

134 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gulf Transmission Company

Docket No. RP10-315-002

ORDER DENYING REHEARING AND REJECTING FILING

(Issued March 17, 2011)

1. On July 22, 2010, the Commission issued an Order Granting Clarification in Part and Denying Rehearing¹ in this proceeding, which involves Columbia Gulf's January 15, 2010 tariff filing to revise certain sections of the General Terms and Conditions (GT&C) of its tariff in order to permit Columbia Gulf to waive the gas quality specifications contained therein (Tariff Filing). The July 2010 Order clarified that Columbia Gulf may not waive its gas quality tariff provisions to accept non-conforming gas if doing so would result in deliveries by Columbia Gulf to interconnects that did not meet Columbia Gulf's receipt point gas quality tariff specifications, and denied rehearing on all other issues raised. On August 20, 2010, Columbia Gulf filed a request for rehearing of the July 2010 Order. This order denies Columbia Gulf's rehearing request and rejects the changes to section 25.3 of Columbia Gulf's GT&C as proposed in the Tariff Filing.

Background

2. Section 25.1 of the GT&C of Columbia Gulf's tariff establishes gas quality specifications for receipts of natural gas onto Columbia Gulf's system. The section 25.1 gas quality specifications include, for example, limits on the heat and sulfur content of the gas Columbia Gulf can accept at its receipt points. Section 25.2 provides Columbia Gulf's gas quality specifications for Cricondentherm Hydrocarbon Dewpoint (CHDP). Prior to this proceeding, section 25.3 of Columbia Gulf's GT&C provided that Columbia Gulf could waive the section 25.2 CHDP gas quality specification if:

[T]he acceptance of non-conforming gas will not, in Transporter's reasonable judgment, adversely impact Transporter's operations, or adversely affect the ability of gas to be accepted for delivery at

¹ *Columbia Gulf Transmission Co.*, 132 FERC ¶ 61,059 (2010) (July 2010 Order).

interconnects with interstate or intrastate pipelines, end-users and local distribution companies.

Columbia Gulf's tariff contains no delivery point gas quality specifications applicable to deliveries by the pipeline to its customers, nor does it contain a merchantability clause.

3. On January 15, 2010, Columbia Gulf filed to revise section 25.3 in order to permit it also to waive the receipt point gas quality specifications in section 25.1 of its GT&C. Columbia Gulf also proposed to revise section 25.4 to provide that none of the gas quality provisions in section 25.1 would affect Columbia Gulf's ability to issue operational flow orders (OFO).

4. In support of its filing, Columbia Gulf stated that it needs flexibility to waive its gas quality provisions consistent with Commission policy that pipeline tariff provisions on gas quality and interchangeability need to be flexible enough to allow pipelines to accept non-conforming gas, if doing so would not jeopardize system operations.² Columbia Gulf noted that its proposed tariff revisions would provide it with the flexibility discussed in the Policy Statement but only if a waiver would not adversely affect Columbia Gulf's operations or the ability of gas to be accepted for delivery at interconnects with interstate or intrastate pipelines, end-users and local distribution companies (LDC). Columbia Gulf also stated that any waivers would be open and transparent, as it proposed to post all waivers of its gas quality specifications on its website.

5. Lafayette Utilities System (Lafayette) and the Tennessee Valley Authority (TVA) protested the modifications proposed in the Tariff Filing. The protests claimed generally that Columbia Gulf had not provided a factual basis for the requested waiver authority because Columbia Gulf did not indicate whether it had experienced gas quality problems that required the flexibility requested. Lafayette also argued that variable gas quality could affect Lafayette's electric generation facilities and air permits, as the generation facilities have been tuned to Columbia Gulf's historical gas quality. Therefore, posting the waiver may not be sufficient to prevent reduction in its electric generation output. The protesters also claimed that the Commission should impose stricter rules and parameters on when Columbia Gulf could waive its standards so that Columbia Gulf would not have carte blanche to do so.

6. Columbia Gulf filed an answer to the protests, which we accepted. In its answer, Columbia Gulf argued that the Commission had approved similar waiver language for

² Tariff Filing at 1-2 and n2 (*quoting Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325, at P 30 (2006) (Policy Statement)).

several pipelines and that such waiver authority is consistent with the Policy Statement.³ Columbia Gulf also stated that the Commission had granted it the authority to waive its CHDP standard and that the protesters had not provided any justification as to why the pipeline's ability to waive its other gas quality specifications should be more limited. Columbia Gulf also claimed that Lafayette's speculative claims of harm should be rejected because Columbia Gulf's authority to waive its gas quality specifications is conditioned on the waiver not affecting the pipeline's ability to deliver gas at its interconnects and to end users or LDCs.

7. On February 11, 2010, the Commission issued a letter order⁴ approving Columbia Gulf's Tariff Filing, finding that the proposed modifications were just and reasonable and consistent with the Policy Statement's principle of minimizing unnecessary restrictions on a pipeline accepting natural gas supplies. We also found Columbia Gulf's proposed provisions did not provide it unfettered discretion to waive its gas quality standards but were appropriately conditioned on not affecting its system operations or its deliveries, consistent with provisions that the Commission had approved for other pipelines.

8. Lafayette filed for clarification or rehearing of the February 11 Letter Order, making many of the same arguments that it had raised in its original protest (Lafayette rehearing request). Lafayette asserted that allowing Columbia Gulf to waive its sulfur and heat content standards could reduce electric generation in the already constrained Acadian Load Pocket (ALP) and exacerbate the risk of electrical emergencies in the ALP.⁵ Lafayette stated that there is a lack of sufficient generation in the ALP and that transmission construction is underway to alleviate constraints. Lafayette further contended that because of the reliability concerns in the area, Lafayette's concerns of electric emergencies in the area are not speculative.

9. Lafayette also requested clarification of the condition that Columbia Gulf may not accept non-conforming gas if doing so would adversely affect Columbia Gulf's systems or its deliveries to other pipelines and end-users, asserting that Columbia Gulf did not explain in its filing, nor did the Commission explain in the February 11 Letter Order, what constitutes an "adverse effect."⁶ Lafayette claimed that it and electric customers in the ALP are particularly vulnerable to gas quality issues and that the tariff language is not

³ Columbia Gulf Answer at p. 3 & n.7.

⁴ *Columbia Gulf Transmission Co.*, 130 FERC ¶ 61,101 (2010) (February 11 Letter Order).

⁵ Lafayette Rehearing Request at p. 9-11.

⁶ *Id.* p. 11.

clear as to whom it applies.⁷ Lafayette argued that the Commission should clarify that reduction of Lafayette's generation capability and/or threats to its air permits that are caused in whole or in part by Columbia Gulf's acceptance of non-conforming gas are adverse effects, and thus, in such circumstances, Columbia Gulf may not waive its gas quality standards.

10. Lafayette further requested, in the event the Commission did not provide the requested clarification, that the Commission grant rehearing of the February 11 Letter Order. Lafayette claimed that in the February 11 Letter Order the Commission elevated its flexibility policy with regard to gas quality and interchangeability over the policy that gas quality standards should be based upon sound technical engineering and scientific considerations. Lafayette asserted that the February 11 Letter Order was not supported by substantial evidence supporting the need for flexibility and that the evidence it presented supports the conclusion that it is inappropriate to waive gas quality standards given the electric reliability concerns of the ALP. Lafayette stated that, based on evidence it presented, its generators and air permits are "optimized" to run on, or are based on deliveries of, historic heat content, and any change to that content may reduce its generation capacity. Lafayette concluded that it would be unjust and unreasonable to grant Columbia Gulf waiver authority and thereby increase the risk of "electric emergencies" in the ALP.

11. In the July 2010 Order, the Commission granted Lafayette's clarification request with regard to the meaning of "adversely affected."⁸ The Commission noted that its previous orders, including the February 11 Letter Order, stated that a pipeline's discretion to waive its gas quality standards is not unfettered. The language approved in those orders allowed waivers only to the extent that accepting non-conforming gas would not adversely affect the subject pipeline's system or its ability to make deliveries at its interconnects with other pipelines, end-users and LDCs. The Commission also noted that in previous approvals it had interpreted this conditional language to mean that a pipeline could only issue a waiver to accept non-conforming gas if it could still meet its delivery point specifications or satisfy any merchantability clause.⁹

⁷ *Id.* p. 11-12.

⁸ July 2010 Order, 132 FERC ¶ 61,059 P 9-10.

⁹ July 2010 Order, 132 FERC ¶ 61,059 P 9 & n. 6 (citing *Norstar Operating LLC v. Columbia Gas Transmission Corp., and Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,035, at P 36 (2008)). The Commission notes that this earlier citation to the *Norstar* order in the July 2010 Order was in error and should instead be to the Commission's previous order in that proceeding, *Norstar Operating LLC v. Columbia Gas Transmission Corp.*, 122 FERC ¶ 61,163, at P 36 (2008) (*Norstar*).

12. The Commission noted in the July 2010 Order that a review of Columbia Gulf's tariff indicated that the tariff contained neither delivery point specifications nor a clause ensuring that gas delivered to customers would be merchantable. In light of the absence of any gas quality standards to protect Columbia Gulf's shippers, the Commission determined that in order to ensure the pipeline's waiver discretion was not unlimited, Columbia Gulf's proposed waiver language must be interpreted to mean that the pipeline could only grant a waiver accepting non-conforming gas if its deliveries to interconnections with other pipelines, end-users and LDCs satisfied Columbia Gulf's receipt point standards. Based on that interpretation, the Commission denied Lafayette's rehearing requests, stating that the above qualification imposed on Columbia Gulf's waiver authority should alleviate Lafayette's concerns.

Request for Rehearing

13. On August 20, 2010, Columbia Gulf filed its request for rehearing of the July 2010 Order. Columbia Gulf argues that the Commission erred in limiting Columbia Gulf's ability to waive its gas quality standards to those circumstances where Columbia Gulf's deliveries to interconnects with other pipelines, end-users and LDCs would meet Columbia Gulf's receipt point gas quality and interchangeability standards. Columbia Gulf argues that such a requirement is tantamount to requiring Columbia Gulf to adopt delivery point standards, which it contends is inconsistent with Commission policy. Columbia Gulf further argues the Commission did not make the requisite finding under section 5 of the Natural Gas Act (NGA) that its existing gas quality specifications are unjust and unreasonable, nor did the Commission explain why the existing tariff provision does not provide sufficient shipper protection.¹⁰

14. As noted, Columbia Gulf argues the Commission's limitation on its waiver ability essentially requires the pipeline to adopt and enforce delivery point gas quality specifications. Specifically, Columbia Gulf contends that such a result is contrary to the Commission's policy that only gas quality and interchangeability specifications contained in a pipeline's tariff can be enforced. Columbia Gulf states that its tariff lacks delivery point specifications and argues that because it did not propose such standards in the Tariff Filing, the Commission must act under section 5 to impose the limitation that it may only grant gas quality waivers if doing so results in its deliveries meeting its receipt point standards. Columbia Gulf states that the Commission made no such finding and did not require Columbia Gulf to file for delivery point specifications.¹¹

¹⁰ Rehearing Request at p. 1-3.

¹¹ *Id.* p. 4-6.

15. Columbia Gulf also asserts that the July 2010 Order is inconsistent with the Commission's *Norstar* order.¹² Columbia Gulf argues that the Commission's finding in the July 2010 Order apparently meant that all receipt points standards in its tariff must apply to all deliveries if Columbia Gulf is to issue a waiver of the receipt point specifications. Columbia Gulf further argues that such a holding is inconsistent with *Norstar* because in *Norstar* the Commission held that it did not intend to make all of Columbia Gas Transmission Company's (Columbia Gas) gas quality and interchangeability standards in the proposed revised section of its tariff applicable to deliveries. Columbia Gulf contends that the *Norstar* order recognized that it is only reasonable to condition a pipeline's waiver authority on satisfying delivery specifications if there are such specifications in its tariff but not otherwise.

16. Columbia Gulf also argues that the Commission did not adequately explain in the July 2010 Order why the existing protections of the waiver language originally approved in the February 11 Letter Order are insufficient.¹³ According to Columbia Gulf, the Commission approved similar language in *Norstar*, and the Commission has not made an NGA section 5 showing that the existing language is insufficient to protect shippers on Columbia Gulf's system. Columbia Gulf states that while it recognizes that it cannot have "unfettered" discretion to waive its gas quality standards, the Commission has already held similar language to sufficiently protect shippers on other systems.

Discussion

17. We deny Columbia Gulf's rehearing request and reject the proposed changes to section 25.3 proposed by Columbia Gulf in the Tariff Filing.¹⁴ In this proceeding, Columbia Gulf has proposed under NGA section 4 to modify section 25.3 of its GT&C in order to permit it waive the receipt point gas quality standards in section 25.1 of its GT&C. Therefore, Columbia Gulf has the burden under NGA section 4 to show that its proposal is just and reasonable. As discussed fully below, we find that, absent any delivery point gas quality and interchangeability standards or a merchantability provision, Columbia Gulf's proposed changes to sections 25.3 of its tariff provide it with too much discretion to waive its gas quality standards without providing sufficient protection to its customers and therefore Columbia Gulf has not satisfied its burden to show that its proposal is just and reasonable.

¹² *Id.*, at p. 6-7.

¹³ *Id.*, at p. 8-9.

¹⁴ The Commission's prior approval of the changes proposed to section 25.4 of Columbia Gulf's GT&C in the February 11 Letter Order is unaffected by our rejection of the changes to section 25.3 in this order.

18. Columbia Gulf correctly notes that pursuant to the Policy Statement, only natural gas quality specifications in a Commission approved gas tariff may be enforced. As Columbia Gulf acknowledges, its existing tariff does not contain gas quality or interchangeability delivery point specifications or a merchantability clause that protects Columbia Gulf's delivery customers or provides those customers assurances as to the quality of natural gas that it can expect to receive from Columbia Gulf.¹⁵ Accordingly, Columbia Gulf's proposed tariff language that allows it to grant a waiver of its specifications subject only to the limitation that it not "adversely affect the ability of gas to be accepted for delivery at interconnects with interstate or intrastate pipelines, end-users and local distribution companies" essentially provides Columbia Gulf unfettered discretion to issue waivers without any clear enforceable provision to which injured customers can resort.

19. Columbia Gulf disagrees with the Commission's interpretation of the limits on the proposed waiver language but proposes no standard or guidance to determine the meaning of the limitation that Columbia Gulf can only issue a waiver if it does not adversely affect "the ability of gas to be accepted" at various types of interconnects. Pursuant to that standard alone, there is nothing to require that gas delivered at the interconnects will be of similar quality to that delivered historically or to require Columbia Gulf to consider whether shippers taking deliveries off its system will be able to use the gas for the purposes they had used it historically. In addition, it appears that Columbia Gulf could accept non-conforming gas without regard to whether the gas it will deliver to its customers is merchantable.

20. The unreasonableness of Columbia Gulf's proposed waiver language is demonstrated by the concerns expressed by Lafayette in this proceeding. Lafayette has shown that, depending on the quality of gas that it receives currently or in the future, and the degree of difference in composition between that gas and the historic composition of the gas it has received from Columbia Gulf, Lafayette's generation capacity may be reduced in an already constrained area. It is unclear whether Columbia Gulf considers non-conforming gas that would cause such a result to be gas that "adversely affects" its deliveries to Lafayette such that the waiver would be disallowed. Accordingly, in the July 10 Order, the Commission determined that it could only find that Columbia Gulf's waiver proposal would be just and reasonable if it was interpreted to mean that any waiver of its gas quality standard would not affect Columbia Gas's ability to deliver gas that satisfies the only existing tariff gas quality standards in its tariff -- its receipt point standards. As discussed above, however, according to Columbia Gulf, that was not its intent. Accordingly, we find that Columbia Gulf has failed to satisfy its burden to show

¹⁵ See, e.g., Rehearing Request at p. 7.

that its proposed revision to section 25.3 of the GT&C is just and reasonable as revised by the Tariff Filing.

21. Having determined that Columbia Gulf has not shown its proposal to be just and reasonable, it is incumbent upon the Commission if it wishes to modify that proposal in a manner unacceptable to Columbia Gulf to show that Columbia Gulf's existing tariff without the waiver language is unjust and unreasonable and that any alternative proposal we impose is just and reasonable.¹⁶ The record in this proceeding however, is insufficient for the Commission to meet that burden. No party here has presented evidence from which we could develop a just and reasonable waiver alternative to Columbia Gulf's existing tariff. Moreover, there is nothing in the record in this proceeding to indicate that the absence of proposed language authorizing Columbia Gulf to waive its gas quality tariff specifications would render its existing tariff language unjust and unreasonable. Accordingly, in the absence of record evidence to make the necessary findings to replace the presumptively just and reasonable existing tariff language with alternative language, the existing language must remain in effect.¹⁷

22. We also reject Columbia Gulf's argument that our holding in this proceeding is inconsistent with *Norstar*. The fact that Columbia Gas' (the pipeline in *Norstar*) then existing tariff contained provisions to protect its delivery point customers distinguishes the instant proceeding.¹⁸ As Columbia Gulf makes clear, in that case the pipeline at issue

¹⁶ In *Western Resources Inc. v. FERC*, 9 F.3d 1568, 1579-1580 (D.C. Cir. 1993) (*Western Resources*), the court held that, before the Commission can impose its own tariff provision in a proceeding commenced under NGA section 4, the Commission first must find that the pipeline failed to carry its burden of proof to support its section 4 proposal. If the Commission wishes to impose its own rates, *Western Resources* states that the Commission has a dual burden under NGA section 5 in order to impose its own rates. The Commission must show that (1) the preexisting rate design is unjust and unreasonable and (2) the Commission's proposed rate design is just and reasonable. *Western Resources*, 9 F.3d at 1578.

¹⁷ See *Panhandle Eastern Pipe Line Company*, 66 FERC ¶ 61,329 (1994), *reh'g denied*, 73 FERC ¶ 61,366 (1995).

¹⁸ Columbia Gas' current tariff also provides protections to its delivery customers. See, e.g., GT&C VIII.25.1 ("Natural gas delivered to Transporter and redelivered to Shipper hereunder shall at all times conform to the quality provisions set forth in this Section."). Notably the tariffs of the other pipelines that Columbia Gulf cites as examples where the Commission has approved similar gas quality waiver language all have provisions that apply to deliveries by the pipeline or a merchantability clause. See, e.g., Florida Gas Transmission Tariff, GT&C Part VI, Section 2.D; El Paso Natural Gas Company Tariff, Third Revised Volume No. 1A, Section 3.3;.

had existing gas quality and interchangeability delivery point standards and a merchantability clause. Thus, while the Commission in that order was addressing the issue of whether all the receipt point standards of its previously existing tariff should apply to all its delivery points, it was in a different context than that presented here. In *Norstar* the Commission was ruling on the scope of Columbia Gas' merchantability clause as it related to a tariff that contained both delivery point gas quality standards and a merchantability clause.¹⁹ The lack of either protection in Columbia Gulf's tariff for Columbia Gulf's delivery customers renders the protection of the "adversely affected" language vague and insufficient. In the Columbia Gas situation, there were existing protections to backstop the pipeline's discretion to issue waivers. There are no such protections here. The same language used for Columbia Gas does not operate to protect Columbia Gulf's shippers from Columbia's Gulf's potential unfettered exercise of discretion.

23. Accordingly, the Commission denies rehearing and rejects Columbia Gulf's proposed change to section 25.3 of the GT&C because, in the absence of delivery point gas quality and interchangeability standards and a merchantability clause, it provides Columbia Gulf with virtually unfettered discretion to issue gas quality specification waivers without adequate protections for its delivery customers. This rejection is without prejudice to Columbia Gulf's filing a just and reasonable waiver provision that would provide appropriate protections to Columbia Gulf's customers in the event that Columbia Gulf exercised any waiver authority to accept non-conforming gas onto its system. In such a filing Columbia Gulf could seek revisions to its gas quality standards to include delivery point specifications or to propose other reasonable limitations on its waiver ability, including tailoring the limitation to specific segments or points on its line.

¹⁹ Columbia Gulf's argument that the limitation on its waiver authority essentially requires it to establish delivery point standards is unavailing. The restriction is only applicable to the extent that Columbia Gulf seeks to waive its receipt point standards to allow non-conforming gas onto the system. Without delivery point standards or a merchantability clause, Columbia Gulf's tariff provides virtually no ascertainable protections for delivery customers if Columbia Gulf decides to grant a waiver. It is only reasonable that Columbia Gulf provide some protections to its delivery customers in the situation where the pipeline wants to accept out of specification gas.

The Commission orders:

- A) Columbia Gulf's rehearing request is denied.
- B) Section 25.3 of Columbia Gulf's tariff is unjust and unreasonable, and is hereby rejected.
- C) Columbia Gulf is directed to make a compliance filing within 15 days of this order removing section 25.3 from the GT&C of its tariff.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.