

128 FERC ¶ 61,115
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC

Docket Nos. RP09-792-000
RP09-792-001

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO
REFUND AND FURTHER ORDER OF THE COMMISSION

(Issued July 31, 2009)

1. On June 30, 2009, Columbia Gas Transmission, LLC (Columbia) filed revised tariff sheets¹ to recover retroactively certain one-time third party transportation costs incurred to provide service during the outage of Columbia's Line 1278 located in Pike County, Pennsylvania. On July 1, 2009, Columbia filed a revised tariff sheet² to correct an incorrect rate. Columbia requests an August 1, 2009 effective date for the tendered tariff sheets. As discussed below, the Commission accepts and suspends the tariff sheets listed in footnotes 1 and 2, effective January 1, 2010, subject to refund and further order of the Commission, except for Fifth Revised Sheet No. 30 in footnote 1, which is rejected as moot since it has been replaced by Substitute Fifth Revised Sheet No. 30 listed in footnote 2.

Background

2. Columbia states that in anticipation of Millennium Pipeline Company's (Millennium) December 22, 2008 in-service date, Columbia requested authorization from the Department of Transportation (DOT) to increase the pressure in its Line 1278 from 800 psig to 1000 psig, so that it could deliver gas into Millennium's system. Columbia

¹ Fifth Revised Sheet No. 25, Fifth Revised Sheet No. 26, Sixth Revised Sheet No. 28, Fifth Revised Sheet No. 29 and Fifth Revised Sheet No. 30 to Columbia's FERC Gas Tariff, Third Revised Volume No. 1.

² Substitute Fifth Revised Sheet No. 30 to its FERC Gas Tariff, Third Revised Volume No. 1.

states that DOT granted its requested authorization in July 2008. Columbia states that Line 1278 ruptured during pressure testing on November 5, 2008. Columbia states that its investigation revealed that the cause of the rupture was near-neutral pH stress corrosion cracking which could not have been detected by the damage-checking operations it performed.³ Columbia maintains that Line 1278 was repaired and on December 4, 2008 the line was repressurized to the levels in effect prior to the rupture.⁴ However, Columbia asserts that DOT rescinded Columbia's authorization to increase the pressure to 1000 psig, which meant that Columbia could not deliver gas into the Millennium 1000 psig pipeline at Waggoner. Therefore, Columbia states that it was necessary for Columbia to install compression at Sparrowbush, near its interconnection with Millennium, in order to increase its line pressure into Millennium.

3. Columbia asserts that to ensure that it could continue to meet its firm obligations until the Sparrowbush Compressor Station was placed into service, Columbia contracted for emergency transportation and/or wheeling service from Tennessee Gas Pipeline Company, Central New York Oil and Gas Company, Millennium, and Empire Pipeline Company. The Sparrowbush Compressor Station was placed into service on January 6, 2009,⁵ which Columbia asserts alleviated this situation.

4. On February 26, 2009, Columbia submitted revised tariff sheets to adjust its Transportation Cost Rate Adjustment (TCRA) rates pursuant to section 36 of the General Terms and Conditions (GT&C) of its tariff. Columbia included the emergency transportation and/or wheeling costs incurred through December 31, 2008 in its TCRA filing. The Commission found that although Columbia's "emergency actions which allowed for continued service to its customers are to be encouraged, the Commission has held that tracking mechanisms should track only those costs related to normal pipeline

³ Columbia states that it performed smart pigging operations on 16.4 miles of the 71 miles of Line 1278 that had not been replaced between 2005 and 2007. *See* David W. Spencer Aff. at P 5.

⁴ *See* Timothy R. Bucci Aff. at P 5.

⁵ Columbia constructed the Sparrowbush Compressor station under an emergency certificate granted by the Commission.

operations.”⁶ Therefore, the Commission rejected the inclusion of these upstream capacity costs in Columbia’s TCRA filing:

without prejudice to Columbia Gas making a separate, limited section 4 filing to recover these extraordinary one-time costs incurred to provide service during the outage of Line 1278, where issues such as prudence and offsets for insurance recoveries could be considered.⁷

Details of the Filing

5. Columbia proposes a one-year Line 1278 surcharge to recover the prior period third-party transportation costs. Columbia states that the third-party transportation costs will be tracked separately and Columbia will not recover any additional costs. Columbia further states that it will file to remove the surcharge from its tariff once all of the third-party transportation costs are recovered. Columbia also states that it will submit a reconciliation report verifying that no additional costs have been recovered from its customers.

6. Columbia states that the instant third-party transportation costs during the disruption period totaled \$3,470,097, including carrying charges. Columbia proposes a Line 1278 surcharge to collect on an as-billed basis the under-recovery of \$3,358,606 in demand costs and an under-recovery of \$111,491 in commodity costs.⁸

7. Columbia argues that the Line 1278 rupture is an extraordinary *force majeure* event and that the costs associated with having its gas transported by other pipelines during the emergency *force majeure* event are eligible to be recovered through a surcharge pursuant to a limited NGA section 4 filing. Columbia asserts that contracting for third-party transportation was a prudent measure because it enabled Columbia to meet all of its firm delivery obligations throughout the *force majeure* event.

⁶ *Columbia Gas Transmission, LLC*, 126 FERC ¶ 61,319, at P 22 (2009) (March 31 Order).

⁷ *Id.*

⁸ Appendix B to the filing reflects the demand determinants used to derive the Line 1278 TCRA surcharge and the demand determinants are those projected to be in effect on August 1, 2009, consistent with section 36.4(a) of Columbia’s GT&C. Throughput levels for Rate Schedules FTS, SST, OPT, GTS, NTS, ITS and TPS are based on the twelve-month period ending July 31, 2009, adjusted for known and measurable changes.

8. Columbia includes an Affidavit of David W. Spencer, which details the service outage and the associated third party transportation costs. Columbia also includes an Affidavit of Timothy R. Bucci, which asserts that Columbia's insurance would not cover the outage costs since the rupture was quickly repaired and Columbia's insurance only covers incidents lasting longer than 30 days. Columbia asserts that there will be no double recovery of costs since there will be no recovery of insurance proceeds.

Notice of Filings and Interventions and Protests

9. Notices of Columbia's filings in Docket Nos. RP09-792-000 and -001 were issued on July 2, 2009 and July 8, 2009, respectively. Interventions and protests were due July 13, 2009, as provided in section 154.210 of the Commission's regulations.⁹ Pursuant to Rule 214,¹⁰ all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Piedmont Natural Gas Company, Inc. (Piedmont), The City of Charlottesville (Charlottesville) and the City of Richmond (Richmond), Virginia Power Energy Marketing, Inc. (VPEM), National Grid Gas Delivery Companies (National Grid), Old Dominion Electric Cooperative (ODEC), Washington Gas Light Company (Washington Gas), EQT Energy, LLC (EQT Energy), Delta Energy, LLC, and the New York State Public Service Commission (NYPSC) filed protests and/or comments.

10. On July 16, 2009, Orange and Rockland Utilities, Inc. (O&R) filed an answer to National Grid's protest and ODEC's comments. On July 17, 2009, Columbia filed an answer to the protests, comments, and requests for technical conference. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept both answers because they provide information assisting us in our decision-making process.

11. ODEC argues that Columbia's filing does not contain information necessary to resolve whether Columbia's decision to contract for emergency transportation from the four pipelines was prudent. ODEC further argues that it is impossible to determine based on the June 30 filing whether the amounts at issue are reasonable and if they should be borne by customers that had no hand in causing the rupture. ODEC alleges that Columbia ignored more efficient alternatives, such as asking shippers to reduce their contract demand during the emergency period, or selecting other transportation and/or wheeling alternatives. ODEC also questions Columbia's proposal to recover the costs

⁹ 18 C.F.R. § 154.210 (2008).

¹⁰ 18 C.F.R. § 385.214 (2008).

over a twelve-month period, given that the costs were only incurred in select winter months. ODEC requests a technical conference to further pursue the issues.

12. Piedmont argues that cost recovery for this occurrence should be handled through normal business practices including insurance to the extent Columbia has such coverage or is self insured. Piedmont further argues that Columbia has not provided a basis or any authority to support its position. Piedmont asserts that Columbia increased the line pressure that caused the rupture in order to make deliveries into Millennium in anticipation of its December 22, 2008 in service date. Piedmont therefore argues that the costs associated with the rupture should be assigned to the Millennium project, an incremental independent project. Piedmont states that Columbia, through its Commission approved rates, is already compensated for maintaining its facilities and the replacement of such facilities as required. Piedmont argues that isolating one cost item for special treatment is not the intended purpose for Natural Gas Act (NGA) section 4 filings. Piedmont therefore requests that the Commission reject the filing or, alternatively, suspend and set the issue for hearing.

13. Washington Gas argues that Columbia has not supported its application with the comprehensive data and information required. Washington Gas asserts that the parties should have an opportunity to review all relevant communications between Columbia and DOT relating to the increased pressure. Washington Gas would not oppose an order granting Columbia regulatory asset treatment for the expenses, whereby the \$3.5 million would be booked to Account No. 182.3 and held in that account until the pipeline files its next NGA section 4 general rate case, or the Commission initiates an NGA section 5 investigation of Columbia's rates. Washington Gas states that Columbia could then seek amortization of the cost in its base rates and parties to the proceeding would be permitted to contest Columbia's application on any grounds.

14. Charlottesville and Richmond state that the Commission has previously allowed a pipeline to establish a surcharge via a limited section 4 filing only for damage resulting from events outside the pipeline's control, such as Hurricane Katrina. They assert that although the Commission stated in the March 31 Order¹¹ that Columbia may seek to recover the costs associated with the rupture in a limited NGA section 4 filing, the Commission subsequently issued its decision in *CenterPoint*,¹² wherein the Commission rejected CenterPoint's limited NGA section 4 filing to recover line losses associated with a rupture on its system. Charlottesville and Richmond state that the instant proceeding is

¹¹ March 31 Order, 126 FERC ¶ 61,319 at P 22.

¹² Citing *CenterPoint Energy Gas Transmission Co.*, 127 FERC ¶ 61,096 (2009) (*CenterPoint*).

directly analogous to *CenterPoint*. They assert that here, as in *CenterPoint*, the exceptional costs arose due to a line rupture that was caused by internal corrosion. They argue that the Commission found that the circumstances of the rupture were within CenterPoint's control. Charlottesville and Richmond conclude that in the instant proceeding, as in *CenterPoint*, ultimate control of the system and, therefore, responsibility for the rupture, rests with the pipeline. They also argue that the fact that Columbia incurred additional costs because of the rupture does not mean that it is under-recovering its overall cost of service. Charlottesville and Richmond further argue that if Columbia determines that the added expense associated with the rupture of Line 1278 would cause it to under-recover its overall cost of service, then Columbia may pursue the matter in a full NGA section 4 rate proceeding. They urge the Commission to reject Columbia's proposal.

15. Charlottesville and Richmond also request that the Commission exercise its NGA section 5 authority and require Columbia to modify its tariff to provide for revenue crediting to its customers when it cannot provide the firm service for which they have contracted.

16. VPEM argues that Columbia's June 30 filing contravenes the Commission's recent decision in *CenterPoint*. VPEM further argues that, the decision not to replace the sixty-year-old pipeline was Columbia's alone. VPEM contends, therefore, that, the subsequent rupture cannot be said to be the result of events beyond the pipeline's control. VPEM argues that in *CenterPoint* the Commission reasoned that pipelines have the responsibility to maintain their systems to prevent losses like those incurred in the rupture and, therefore, Columbia's decision to employ third party transportation to avoid curtailments does not shift the cost responsibility to Columbia's shippers. VPEM asserts that allowing Columbia to pass through costs in this case would create incentives to defer maintenance and reduce insurance coverage and contends that the Commission should reject the proposed surcharge.

17. National Grid argues that the Commission should reject Columbia's request because such recovery would violate the rule against retroactive ratemaking and the filed rate doctrine.¹³ National Grid asserts that the rule against retroactive ratemaking precludes the Commission from permitting a pipeline to adjust its current rates to make up for previous under-collections of costs in prior periods.¹⁴ National Grid states that the

¹³ Citing *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 101 S. Ct. 2925, 69 L. Ed. 2d 856 (1981).

¹⁴ Citing *Associated Gas Distributors v. FERC*, 898 F.2d 809, 810 (D.C. Cir. 1990).

Commission's March 31 Order already has held that Columbia may not recover the Line 1278 outage related transportation costs through its TCRA tracker pursuant to section 36 of the GT&C of its tariff. Furthermore, National Grid asserts that Columbia cites no section of its tariff that provides customers with notice that additional transportation costs, beyond those permitted in the TCRA set forth in GT&C section 36, will be charged. National Grid argues that it is well settled that without notice, the filed rate doctrine precludes adjustments to a pipeline's rates to recover prior period costs, such as the transportation costs that Columbia seeks to recover in this proceeding.¹⁵ National Grid asserts that Columbia has characterized these additional transportation charges as costs incurred due to a force majeure event and argues that section 15 of the GT&C of Columbia's tariff clearly provides that neither the pipeline nor its customers will be liable to the other for any damages occurring because of force majeure. National Grid concludes that the Commission should reject Columbia's filing.

18. EQT Energy argues that it does not use Line 1278 or transport gas into the Millennium pipeline system. EQT Energy states that transportation service to EQT Energy, therefore, was not affected by the Line 1278 rupture and Columbia did not enter into the third-party transportation arrangements for EQT Energy's benefit. Therefore, EQT Energy argues that Columbia has not demonstrated that assessing EQT Energy the proposed Line 1278 Surcharge is just and reasonable. EQT Energy requests that the Commission reject Columbia's proposed tariff filing.

19. NYPSC asserts that the Commission's regulations and the principles of test period ratemaking do not generally provide for the recovery of isolated costs. NYPSC is concerned that there has not been any showing that the recovery of these isolated costs, in addition to the existing rates, will produce overall rates that are just and reasonable. NYPSC argues that Columbia has yet to demonstrate that the third party transportation expense is an extraordinary loss that will have an impact on its ability to generate a just and reasonable return. Accordingly, NYPSC urges the Commission to establish a technical conference.

20. O&R requests that the Commission deny National Grid's request for rejection and grant ODEC's request for a technical conference. O&R states that National Grid's assertion that the Commission must deny relief is incorrect. O&R argues that the industry has been on notice since at least *Colorado Interstate Gas Co. (CIG)*,¹⁶ that when

¹⁵ Citing *Columbia Gas Transmission Corp. v. FERC*, 831 F.2d 1135, 1140-1141 (D.C. Cir. 1987).

¹⁶ 121 FERC ¶ 61,161 (2007); *reh'g denied*, 123 FERC ¶ 61,183 (2008). See also *Columbia Gulf Transmission Co.*, 125 FERC ¶ 61,255 (2008).

a pipeline suffers an extraordinary, one-time loss that could not reasonably have been predicted when it filed its last section 4 rate case, the pipeline may be able to recover that cost in a separate limited section 4 proceeding. O&R further argues that granting ODEC's request for a technical conference would provide all stakeholders and the Commission an opportunity to fully explore Columbia's prudence, both before and after the Line 1278 rupture.

21. Columbia argues in its answer that section 16.1 of its GT&C provides that Columbia has the right to interrupt firm service if there is a force majeure or other unforeseen condition on its system and that it arranged the third party transportation in order to avoid curtailing firm service. Columbia asserts that disallowing the recovery of these costs would encourage pipelines to curtail firm service, rather than take other measures to continue service until new facilities can be placed into service.

22. Columbia states that the Commission's decision in *CenterPoint* to reject CenterPoint's gas loss was based on its determination that the loss did not rise to the level of an extraordinary, onetime loss that could not be predicted when a pipeline filed its last general section 4 rate case. Columbia states that the Commission has already held that the third-party transportation costs Columbia is seeking to recover through the Line 1278 Surcharge are "extraordinary one-time costs incurred to provide service during the outage of Line 1278."¹⁷ Columbia points out that the Commission specifically invited Columbia to file "a separate, limited section 4 filing."¹⁸ Columbia therefore believes the Commission should distinguish *CenterPoint* and find that recovery of these costs through a limited section 4 filing is appropriate.

23. Columbia urges the Commission to reject VPEM's, Piedmont's, and Washington Gas's arguments regarding the prudence of Columbia's decision to pressure-test Line 1278 and the transportation service Columbia relied on to meet its firm service obligations. Columbia asserts that the smart-pig tools that it used are the industry standard for verifying the line pressure capability and test for discrepancies in the thickness of the wall of the pipe, which is the most common cause of integrity issues. Columbia further asserts that stress corrosion cracking, which was the cause of the Line 1278 rupture, is much less common and can not be detected with standard smart pigging tools. Columbia argues that its reliance on smart pigging was prudent and reasonable because it had no reason to suspect stress corrosion cracking on Line 1278 and its testing was accepted by the DOT.

¹⁷ March 31 Order, 126 FERC ¶61,319 at P 22.

¹⁸ *Id.*

24. Columbia asserts that the technical conference ODEC and O&R have requested is not warranted, arguing that it has provided all of the information necessary to determine whether the costs were prudently incurred.

Discussion

25. The parties have raised a number of significant issues concerning whether Columbia's filing is just and reasonable and is otherwise lawful. The Commission requires additional time to consider those issues. Accordingly, the Commission accepts and suspends the tariff sheets listed in footnotes 1 and 2, effective January 1, 2010, subject to refund and further order of the Commission, except for Fifth Revised Sheet No. 30 in footnote 1, which is rejected as moot since it has been replaced by Substitute Fifth Revised Sheet No. 30 listed in footnote 2.

Suspension

26. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts and suspends the tariff sheets as listed below subject to refund effective January 1, 2010, and further order of the Commission.

27. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). The Commission does not find such results here where the pipeline has proposed a special surcharge to recover costs incurred to obtain service on other pipelines. Therefore, the Commission will accept and suspend the proposed tariff sheets to be effective January 1, 2010, subject to refund and further review by the Commission.

The Commission orders:

The Commission accepts and suspends the tariff sheets listed in footnotes 1 and 2 effective January 1, 2010, subject to refund and further order of the Commission, except for Fifth Revised Sheet No. 30 in footnote 1, which is rejected as moot since it has been replaced by Substitute Fifth Revised Sheet No. 30 listed in footnote 2.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.