

125 FERC ¶ 61,289
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Norstar Operating LLC v. Columbia Gas Transmission Corporation	Docket Nos. RP06-231-007 RP06-231-008 RP06-365-005
Columbia Gas Transmission Corporation	RP06-365-006

ORDER ON COMPLIANCE FILING AND GRANTING CLARIFICATION

(Issued December 15, 2008)

1. On August 18, 2008, Columbia Gas Transmission Corporation (Columbia) filed a tariff sheet¹ (compliance filing) to comply with the Commission's July 17, 2008 *Order on Rehearing and Compliance Filing*,² which related to natural gas quality and interchangeability standards on Columbia's system. The July 2008 Order clarified that the Commission did not intend in its February 2008 Order in this proceeding³ to require Columbia to make all of its gas quality and interchangeability specifications applicable to deliveries, but directed Columbia to modify section 25.5(a) of its tariff to make its merchantability language apply to lines, regulators, meters and other gas handling equipment "through which [the gas] flows" and not just to Columbia's facilities.⁴ Columbia sought clarification or rehearing of the July 2008 Order,⁵ and Washington Gas

¹ Second Substitute Fifth Revised Sheet No. 406. Columbia proposed a June 1, 2007 effective date.

² *Norstar Operating LLC v. Columbia Gas Transmission Corporation and Columbia Gas Transmission Corporation*, 124 FERC ¶61,035 (2008) (July 2008 Order).

³ *Norstar Operating LLC v. Columbia Gas Transmission Corporation and Columbia Gas Transmission Corporation*, 122 FERC ¶ 61,163 (2008) (February 2008 Order).

⁴ July 2008 Order at P 26.

⁵ *Request for Clarification or, in the Alternative, Rehearing of Columbia Gas Transmission Corporation*, dated August 18, 2008 (Columbia's rehearing request).

Light Company (WGL) protested Columbia's compliance filing. This order grants clarification, denies WGL's protest, and accepts the sheet listed in footnote one effective June 1, 2007.

I. Background

2. On April 21, 2006, the Commission issued an order⁶ in Docket No. RP06-231-000 denying Norstar's February 22, 2006 complaint with respect to Columbia's refusal to accept Norstar's deliveries of gas because the nitrogen content exceeded the limit in Columbia's meter set agreements (MSAs). The April 2006 Order denied the complaint and initiated a Natural Gas Act (NGA) section 5 proceeding requiring Columbia to revise section 25.5(e) of the General Terms and Conditions of its tariff (GT&C),⁷ pertaining to gas quality standards.

3. On May 22, 2006, Columbia filed a revised tariff sheet in Docket No. RP06-231-002 revising section 25.5(e) of its tariff to comply with the Commission's April 2006 Order. Columbia also filed on May 22, 2006 revised tariff sheets in Docket No. RP06-365-000, incorporating into its tariff most of the gas quality specifications found in its MSAs. On June 21, 2006, the Commission issued an order⁸ accepting and suspending the tariff sheets filed in Docket No. RP06-365-000, to be effective no earlier than November 22, 2006, and establishing a technical conference to address the issues presented in both filings. The June 2006 Order also deferred consideration of Columbia's compliance filing in Docket No. RP06-231-002 pending further consideration following the technical conference.

4. On March 16, 2007, the Commission issued its order on technical conference in this proceeding,⁹ which accepted in part and rejected in part Columbia's gas quality and interchangeability proposals. That order required Columbia to modify (1) its gas quality proposals concerning its Appalachian exception to the proposed Wobbe Index and maximum heating value limits for Appalachian Gas; (2) its delivery standards provision;

⁶ *Norstar Operating LLC v. Columbia Gas Transmission Corporation*, 115 FERC ¶ 61,094 (2006) (April 2006 Order).

⁷ Unless otherwise noted all references herein to sections of Columbia's tariff are to the GT&C.

⁸ *Norstar Operating LLC v. Columbia Gas Transmission Corporation*, 115 FERC ¶ 61,351 (2006) (June 2006 Order).

⁹ *Norstar Operating LLC v. Columbia Gas Transmission Corporation and Columbia Gas Transmission Corporation*, 118 FERC ¶ 61,221 (March 2007 Order).

and (3) section 25.5(e) of its tariff relating to Columbia's rights and obligations with respect to non-conforming gas received by Columbia. Columbia made a tariff filing to comply with the March 2007 Order on April 16, 2007 (April 2007 compliance filing).¹⁰ Several parties sought rehearing or clarification of the March 2007 Order and filed comments or protests to Columbia's April 2007 compliance filing.

5. In the February 2008 Order, the Commission denied the requests for rehearing of the March 2007 Order, clarified that Columbia could not grant a waiver of its receipt point gas quality standards under section 25.9 its tariff¹¹ if such waiver would result in Columbia not meeting its delivery specifications, and directed Columbia to make a compliance filing to modify certain of its tariff provisions consistent with the Commission's discussion in the order. On March 24, 2008, Columbia submitted a filing to comply with the February 2008 Order. The March 2008 compliance filing proposed tariff revisions that (1) modified the quality standards for gas delivered by Columbia; (2) redefined the Appalachian exception; and (3) revised Section 25.8 of its tariff to refer to section 25 instead of section 25.5. Numerous parties filed requests for clarification or rehearing of the February 2008 Order and protested the March 2008 compliance filing.

6. As noted above, the Commission's July 2008 Order ruled on the requests for rehearing of the February 2008 Order and on the March 2008 compliance filing. Specifically, in the July 2008 Order the Commission clarified that it did not intend in the February 2008 Order to make all of Columbia's gas quality and interchangeability specifications applicable to deliveries by Columbia. The July 2008 Order also accepted Columbia's revised definition for its Appalachian exception and accepted Columbia's modified tariff language relating to the acceptance of non-conforming gas onto its system. The Commission required Columbia to revise the merchantability language in section 25.5 of its tariff to apply to lines, regulators, meters and other gas equipment through which the gas flows, and not just to Columbia Gas' equipment.¹²

7. On August 18, 2008, Columbia filed a request for clarification or rehearing of the July 2008 Order.

¹⁰ Docket Nos. RP06-231-003 and RP06-365-001.

¹¹ Section 25.9 provides that Columbia may accept non-conforming gas so long as such acceptance will not interfere with Columbia's ability to (1) maintain an acceptable gas quality through prudent and safe operation of its system; (2) ensure that acceptance of such gas does not interfere with Columbia's ability to provide service to its customers in accordance with the applicable rate schedule and its tariff; and (3) ensure that such gas does not adversely affect Columbia's ability to deliver gas at its delivery points.

¹² July 2008 Order, P 26.

II. Public Notice, Interventions, and Protests

8. Public notice of Columbia's compliance filing was issued on August 20, 2008. Comments or protests were due September 2, 2008.
9. Washington Gas Light Company (WGL) filed a protest to Columbia's compliance filing. The NiSource Distribution Companies (NiSource Distribution) filed comments.

III. Discussion

10. For the reasons stated below, the Commission grants clarification, denies WGL's protest and accepts Columbia's compliance filing.

11. The sole question remaining in this proceeding is the appropriate scope and applicability of the merchantability language proposed by Columbia. In its May 2006 filing, Columbia proposed the following merchantability language as part of the General Terms and Conditions (GT&C) of its tariff:

25.6 All gas delivered to Shipper hereunder shall be commercially free (at prevailing pressure and temperatures in Transporter's pipeline) from objectionable particulates or other solid or liquid matter that might interfere with its merchantability or cause injury to or interference with proper operation of the lines, regulators, meters and other gas handling equipment **through which it flows**. (emphasis added).

12. In its March 2008 compliance filing, which Columbia made to comply with the Commission's February 2008 Order, Columbia changed the last sentence of the referenced merchantability clause to make it applicable only to "the lines, regulators, meters and **other equipment of Transporter.**"¹³ Several parties protested Columbia's unilateral change that effectively made the "no harm" clause only applicable to Columbia's facilities and not to those of its customers.

13. In the July 2008 Order, the Commission addressed challenges by shippers that merchantability language that Columbia proposed in its March 2008 compliance filing was applicable only to Columbia's facilities and provided no protection to facilities to which Columbia delivers gas. Those parties asserted that while previously filed language by Columbia assured that gas delivered to shippers would be free from objectionable particulates or other solid matter that might interfere with the merchantability of the gas

¹³ Section 25.5, Substitute Fifth Revised Sheet No. 406.

or cause injury to or interference with proper operation of “lines, regulators, meters and other gas handling equipment **through which it flows,**” the language proposed in the March 2008 compliance filing only protected “lines, regulators, meters and other **equipment of Transporter.**”¹⁴ In the July 2008 Order, the Commission agreed with those parties that its intention in the February 2008 Order was to require Columbia to implement tariff merchantability language that would assure that gas delivered by the pipeline would be merchantable upon entry as well as exit out of the pipeline. Accordingly, the Commission directed Columbia to modify its proposed language to apply to lines, regulators, meters and other gas handling equipment through which gas flows, and not just to Columbia’s facilities.¹⁵

14. In its request for clarification/rehearing, Columbia requests that the Commission clarify that by requiring it to adopt merchantability language that would guarantee the merchantability of gas in the “equipment through which it flows” it did not intend to include a customer’s downstream facilities beyond the delivery point.¹⁶ Columbia asserts that interpreting the Commission’s intent to require Columbia’s obligation to extend beyond its delivery point and to a customer’s downstream facilities would be contrary to the intent of the July 2008 Order and to the Commission’s policy that a pipeline is not responsible for the operating conditions on a customer’s downstream facilities.¹⁷ Columbia asserts that pursuant to the holdings in *ANR and Tennessee*, the Commission’s policy is that in relation to gas delivered by a pipeline, the merchantability obligations of the pipeline end at the delivery point.¹⁸

15. Based on this interpretation of the Commission’s policy and interpretation of the intent of the July 2008 Order, Columbia proposed the following language for section 25.5 of the General Terms and Conditions of its tariff in its compliance filing:

The gas received and delivered by Transporter:

shall be commercially free from dust, gum, gum-forming constituents, paraffin, and other particulates or solid or liquid

¹⁴ July 2008 Order P 23.

¹⁵ *Id.* P 26.

¹⁶ Columbia’s rehearing request at 4.

¹⁷ *Id.*, and n.7 (citing *ANR Pipeline Co.*, 116 FERC ¶ 61,002, at P 62 (2006) (*ANR*), *order on reh’g*, 117 FERC ¶ 61,286; and *Indicated Shippers v. Tennessee Gas Pipeline Co.*, 121 FERC ¶ 61,151, at P 108 (2007) (*Tennessee*)).

¹⁸ *Id.* at 9.

matter which might interfere with its merchantability or cause injury to or interference with proper operations of the lines, regulators, meters and other equipment through which it flows **at the delivery point**. Second Sub Fifth Revised Sheet No. 406 (emphasis added).

Columbia states that it added the delivery point reference to provide clarity that, as it argued in its rehearing request, the language should not apply to a customer's downstream facilities.¹⁹

16. WGL protests the revised language filed by Columbia claiming that it would limit the gas quality protections that the Commission intended to afford customers in the July 2008 Order. Noting its prior opposition to Columbia's attempt to limit the applicability of the merchantability clause to only Columbia's facilities, and thus not protecting customer facilities downstream of the pipeline's delivery points, WGL asserts that Columbia's latest rendition of the merchantability language again attempts to limit its applicability in contradiction of the Commission's directive in the July 2008 Order. WGL states that the Commission upheld its protest to Columbia's March 24 compliance filing when Columbia first eliminated the protections for downstream facilities, and that in the July 2008 Order the Commission ordered Columbia to "retain" its original language. WGL requests that the Commission reject Columbia's attempts to backtrack on its original proposal and to make substantive tariff changes as part of a compliance filing.

17. NiSource comments that Columbia's addition of the "at the delivery point" language was premature and pre-judged the Commission's ruling on Columbia's rehearing request. It urges the Commission not to approve the proposed tariff sheet until such time as the Commission decides to which facilities the merchantability language should apply and that the tariff language should be modified accordingly at that time.

IV. Commission Determination

18. The Commission grants clarification that the July 2008 Order did not intend to require that Columbia's merchantability obligation should extend beyond the delivery point to its customers' downstream facilities. As we have found previously, a pipeline is responsible only for the operational integrity of its own system, not for the operational integrity of downstream systems.²⁰ A similar issue concerning the applicability of gas

¹⁹ Compliance filing at 2.

²⁰ *Tennessee*, 121 FERC ¶ 61,151 at P 108 (citing *ANR*, 116 FERC ¶ 61,002 at P 64).

quality standards to downstream facilities arose in *Tennessee*. There the Commission considered whether Tennessee's obligation to prevent delivery of objectionable materials at interconnects was satisfied if Tennessee met that obligation at the interconnect and no further downstream. The Commission determined that even though some of the equipment protected by the provision may be non-pipeline owned, there was no obligation on the part of the pipeline to deliver gas free of objectionable materials further downstream than its interconnect facilities.²¹

19. The same reasoning applies here. Commission policy is that pipelines are not responsible for the integrity of downstream systems once the pipeline has delivered gas in accordance with its tariff specifications. That is the responsibility of the downstream systems' operator. Accordingly in this instance Columbia is not responsible to protect the downstream systems of its customers once it delivers merchantable gas to those customers at the delivery point.

20. The above determination renders NiSource's comments moot because the Commission is in this order determining to which facilities the merchantability language should apply. Nevertheless, NiSource's point is well taken. In the future Columbia must file in direct compliance with the relevant Commission order and not alter that compliance filing to fit an interpretation for which it seeks a Commission determination in a separate pleading.

The Commission orders:

(A) Columbia's request for clarification is granted and WGL's protest is denied as discussed above.

(B) The tariff sheet listed in footnote 1 is accepted effective June 1, 2007.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²¹ *Id.*