

137 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gulf Transmission Company

Docket Nos. RP11-1435-000
RP11-1435-002
RP11-1435-003
RP11-1435-004
RP11-1435-006
RP11-24-000
RP11-24-004
(consolidated)

ORDER APPROVING SETTLEMENT,
AND ACCEPTING AND REJECTING TARIFF RECORDS

(Issued December 1, 2011)

1. On September 9, 2011, Columbia Gulf Transmission Company (Columbia Gulf) filed a Stipulation and Agreement of Settlement (Settlement Agreement or Settlement) to resolve all issues in the above-referenced consolidated proceeding. On October 4, 2011, the Presiding Administrative Law Judge (ALJ) certified the Settlement Agreement as uncontested to the Commission in light of the severance of the only contesting party from the Settlement.¹ Therefore, as discussed below, the Commission approves the uncontested Settlement Agreement. Also, as detailed further, the Commission accepts to be effective May 1, 2011, the tariff record that Columbia Gulf filed to comply with the Commission's April 29, 2011 order on the technical conference² in this proceeding, and the Commission rejects as moot certain other tariff records.³

¹ *Columbia Gulf Transmission Co.*, 137 FERC ¶ 63,001 (2011) (October 4 Order).

² *Columbia Gulf Transmission Co.*, 135 FERC ¶ 61,106 (2011) (April 29 Order).

³ The tariff records are identified in the Appendix.

I. Background

2. On October 28, 2010, Columbia Gulf filed a request under section 4 of the Natural Gas Act⁴ (NGA) to implement a general rate increase (October 28 Filing). As part of the October 28 Filing, Columbia Gulf included both Primary and Preferred Cases. The Primary Case proposed to maintain Columbia Gulf's existing Mainline and Onshore rate zone structure and allocate costs between those zones. The Preferred Case proposed to combine the Mainline and Onshore Rate Zones into a single Market Rate Zone. Columbia Gulf currently provides firm service in the Mainline Zone under Rate Schedule FTS-1.⁵ It provides firm service in its Offshore Zone, Onshore Zone, and Offsystem-Onshore Zone under Rate Schedule FTS-2. Columbia Gulf's Preferred Case would remove the Onshore Zone from Rate Schedule FTS-2 and include both that zone and the existing Mainline Zone in Rate Schedule FTS-1. Columbia Gulf also proposed a new short-term firm reservation rate for firm service with contract terms of less than one year. The maximum short-term firm reservation rate would equal 250 percent of the firm reservation rate in the applicable zone. In addition, Columbia Gulf proposed a number of new and revised non-rate tariff provisions. The proposed non-rate tariff provisions were identical in both the Primary and Preferred Cases.

3. On November 30, 2010, the Commission accepted and suspended the tariff records associated with the Primary Case to be effective May 1, 2011, subject to refund.⁶ The Commission established a hearing to consider rate issues and a technical conference to consider the non-rate tariff proposals and a hearing to consider rate issues.

4. On February 2, 2011, the Commission issued an order, approving Columbia Gulf's October 1, 2010 proposal in Docket No. RP11-24-000 to implement a new firm daily delivery point scheduling variance service under Rate Schedule SVS.⁷ While the Commission approved the terms and conditions under which Columbia Gulf proposed to provide that service, the Commission consolidated Docket No. RP11-24-000 with Columbia Gulf's Docket No. RP11-1435-000 general section 4 rate case for purposes of considering the justness and reasonableness of the rate proposed by Columbia Gulf for SVS service and the extent to which costs should be allocated to SVS service in designing Columbia Gulf's other rates.

⁴ 15 U.S.C. § 717c (2006).

⁵ "FTS" means "Firm Transportation Service."

⁶ *Columbia Gulf Transmission Co.*, 133 FERC ¶ 61,182 (2010) (November 30 Order).

⁷ *Columbia Gulf Transmission Co.*, 134 FERC ¶ 61,082 (2011).

5. Commission Staff conducted the technical conference on January 18, 2011. On February 4, 2011, Columbia Gulf submitted comments, offering to make various modifications to its non-rate tariff proposals in response to the comments, questions and concerns raised at the technical conference. Thereafter, the parties submitted two rounds of comments on Columbia Gulf's non-rate tariff proposals.

6. On April 29, 2011, the Commission issued an order on the technical conference. The Commission generally accepted Columbia Gulf's proposed non-rate tariff proposals, including its flow control requirements and Enhanced Firm Transportation service, subject to its incorporation of the modifications proposed by Columbia Gulf in its February 4 clarification filing.⁸ The Commission found, however, that Columbia Gulf had not justified its proposals to require uniform hourly takes at delivery points and hourly scheduling penalties for violation of that requirement, and rejected those proposals. Finally, the Commission required Columbia Gulf to revise its proposed unauthorized gas penalty by limiting the penalty to receipts in excess of scheduled volumes delivered into a pool.

7. On May 25, 2011, Columbia Gulf filed a request for rehearing of the April 29 Order's treatment of the proposed hourly scheduling and unauthorized gas penalties. On May 31, 2011, as supplemented by the errata filed on June 3, 2011, and an additional filing on June 21, 2011, Columbia Gulf submitted tariff records⁹ in order to comply with the rulings of the April 29 Order on its non-rate tariff proposals.¹⁰

8. On September 9, 2011, Columbia Gulf filed the instant Settlement Agreement, together with *pro forma* tariff records showing the changes to Columbia Gulf's tariff provided for in the Settlement.

II. Settlement Agreement Terms

9. The Settlement Agreement consists of fifteen numbered articles, and four lettered appendices, in terms substantially as follows:

10. Article I provides the background and procedural history of the case.

11. Article II provides that Columbia Gulf's existing Mainline and Onshore Zones will be combined into a single Market Zone with postage stamp rates, and firm service in

⁸ April 29 Order, 135 FERC ¶ 61,106 at P 1-3.

⁹ Identified in the Appendix of this order.

¹⁰ In response to protests regarding the May 31 and June 3 Filings, Columbia Gulf further revised its compliance filing on June 21, 2011.

the new Market Zone would be provided under Rate Schedule FTS-1. This article describes the applicable base transportation rates, transportation retainage adjustment, depreciation and net salvage, allocation of Rayne compressor costs, and refunds.

12. Article III provides for the addition of a reservation charge credit provision to Columbia Gulf's tariff.

13. Article IV provides that Columbia Gulf will withdraw its proposal in Docket No. RP11-1435-000 to implement a short-term firm rate as applicable to the Settling Parties as set forth in Article XV of the Settlement Agreement and will refund all monies, with Commission prescribed interest, collected in excess of the applicable settlement rates. The short-term firm rate will remain effective for the Contesting Parties, subject to refund, pending the Commission's resolution, with respect to such parties, of pending issues in Docket Nos. RP11-1435-000 and RP11-24-000.

14. Article V provides that FTS-2 shippers paying maximum recourse rates as of July 31, 2011, will have their FTS-2 service agreement reservation rates capped for the term of the agreement at the rate set forth in Appendix B of the Settlement Agreement. Article V further provides that the rate cap will only apply to transportation service using receipt and delivery points in the existing Onshore Zone. Article V also provides that during the Settlement term, Columbia Gulf will credit to shippers with maximum rate Market Zone firm transportation service any revenues above the rate cap received from existing FTS-2 shippers' and their replacement shippers' use of primary and secondary points outside of the Onshore Zone. Finally, Article V describes additional limits on the extent to which the FTS-2 rate cap applies to releases of FTS-2 capacity.

15. Article VI describes Columbia Gulf's treatment of post employment benefits other than pensions, pension expenses, and regulatory expenses. The Settlement Agreement rates reflect a total annual funding amount of \$0.5 million for Columbia Gulf's post-retirement benefits other than pensions (PBOP) expenses, which include Columbia Gulf's direct PBOP expenses as well as its share of the PBOP expenses applicable to the shared service company employees as reflected in the monthly intercompany invoices. To the extent actual PBOP accruals, beginning April 1, 2011 and continuing in the years until the effective date of rates established either in Columbia Gulf's next rate case under NGA section 4 or in any proceeding under NGA section 5 that includes these costs, whichever occurs first, differ on an annual basis from the \$0.5 million annual funding amount, a regulatory asset (Account No. 182.3) or liability account (Account No. 254) will be recorded for the difference and deferred until the next rate case. Article VI also provides additional details on the funding, recordation and disbursement of Columbia Gulf's pension and PBOP expenses.

16. Article VII states that in any general rate case filed within five-years of the Settlement's effective date, or in the first such case filed after five years from such date if no general rate case has been previously filed, to the extent that Columbia Gulf seeks to

continue the postage stamp rate design for the Market Zone, Columbia Gulf will file an alternate case that shows the existing Mainline and Onshore Zones as separate rate zones. Moreover, Columbia Gulf will maintain its books and records necessary to support the two-zone case. In such future general rate case, Columbia Gulf will: (1) have the right to select the postage-stamp rate design as its Preferred case; (2) maintain the allocation of net plant costs associated with the Rayne Compressor Station as set forth in section 2.4 of the Settlement Agreement; and (3) provide a cost and revenue analysis of the existing Onshore Zone to determine how Columbia Gulf's actual revenues compare to the revenue requirement for those facilities. Article VII also describes whether or not any difference between such Onshore Zone costs and revenues will be absorbed by Columbia Gulf. Article VII further states that in its next general rate proceeding, Columbia Gulf will have no refund obligation for Settling Parties with respect to rates lower than the maximum postage-stamp Market Zone rate set forth in the Settlement. Finally, Article VII states that its obligations will be of no force and effect if new rates result from a Commission-initiated NGA section 5 proceeding as a result of the cost and revenue study set forth in Article VIII. Article XII provides that Article VII will be effective for a minimum period of five years.

17. Article VIII: (1) requires that Columbia Gulf file a cost and revenue study no earlier than April 1, 2014, and no later than May 1, 2017, and sets forth the contents of the study; (2) describes certain refund protections that are provided by the Settlement Agreement; and (3) states the circumstances under which Columbia Gulf's obligation to file a cost and revenue study is terminated.

18. Article IX provides that, with respect to the Settling Parties, Columbia Gulf will file to amend its tariff to remove the following provisions and refund all monies, with Commission-prescribed interest, collected pursuant to those provisions: (1) unauthorized gas penalties, flow control requirements, Enhanced Firm Transportation service accepted in the April 29 technical conference order; and (2) Scheduling Variance Service accepted in Docket No. RP11-24-000; and delivery point scheduling penalties accepted in Docket No. RP07-174-000.¹¹ Such provisions will remain in effect for any contesting party pending the outcome of further litigation or settlement. In addition, this article states that Columbia Gulf will withdraw its request for rehearing regarding the April 29 Order's rejection of the proposed non-rate tariff provisions regarding hourly scheduling and unauthorized gas penalties.

19. Article X provides that neither Columbia Gulf nor any other Settling Party (or assignee, successor or affiliate thereof) will seek to modify Columbia Gulf's base recourse rates unless such modified base recourse rates would go into effect on or

¹¹ *Columbia Gulf Transmission Co.*, 119 FERC ¶ 61,268 (2007), *order on reh'g*, 124 FERC ¶ 61,121 (2008).

subsequent to April 1, 2014. The article further explains that, during the term of the Settlement Agreement, Columbia Gulf will not file to implement the tariff changes regarding: (1) hourly scheduling and unauthorized gas penalties and uniform hourly flow obligations that are the same or analogous to those that the Commission rejected by the April 29 Order; (2) Scheduling Variance Service and delivery point scheduling penalties that are the same or analogous to those accepted by the Commission, as referred to in Article IX; or (3) a short-term firm rate that is the same or analogous to that accepted by the Commission, as referred to in Article IV.

20. Article XI sets forth the definitions of “Settling Party” and “Contesting Party.” The article provides that a Settling Party shall be bound by an order which approves this Settlement without any condition or modification that materially and adversely affects the Settling Party. The article provides that a Contesting Party is not entitled to any of the benefits, or subject to any of the burdens imposed in the Settlement Agreement and may be severed from the Settlement Agreement. If the Commission severs a Contesting Party, that party will be free to pursue through litigation the rates applicable to its direct interest. The article specifies the maximum rate that will apply in a right-of-first refusal procedure or capacity release where a different maximum rate applies to Settling and Contesting Parties.

21. Article XII explains that the provisions of the Settlement Agreement are not severable. Article XII also sets forth conditions that determine the effective date and, with the exception of the 5-year minimum effectiveness of Article VII, the expiration date of the agreement.

22. Article XIII provides that Columbia Gulf reserves the right to make a filing to place into effect the interim reservation rates set forth on Appendix B of the Settlement Agreement, and states that such interim rates will remain in effect until the Settlement Agreement rates become effective or the Commission places other rates into effect.

23. Article XIV contains the Settlement Agreement’s “reservations” provisions. This article provides that the Settlement Agreement shall be privileged if it does not become effective and shall not be admissible in evidence or in any way used against any person in any proceeding. The standard of review for any changes to the terms of the Settlement Agreement shall be the just and reasonable standard and not the public interest standard. No participant shall be deemed to have approved, accepted, agreed or consented to any principle or method of regulation or ratemaking underlying or supposed to underlie any of the provisions of the Settlement Agreement. The provisions of the Settlement Agreement shall not be construed against any party as the drafter and are not severable. Finally, this article provides that in the event of conflict between terms contained in the Settlement Agreement and those of the Explanatory Statement, the terms of the Settlement Agreement control.

24. Article XV sets forth the time frame for Columbia Gulf to file actual tariff records implementing the Settlement Agreement's *pro forma* tariff records.

III. Comments, Objections and Severance

25. On September 12, 2011, Columbia Gulf filed a request to suspend the procedural schedule and a request for a shortened answer period of three days to its request for suspension. On September 13, 2011, the Chief ALJ granted Columbia Gulf's request.

26. On September 15, 2011, Total Gas & Power North America, Inc. (Total) filed in opposition to Columbia Gulf's request for suspension. Total argued that suspension of the procedural schedule would cause real and substantive harm to Total and cause unnecessary delay in the establishment of just and reasonable rates applicable to Total. However, Total stated that, as long as it is severed from the Settlement Agreement, it would avoid taking action that interfered with Columbia Gulf reaching a settlement with its other shippers.

27. On September 16, 2011, Columbia Gulf filed an answer to Total's opposition, stating that Total should be severed from the settled proceeding so that the non-contesting parties could obtain the benefits of the Settlement Agreement.

28. On September 16, 2011, the Chief ALJ issued an order temporarily suspending procedural schedule and an order to show cause why Total should not be severed from the above-captioned dockets. On September 22, 2011, Columbia Gulf filed a response, stating that no reason exists why Total should not be severed from this proceeding at the earliest available opportunity, provided that the hearing schedule remains suspended with respect to the other participants. The Cities of Charlottesville and Richmond, Virginia, NiSource Distribution Companies¹² and Baltimore Gas & Electric Company submitted comments concurring that Total should be severed from this proceeding at the earliest possible time.

29. On September 27, 2011, Tennessee Valley Authority submitted comments in support of the Settlement Agreement. On September 29, 2011, Columbia Gulf, Commission Trial Staff, Washington Gas Light Company, BG&E, NiSource Distribution Companies,¹³ the City of Charlottesville, Virginia, the Easton Utilities Commission, and

¹² Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc.

¹³ Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc.

the City of Richmond, Virginia submitted comments in support of the Settlement Agreement. On that same day, the Indicated Shippers¹⁴ filed comments supporting or not opposing the Settlement Agreement.

30. On September 29, 2011 Total filed comments contesting the Settlement Agreement, stating that the proposed settlement rates are not supported by substantial evidence and are unjust and unreasonable as they relate to Total. Total also stated that it should be severed from the proceeding to litigate its interest.

31. On September 30, 2011, the Chief ALJ issued an order suspending the procedural schedule for the non-contesting parties and severing Total from the rest of the proceedings.¹⁵ The Chief ALJ found that “[s]everance will allow Total an opportunity to go forward with the prosecution of its case and will enable the settling parties to enjoy the rate certainty and finality” of Commission approval of the Settlement Agreement.¹⁶ The Chief ALJ also stated that the hearing on the severed proceeding will be conducted in Docket Nos. RP11-1435-000 and RP11-24-000. On October 4, 2011, the Presiding ALJ certified the settlement to the Commission as uncontested in light of the severance of Total.

IV. Discussion

32. The Commission approves the Settlement Agreement for the non-contesting parties under section 602(g) of the Commission's regulations¹⁷ as fair and reasonable and in the public interest.

33. The Commission also approves the Chief ALJ's decision to sever Total from these proceedings so that it may continue to prosecute its case before the Commission in Docket Nos. RP11-1435-000 and RP11-24-000. The Commission understands that Total has raised a number of objections to the rates established by the terms of the Settlement Agreement, which require further investigation to resolve on the merits. The consenting parties, however, regard the rate certainty provided by the Settlement Agreement, including the moratorium on rate changes until April 1, 2014, and other benefits provided

¹⁴ Indicated Shippers joining in these Initial Comments are BP Energy Company, BP America Production Company, 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.

¹⁵ *Columbia Gulf Transmission Co.*, 136 FERC ¶ 63,020 (2011).

¹⁶ *Id.* 4.

¹⁷ 18 C.F.R. § 385.602(g) (2011).

by the Settlement Agreement, as preferable to the costs and uncertainty entailed in any litigation relating to Columbia Gulf's section 4 rate case.¹⁸

34. Here, the consenting parties have chosen to settle rather than litigate, and approval of the Settlement Agreement for those parties is consistent with the Commission's policy of encouraging settlements. In light of the resolution of the issues in the above captioned dockets, this order terminates Docket Nos. RP11-1435-006 and RP11-24-004.

35. The Commission also accepts the tariff records Columbia Gulf filed on May 31, 2011 to comply with the April 29 Order, as corrected by its June 21, 2011 Filing.¹⁹ The accepted tariff records are identified in the Appendix to this order. The Commission also rejects the tariff records included in the May 31 and June 3, 2011 Filings which were superseded by the corrected tariff record included in the June 21, 2011 Filing.²⁰ When Columbia Gulf files actual tariff records to implement the Settlement Agreement, it must also revise all relevant tariff records to clearly identify which tariff records are applicable only to the contesting party and which tariff records are applicable to all shippers other than the contesting party.

The Commission orders:

(A) The tariff records Columbia Gulf filed on May 31, 2011 to comply with the April 29 Order, as corrected by its June 21, 2011 Filing are hereby accepted to be effective May 1, 2011, as identified in the Appendix of this order.

(B) The tariff records included in Columbia Gulf's May 31 and June 3, 2011 Filings which were replaced by a tariff record included in the June 21, 2011 Filing are hereby rejected as moot, as identified in the Appendix of this order.

¹⁸ See *Panhandle Eastern Pipeline Company v. Federal Energy Regulatory Commission*, 95 F.3d 62, 74 (1996) (Parties settle in order to avoid the risk that they might do worse by litigating, both because they might lose and because winning might come at a high cost; both parties to a Settlement accept the risk that they might have done better by fighting.)

¹⁹ The rates included in the accepted tariff record will remain subject to refund with respect to Total.

²⁰ The rejected tariff records are also identified in the Appendix.

(C) The uncontested Settlement Agreement is hereby approved as fair and reasonable and in the public interest.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix
Columbia Gulf Transmission Company
NGA Gas
Columbia Gulf Tariffs

Tariff Records Accepted to be effective May 1, 2011.

RP11-1435-002:

Currently Effective Rates, FTS-1 Rates, 5.0.0
Currently Effective Rates, FTS-2 Rates, 5.0.0
Currently Effective Rates, EFT Rates, 1.0.0
Rate Schedules, Rate Schedule FTS-1, 5.0.0
Rate Schedules, Rate Schedule FTS-2, 5.0.0
Rate Schedules, Rate Schedule PAL, 2.0.0
Rate Schedules, Rate Schedule EFT, 1.0.0
Gen. Terms and Conditions, , 5.0.0
Gen. Terms and Conditions, Definitions, 3.0.0
Gen. Terms and Conditions, Requests for Service, 2.0.0
Gen. Terms and Conditions, Auctions of Available Firm Service, 2.0.0
Gen. Terms and Conditions, Nominating, Scheduling and Monitoring, 3.0.0
Gen. Terms and Conditions, Capacity Allocation, 3.0.0
Gen. Terms and Conditions, Flexible Primary and Secondary Receipt and Delivery
Points, 2.0.0
Gen. Terms and Conditions, Maximum Daily Obligation, 2.0.0
Gen. Terms and Conditions, Interruptions of Service, 3.0.0
Gen. Terms and Conditions, Critical Period Notices and Operational Flow Orders, 3.0.0
Gen. Terms and Conditions, Penalties, 3.0.0
Gen. Terms and Conditions, Measurement, 1.0.0
Gen. Terms and Conditions, Negotiated Rates, 2.0.0
Service Agreement Forms, FTS, EFT and ITS, 2.0.0

RP11-1435-004:

Gen. Terms and Conditions, Operating Conditions, 3.0.2

Tariff Records Rejected as Moot:

RP11-1435-002:

Gen. Terms and Conditions, Operating Conditions, 3.0.0

RP11-1435-003:

Gen. Terms and Conditions, Operating Conditions, 3.0.1