including those of inadvertent delays beyond the control of the shipper (i.e., weather emergencies making senior decision makers unavailable); 2) whether Columbia Gulf can seek its full "liquidated damages" despite the fact that there were no competitors for the capacity (i.e., whether that obligates the defaulting contractor to pay the full value of its original commitment); and 3) whether a single re-bidding process establishes the damages amount, such that Columbia Gulf could effectively achieve double collection for at least a portion of the capacity. Indicated Intervenors assert that it also unclear whether this provision is consistent with the Commission's policy regarding a pipelines collection of penalties, which requires that penalties be credited back to the shippers. Therefore, Indicated Intervenors request that the Commission require Columbia Gulf to provide more specificity, limitations and procedural protections before approving this measure.

144. VGN states that Columbia Gulf has failed to justify its proposed liquidated damage penalty for failure to execute a service agreement timely. VGN states the cases cited by Columbia Gulf do not support the rationales for which they are cited. VGN argues that the *Texas Gas* case is an unpublished letter order approving the proposed tariff provisions where there had been no protests or adverse comments, and there is no discussion in the order regarding the proposed changes, much less any rationale for

Columbia Gulf to embrace.[82] VGN states the *Gulf South* case, which approved over protest an extension of that previously approved tariff provision to the ROFR context, is also distinguishable. VGN asserts that the proposal was combined with the pipeline's approved request to establish a deadline of 10 business days for the execution of service agreements in the ROFR context (compared to no prior deadline at all).[83] VGN argues the Commission noted that, given that the shipper had already elected to exercise its matching right, it would already have seen and evaluated the terms of the arrangements, so the contract execution decision would be ministerial only.[84]

145. Columbia Gulf asserts that, in response to comments raised by the parties, it will conform the ROFR provisions to the proposed changes in Section 4.2(e) thus allowing 15 days for shippers contemplating the long-term renewal of capacity. Further, Columbia Gulf contends that, as requested by Cities, it intends to accommodate reasonable requests from shippers for extensions of timelines, such as for municipal entities that may require a longer processing time. Columbia Gulf states that its liquidated damages provision in Section 4.2(e) is reasonable because it ensures that capacity is awarded to the customer that values it most and maintains the integrity of the bidding process, which benefits all shippers interested in bidding on available capacity. Columbia Gulf contends the Commission has also held that such liquidated damages are appropriate for service agreements to be executed as a result of a shipper's exercise of its ROFR reasoning that such a provision would provide the pipeline with more opportunity to re-market capacity subject to a ROFR in a timely manner.[85]

146. With the above clarifications, Columbia Gulf argues that its proposed liquidated damages for failure to execute a service agreement are reasonably designed to apply only to shippers who evidence a clear intent to back out of a binding commitment to contract for capacity. Columbia Gulf claims that, in such cases, the Commission has previously found "that language providing a penalty for the non-execution of a contract . . . is just and reasonable for the allocation of unsubscribed capacity."[86] As stated previously, Columbia Gulf avers that the penalty would be limited to the difference between the

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[82] *Texas Gas*, Docket No. RP10-366-000 (March 2, 2010) (unpublished letter order).

[83] *Gulf South II*, 125 FERC ¶ 61,010 at P 17.

[84] *Id*. P 23-25.

[85] *Id*. P 17.

[86] *Id.* P 24.

amount bid by the original shippers and the amount that Columbia Gulf was able to obtain from the subsequent shipper and therefore, the Commission should find that these damages are just and reasonable.

3. **Commission Decision**

147. The Commission accepts Columbia Gulf's proposed changes to GT&C Section 4.2(e) and Section 4.3(e)(4), with the revisions Columbia Gulf proposed in its February 4 Clarification and March 8, 2011 post-technical conference reply comments. With these revisions, the current 15-day deadline for new shippers to execute service agreements of one year or more and existing shippers with ROFR rights to match third-party bids will be retained. Therefore, the deadline for executing service agreements will only be shortened for service agreements of less than one-year. Reducing that deadline to five business days will help ensure the prompt execution of short-term service agreements.

148. The Commission believes that the proposed timeframes, as amended by Columbia Gulf, will strike an appropriate balance between the desire for the timely execution of an agreed upon contract and the desire for a customer to have sufficient time to review the service agreement once it is tendered by the pipeline. Although the shorter review period for contracts of terms extending less than one year could prove challenging for a municipal government's contracting review process, Columbia Gulf has stated in its March 8, 2011 reply comments that it intends to accommodate reasonable requests from shippers for extensions of timelines.[87] The Commission expects Columbia Gulf to honor this accommodation.

149. With regard to the liquidated damages provision, the Commission approved a similar provision in *Gulf South II*, requiring a shipper in possession of a ROFR, who has agreed to match the best bid but failed to execute a new service agreement, to pay the difference between the contract rate agreed to in the matching bid and the price shipper ultimately receives for the capacity when re-sold, multiplied by the volumes of the winning bid.[88] The Commission stated in *Gulf South II*, that the provision proposed by the pipeline "balance[d] the shipper's right to the continued capacity with the pipeline's right to continue to receive revenues from the sale of the capacity without interruption."[89]

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[87] *See id.* P 23. (Commission explicitly endorsed the filing pipeline's statements that it would show flexibility with respect to these deadlines and work with small and governmental parties that might need additional time to achieve the necessary approvals for new contracts.

[88] *Id*. P 4.

[89] *Id.* P 25.

Similarly, the Commission determines that the liquidated damages provision Columbia Gulf has proposed is an appropriate remedy and provides the proper disincentive to shippers who are intent on "gaming" the contracting process while preserving the ability of shippers to review the service agreement once tendered by Columbia Gulf.

150. Indicated Intervenors argued that it is not unreasonable for a pipeline to impose a sanction for a shipper's failure to honor its commitment to execute a service agreement, or to compensate Columbia Gulf for the lost opportunity costs when fully qualified alternative bidders were in fact available at the time of the first auction but no longer present. However, Indicated Intervenors was concerned that Columbia Gulf's proposal is not properly targeted or limited to the above situations. Columbia Gulf has clarified in its March 8, 2011 reply comments that it intends to accommodate reasonable requests for shippers that request to extend the timelines for execution of the service agreement. It also has language in Section 4.2(e) that "[t]ransporter may, on a not unduly discriminatory basis, waive this requirement or reduce the total amount owed by Shipper under this provision."[90] With these clarifications, the Commission believes that the liquidated damages provision conforms to the changes we approved in *Gulf South II*, and is, therefore, just and reasonable.

H. Uncontested and Miscellaneous Tariff Provisions

151. In its February 4 filing and its March 8, 2011 reply comments, Columbia Gulf listed additional tariff clarifications that were either identified by various parties to the proceeding or by Columbia Gulf itself.[91] The Commission directs Columbia Gulf to include these changes in the compliance filing ordered by the Commission in the instant order.

152. In addition, Columbia Gulf listed in its March 8, 2011 reply comments a number of tariff provisions that were not contested.[92] Columbia Gulf asserts that some of the proposed revisions were designed to improve its ability to market capacity and operate its system efficiently, while others were intended to clarify and streamline existing tariff provisions. Columbia Gulf requests that the Commission allow these provisions to take

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[90] October 28 filing of Columbia Gulf, Volume II.4, Section 4.2(e).

[91] The Commission notes that Columbia Gulf cites changes to: Rate Schedule FTS-2, Section 2(d)(1); GT&C Section 19.3; GT&C Section 34.1; GT&C Section 34.6; and GT&C Section 4.1(c) as those provisions that will be revised in a compliance filing.

[92] The Commission notes that these proposed revisions include GT&C: Sections 4.5, a new Section 4.1(b), Section 6, and Section 4.2.

effect on May 1, 2011 without additional delay. The Commission approves these uncontested tariff revisions effective May 1, 2011 as requested.

<u>The Commission orders</u>:

(A) The tariff records identified in the Appendix are accepted effective May 1, 2011, subject to further revision as discussed in this order.

(B) The tariff record identified as “Currently Effective Rates, Retainage Rates, 3.0.0” is rejected.

(C) Within 30 days of the date of this order, Columbia Gulf shall file revised tariff records consistent with the discussion in this order, to be effective May 1, 2011.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Columbia Gulf Transmission Company
NGA Gas
Columbia Gulf Tariffs
Tariff Records Accepted Effective May 1, 2011
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