UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

KO Transmission Company Docket No. RP00-394-000

ORDER ON COMPLIANCE WITH ORDER NO. 637

(Issued May 11, 2004)

1. The Commission made KO Transmission Company's (KOT) penalty level proposals subject to the outcome of the proceeding on Columbia Gas Transmission Company's (Columbia Gas) Order No. 637 filings.[1] The Columbia Gas proceeding has been concluded.[2] The Commission finds that, in accordance with the Columbia Gas proceeding, KOT may not increase the level of its penalties in this proceeding. This order benefits the public by making penalty levels on KOT consistent with the Commission's policies in Order No. 637 and with its orders in the Columbia Gas Order No. 637 proceeding.

Background

2. KOT owns a 32.6% interest in a 90-mile pipeline that is operated by Columbia Gas and of which Columbia Gas owns the remainder. In its filing to comply with Order No. 637, KOT proposed increases for three penalties: the overrun penalty, the penalty for violating an Operational Flow Order (OFO), and the penalty for failing to interrupt service when required,[3] to match levels that Columbia Gas initially proposed in its Order

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[1] 98 FERC ¶ 61,093 (2002) (January 31 Order).

[2] Columbia Gas Transmission Corp., 100 FERC ¶ 61,084; Order on Rehearing, Clarification and Compliance Filing, 104 FERC ¶ 61,168; Order on Compliance Filing with Order No. 637, 105 FERC ¶ 61,127 (2003).

[3] Sections 20.1, 20.2, and 20.3, General Terms and Conditions.

No. 637 proceeding.[4] Specifically, it proposed to increase its overrun penalty from $10/Dt to $25/Dt for overruns in excess of 103% of daily total firm entitlements. It proposed to increase its failure to interrupt penalty from $10/Dt to $25/Dt for quantities in excess of 103% of the lowered scheduled daily receipt or delivery quantity set by the interruption order. (Penalties on the first 3% of excess quantities remained $5/Dt.) It proposed to increase its OFO penalty from $5/Dt to $25/Dt, $50/Dt, or $75/Dt depending on the level of OFO. Finally, KOT proposed to eliminate its imbalance penalties.

3. On January 31, 2002, the Commission issued an order on KOT's Order No. 637 proceeding, prior to acting on Columbia Gas's Order No. 637 compliance filing. The Commission deferred its decision on KOT's proposed penalty increases and made them subject to the outcome of Columbia Gas's Order No. 637 filing. The Commission stated that its decisions concerning these penalties in the order on Columbia Gas's Order No. 637 filing would determine the level of these penalties on KOT. The Commission accepted KOT's elimination of its imbalance penalties.

4. Columbia Gas's existing penalties at that time included $10.00/Dt for overruns in excess of 103% of total firm entitlements; $5.00/Dt for failure to interrupt service on the first 3% and $10.00/Dt thereafter on takes in excess of 100% of the sum of the lowered receipt or delivery quantities directed by Columbia Gas; and $5.00/Dt on all quantities that violate an OFO. In a revised Order No. 637 compliance filing made after KOT's compliance filing, Columbia proposed to increase these and other penalties by adding a variable penalty amount based on a gas index price to the fixed penalty amount. Columbia Gas also proposed that overrun penalties would only be imposed on critical days. The Commission found that Columbia Gas's existing OFO and failure to interrupt penalties were just and reasonable, since they would only be assessed in connection with shipper actions that might threaten the operational performance of the pipeline. The Commission also found that Columbia Gas's existing overrun penalty was just and reasonable as modified by the critical day provision.[5] The Commission rejected Columbia Gas's proposal to increase the existing penalty levels because it was beyond the scope of the Order No. 637 compliance proceeding. The Commission stated that the purpose of the Commission's section 5 action in Order No. 637 was to limit penalties to

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[4] Columbia Gas subsequently filed revised tariff sheets in its Order No. 637 proceeding so that KOT's proposed penalty levels no longer matched the levels proposed by Columbia Gas.

[5] 100 FERC ¶ 61,084 P 200.

those necessary to deter harmful conduct, not to give pipelines an opportunity to increase their penalties. It also prohibited Columbia Gas from imposing more than one penalty for the same infraction.[6]

Discussion

5. The Commission rejects KOT's proposed penalty increases for the same reasons it rejected Columbia Gas's proposed penalty increases.[7] Increases are beyond the scope of this section 5 proceeding, since Order No. 637 only required an examination of existing penalties to ensure that those penalties are no higher than necessary to protect system integrity. Order No. 637 was not an opportunity for pipelines to file to increase their penalties. In addition, the purpose of KOT's proposed increases was to match increased penalties on Columbia Gas. No corresponding penalty increases became effective for Columbia Gas, so there is no need to accept KOT's proposed increases in this filing. KOT's existing penalties match the corresponding Columbia Gas penalties which the Commission approved in the Columbia Gas Order No. 637 proceeding and which Columbia Gas currently uses as penalties.[8] Thus, the equivalence between the two penalty regimes is maintained.

6. KOT must also revise its penalty provisions in two other ways. KOT must provide that its overrun penalty (takes in excess of firm entitlements) only applies on critical days as Columbia Gas provides in section 19.7 of its tariff. In addition, KOT must revise its tariff to provide that only one penalty will be imposed on a transaction in keeping with the Commission's policy which prohibits multiple penalties for the same infraction.[9]

7. KOT has not yet filed actual tariff sheets in this Order No. 637 proceeding. To date, it has filed only pro forma tariff sheets. Consequently, KOT must file actual tariff sheets that incorporate (1) the revisions the Commission required in its January 31 Order and (2) the decisions in this order.

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[6] 100 FERC ¶ 61,084 P 201.

[7] 100 FERC ¶ 61,084 P 204.

[8] Sections 19.1, 19.2, and 19.3, Third Revised Sheet No. 390, Columbia Gas Transmission Corp., FERC Gas Tariff, Second Revised Volume No. 1.

[9] 100 FERC ¶ 61,084 P 201 <u>citing</u> Crossroads Pipeline Co., 100 FERC ¶ 61,025 at P51 (2002); East Tennessee Gas Co., 98 FERC ¶ 61,060 at 61,157 (2002); and Crossroads Pipeline Co., 71 FERC ¶ 61,076 at 61,265 (1995).

<u>The Commission orders</u>:

(A) KOT's proposed penalty increases are rejected.

(B) KOT must file actual tariff sheets that incorporate (1) the revisions the Commission required in its January 31 Order and (2) the decisions in this order within 30 days of the date this order is issued.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.