131 FERC ¶ 61,093
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC — Docket No. RP10-577-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued April 30, 2010)

1. On April 1, 2010, Columbia Gas Transmission, LLC (Columbia Gas) filed revised tariff sheets[1] with a proposed effective date of May 1, 2010. Specifically, Columbia Gas proposes to: (1) revise section 48 of the General Terms and Conditions (GT&C) of its tariff clarifying its obligations with respect to offsystem capacity; (2) revise GT&C section 4.2(i) to clarify that Columbia Gas may reserve capacity for projects to be constructed under its blanket prior notice certificate authority; (3) revise GT&C section 4.1(b)(2) to clarify Columbia Gas' right to renegotiate the terms of service agreements with shippers; and (4) revise Columbia Gas' form of service agreements to provide additional contracting flexibility under Rate Schedule GTS. The tariff sheets in footnote no. 1 are conditionally accepted effective May 1, 2010, subject to Columbia Gas filing revised tariff sheets, as discussed below.

I. Background

A. Proposed Revisions to Section 48 of the GT&C

2. Section 48 of Columbia Gas' GT&C provides that Columbia Gas may acquire offsystem capacity "to provide service to Transporter's shippers under its FERC Gas Tariff." In this filing, Columbia Gas proposes to revise GT&C section 48 to clarify its

[1] First Revised Sheet No. 278, First Revised Sheet No. 282, First Revised Sheet No. 401, Second Revised Sheet No. 500, First Revised Sheet No. 505, First Revised Sheet No. 507, First Revised Sheet No. 510, First Revised Sheet No. 514, and First Revised Sheet No. 517 to FERC Gas Tariff, Third Revised Volume No. 1.

obligations when it acquires offsystem capacity on third-party pipelines. First, Columbia Gas proposes to clarify that it can acquire capacity on third-party pipelines for three primary reasons: (1) for operation reasons, such as to provide additional operational flexibility to existing shippers; (2) to meet existing firm service commitments, for example when Columbia Gas has outages resulting from construction; or (3) to provide additional firm service to shippers under Columbia Gas' tariff.

3. Second, Columbia Gas proposes to clarify GT&C section 48 that, when off-system capacity is not required for operational purposes or to meet firm service commitments, it will offer the off-system capacity to shippers on a primary firm basis. It asserts that this proposal is consistent with previous Commission directives.[2] Third, Columbia Gas proposes to clarify that section 48 does not preclude Columbia Gas from releasing any capacity it holds on third-party pipelines pursuant to the Commission's capacity release program.

4. Fourth, Columbia Gas requests authority to limit any applicable right of first refusal (ROFR) on capacity offered to shippers on a primary firm basis if Columbia Gas determines that it will require additional off-system capacity for operational reasons or to meet existing or new firm service commitments. Columbia Gas states that such a restriction is consistent with the Commission's previous acceptance of its proposal to impose a one-year term limitation on the Millennium Pipeline Company, LLC (Millennium) capacity offered to shippers on a primary firm basis, providing an opportunity to evaluate the operational need for that capacity.[3] Columbia Gas contends that no shipper will be burdened by this limitation and that permitting it to limit the quantity of capacity subject to a ROFR "will result in the most efficient use of offsystem capacity and minimize the cost to shippers."[4]

5. Columbia Gas' filing also addresses several issues concerning its recovery of its costs of acquiring off-system capacity on third-party pipelines. Section 36 of Columbia Gas' GT&C currently provides for recovery of "Operational 858 costs" through a tracking mechanism. Section 36.1(a) defines Operational 858 costs as "costs incurred for the transmission and compression of gas by others . . . including amounts paid to upstream pipelines for contracts retained as a result of Transporter's Order No. 636

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[2] Columbia Gas Transmittal Letter at 3 (citing *Columbia Gas Transmission, LLC*, 126 FERC ¶ 61,319, at P 19 (2009)).

[3] *Id.* at 4 (citing *Columbia Gas Transmission, LLC*, 128 FERC ¶ 61,071, at P 20 (2009)).

[4] *Id.*

restructuring, or utilized in Transporter's post-restructuring operations." Section 36.2 requires Columbia Gas to make an annual Transportation Costs Rate Adjustment (TCRA) rate filing on or before March 1 of each year to be effective April 1. The TCRA rates include two components: (1) the "Current Operational TCRA Rate," which recovers Operational 858 costs Columbia Gas projects it will incur during the April to March annual period the TCRA rate will be in effect, and (2) the "Operational TCRA Surcharge," which trues up over- and under-recoveries during the preceding calendar year. Section 36.4(a)(1) and (2) of the GT&C provides that each component of the TCRA rates shall be allocated to the applicable rate schedules "on an as-billed basis and in a manner consistent with Transporter's currently effective cost allocation and rate design."

6. Columbia Gas proposes to add a new Section 48.3 to the GT&C to clarify that penalties incurred under offsystem capacity contracts will not be eligible for recovery under the TCRA. Specifically, Columbia Gas proposes that, "if a shipper to whom Columbia Gas has sold offsystem capacity on a primary firm basis incurs penalties on the offsystem pipeline associated with that shipper's use of that capacity, Columbia Gas will directly assign the cost of such penalties to that shipper."[5] Columbia Gas contends that because the shipper (as opposed to Columbia Gas) has control over whether the capacity is utilized in accordance with the off-system pipeline's tariff, the shipper should be responsible for any penalties incurred. Columbia Gas also asserts that it would be unreasonable for it to absorb these costs, nor should they be borne by all shippers through the TCRA.[6]

7. Finally, in its transmittal letter, Columbia Gas clarifies that the revisions are not intended to affect how Columbia Gas recovers the costs of off-system capacity or affect the standards to be used by the Commission in determining whether recovery of particular costs is just and reasonable. Columbia Gas states that currently its recovery of these costs is governed by its TCRA and it recognizes that mechanisms, such as the TCRA do not guarantee the right to recovery of any such costs.[7]

B. Other Proposed Tariff Revisions

8. Section 4.2(i) of the GT&C permits Columbia Gas to reserve capacity for projects completed pursuant to authorization under section 7(c) of the Natural Gas Act (NGA).

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[5] *Id.*

[6] *See id.* at 5.

[7] *Id.*

Columbia Gas proposes to amend this section to cover projects that do not require a section 7(c) filing and are instead undertaken under prior notice authorization. Columbia Gas states that it will still offer any capacity to shippers before reserving it, will provide notice, and the reserved capacity will continue to be available to shippers in the interim before the in-service date of the expansion project.[8] Columbia Gas notes that the Commission has previously approved a similar change for Columbia Gulf Transmission Company.[9]

9. Section 4.1(b)(2) of the GT&C provides for the right to renegotiate service agreements. Columbia Gas proposes to clarify that Columbia Gas and a shipper may mutually agree to renegotiate the terms of multiple service agreements, along with a clarification that "the initiation of the right of first refusal procedure" is the date by which Columbia Gas must post capacity subject to a ROFR auction, pursuant to section 4.1(c)(3) of the GT&C. Columbia Gas contends that these changes will permit greater flexibility, as well as certainty during the contract negotiation process.[10]

10. Finally, Columbia Gas proposes to revise the term language applicable to Rate Schedule GTS to allow these service agreements to continue from year to year after the primary term unless terminated by either Columbia Gas or the shipper upon six months' prior notice. Columbia Gas asserts that this will ensure that the evergreen provisions do not qualify as non-conforming contracts by making this right explicit in the service agreements.[11] Columbia Gas also states that this revision is consistent with Commission policy.[12]

II. <u>Public Notice, Intervention and Comments</u>

11. Public notice of Docket No. RP10-577-000 was issued on April 5, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2009). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely filed motions to intervene and all motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage

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[8] *See id.* at 6.

[9] *See id.* (*citing Columbia Gulf Transmission Co.,* unpublished letter order issued July 8, 2009 in Docket No. RP09-768).

[10] *See* Transmittal Letter at 7.

[11] *See id.*

[12] *See id.* at 7 (citing *Texas Gas Transmission, LLC*, 122 FERC ¶ 61,185 (2008)).

of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

12. Protests were filed by Piedmont Natural Gas Company, Inc. (Piedmont); Orange and Rockland Utilities, Inc. (O&R); Washington Gas Light Company (Washington Gas); Chevron U.S.A., Inc., Hess Corporation, and Interstate Gas Supply, Inc. (Indicated Shippers); the City of Charlottesville, Virginia and the City of Richmond, Virginia (Cities); The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Boston Gas Company, Colonial Gas Company, Essex Gas Company, EnergyNorth Natural Gas Inc., d/b/a National Grid NH, Niagara Mohawk Power Corporation d/b/a National Grid, and the Narragansett Electric Company d/b/a National Grid (National Grid) and Baltimore Gas and Electric Company (BGE).

13. On April 20, 2010, Columbia Gas filed an answer to the protests. While the Commission's regulations do not permit the filing of answers to protests,[13] the Commission will accept the answer because it provides additional information which aids in our decision making process.

III. Discussion

14. The Commission finds that Columbia Gas' proposed tariff revisions referenced in footnote no. 1 are generally consistent with Commission policy. Accordingly, the Commission accepts Columbia Gas' revised tariff sheets to be effective May 1, 2010, subject to the conditions discussed below.

A. Authorization to Purchase Off-system Capacity

15. All the protestors raise concerns with Columbia Gas' proposal to revise section 48 of the GT&C to clarify that it can acquire capacity on third-party pipelines for three primary reasons: (1) for operation reasons, such as to provide additional operational flexibility to existing shippers; (2) to meet existing firm service commitments, for example when Columbia Gas has outages resulting from construction; or (3) to provide additional firm service to shippers under Columbia Gas' tariff. For the reasons discussed below, the Commission accepts this proposal, subject to the condition that Columbia Gas revise its tariff to clarify that it will request Commission authorization before acquiring any capacity for the primary purpose of providing additional firm service to shippers.

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[13] 18 C.F.R. § 385.213 (2009).

1. **Protests**

16. The protestors are primarily concerned with the interaction between Columbia Gas' TCRA and its proposed authorization to acquire off-system capacity to provide additional firm service.[14]

17. Multiple protestors contend that permitting Columbia Gas to acquire capacity on third-party pipelines to provide additional firm service to shippers under Columbia Gas' tariff conflicts with the Commission's *Texas Eastern Transmission Corp.*[15] policy concerning pipeline acquisition of capacity on other pipelines. BGE, for example, asserts that, while *Texas Eastern* held that pipelines would not need case-specific authorization each time they acquire capacity on another pipeline, the Commission "made it clear that offsystem capacity costs incurred solely for marketing purposes are not automatic flow-through costs, but that instead 'pipelines will be at-risk for any unrecovered costs associated with such an acquisition."[16] However, Columbia Gas' TCRA authorizes it to flow through all such costs through a tracking and true-up mechanism. Piedmont and Washington Gas similarly express concerns that contrary to *Texas Eastern*, under Columbia Gas' proposal the financial risk of any offsystem capacity acquired under revised section 48 may be passed through to shippers that currently pay the TCRA charge.[17]

18. Cities contends that the proposal would permit Columbia Gas to include costs in the TCRA incurred to acquire capacity for the sole purpose of remarketing it.[18] Cities and Piedmont take issue with the potential requirement to protest these types of costs

[14] *See, e.g.,* Washington Gas Protest at 2.

[15] 93 FERC ¶ 61,273, at 61,886 (2000), *reh'g*, 94 FERC ¶ 61,139 (2001), *reh'g*, 95 FERC ¶ 61,056 (2001).

[16] BGE Protest at 5 (citing *Texas Eastern Transmission Corp.* 93 FERC ¶ 61,273, at 61,882).

[17] *See* Piedmont Protest at 3; *see also* Washington Gas Protest at 3. Washington Gas also contends that this filing is distinguishable from a similar filing made by Columbia Gas' affiliated pipeline (Millennium) because Millennium's tariff does not include a provision that permits the pipeline to recover the costs of off-system capacity acquisitions from all of its customers on a rolled-in basis. *See BGE Protest* at 4.

[18] *See* Cities Protest at 4.

included in each annual tracking filing and the burden of demonstrating that the costs are unjust unreasonable and unduly discriminatory.[19]

19. Washington Gas and National Grid raise concerns that the proposed revisions would allow the pipeline to deviate from the Commission's incremental pricing policy, which requires a pipeline that proposes to expand its service offerings to price that expansion capacity on an incremental basis, assuming the cost of the new capacity is higher than that of the existing capacity.[20] They point out that Columbia Gas' TCRA authorizes it to recover the costs of off-system capacity on a rolled-in basis, because it provides for such costs to be allocated among all current shippers on Columbia Gas. Washington Gas asserts that if new customers are allowed to pay rolled-in rates and the cost of the offsystem capacity were allowed to be rolled-in to the rates of all Columbia Gas customers consistent with Section 36 of the GT&C, then Columbia Gas and the new customer could effectively avoid the incremental pricing requirements. Washington Gas contends that this result could be avoided if Columbia Gas amends its TCRA and rate schedules to require it to incrementally price the cost of offsystem capacity to a new customer.[21] National Grid similarly requests that the Commission require Columbia Gas and/or any customer that obtains incremental service when Columbia Gas purchases offsystem capacity to serve incremental demand, to bear the costs of such capacity.[22]

20. Washington Gas contends that if Columbia Gas acquires offsystem, affiliated pipeline capacity it could result in the customers of one pipeline reducing or eliminating losses on an affiliated pipeline. Washington Gas asserts that with these proposed revisions, Columbia Gas could acquire capacity on its affiliates, release it to others on a discounted basis, yet remain financially whole through recovery of any unrecovered demand charges via the TCRA.[23]

21. Washington Gas indicates that it would not object to Columbia Gas being permitted to seek, on a case-by-case basis, the long-term acquisition of offsystem capacity, provided that cost recovery, tracking, and operational issues are considered in

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[19] *See id.; see also* Piedmont Protest at 3.

[20] *See* Washington Gas Protest at 4 (citing *Certification of New Interstate Natural Gas Pipeline Facilities*, Statement of Policy, 88 FERC ¶ 61,227 (1999)).

[21] *See id.* at 5.

[22] *See* National Grid Requests for Clarification and Conditions at 4.

[23] *Id.* at 5-6.

advance of the acquisition.[24] Piedmont similarly requests that if the Commission approves this proposal that Columbia Gas should be required to include in the TCRA filings a report that segregates any offsystem capacity that was acquired for the benefit of new shippers.[25] Cities requests that if the Commission accepts the proposed revisions it should condition the acceptance on the requirement that Columbia Gas amend its tariff to state that if it acquires offsystem capacity for reasons other than to meet specific operational needs or existing firm service commitments, the costs of such capacity would not be recoverable under the TCRA mechanism.[26]

22. No party raised concerns with Columbia Gas acquiring capacity on third-party pipelines for operational reasons. However, O&R is concerned that the phrase "meet existing or new service commitments" is vague and could be read to include capacity acquisitions that are not limited to service on the Columbia Gas system.[27] O&R also contends that permitting the acquiring of this type of off-system capacity could permit "double recovery."[28]

23. National Grid requests clarification that Columbia Gas will have a duty to purchase incremental capacity on third-party pipelines to meet existing firm commitments when it experiences *force majeure* circumstances.[29] National Grid contends that such a requirement would prevent future firm service outages.

2. Answer

24. In its answer, Columbia Gas agrees to seek Commission authorization prior to entering into any new off-system contracts that will be used primarily for the purpose of meeting new firm service demands so that all parties can review and comment on the

[24] *See* Washington Gas Protest at 6.

[25] *See* Piedmont Protest at 3.

[26] *See* Cities Protest a 5.

[27] O&R Protest at 4.

[28] O&R contends in its protest at 4-5 and n. 1, that Columbia Gas is engaging in double recovery concerning the crediting of Columbia Gas' revenue from sales of Millennium capacity against its TCRA costs. We find that this issue is beyond the scope of this proceeding and should be addressed in the form of a request for rehearing of the Commission's determination in Docket No. RP10-401-000.

[29] *See* National Grid Requests for Clarification and Conditions at 5.

proposed contracts.[30] Columbia Gas notes that Commission policy generally permits pipelines to acquire off-system capacity without seeking prior Commission approval.[31] Columbia Gas, however, conceded that the situation involving its pipeline is unique because it has a mechanism to recover off-system capacity costs without filing a general rate case under section 4 of the NGA.[32]

25. Columbia Gas contends that seeking Commission authorization prior to entering potentially long term agreements for off-system capacity is beneficial to the pipeline and its customers. Furthermore, Columbia Gas believes that this solution will adequately address most shipper concerns associated with bearing additional costs from these off-system opportunities.[33] Columbia Gas believes that this case-by-case approach is a better approach then imposing blanket restrictions on Columbia Gas' ability to acquire off-system capacity.

26. Columbia Gas, however, asserts that it should not be required to seek prior Commission authorization for off-system capacity acquired for operation reasons or to meet existing firm service commitments.[34] Columbia Gas contends that in these situations, pre-authorization would "unreasonably slow the process down and the opportunities to manage the system and prevent firm service curtailments could be compromised."[35] Columbia Gas believes this approach is consistent with the approach suggested by Washington Gas. Finally, Columbia Gas encourages the Commission to reject National Grid's proposal to impose an obligation on Columbia Gas to purchase off-system capacity to minimize firm service disruptions because contracting for off-system capacity may not always be the most efficient method of responding to firm service outages.[36] Columbia Gas affirms that it will contract for such capacity in a not unduly discriminatory manner.[37]

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[30] *See* Columbia Gas Answer at 3.

[31] *See id.* (citing *Texas Eastern Transmission Corporation*, 93 FERC ¶ 61,273 (2000)).

[32] *See id.*

[33] *See id.* at 4.

[34] *See id.* at 5.

[35] *Id.*

[36] *See id.* at 6.

[37] *See id.* at 7.

3. Determination

27. In *Texas Eastern*, the Commission found that pipelines no longer need to obtain case-by-case approval prior to acquiring capacity on another pipeline (off-system capacity), provided that the acquiring pipeline agrees to be at-risk for any unrecovered costs associated with acquiring the capacity.[38] The Commission also required that a pipeline desiring to acquire off-system capacity include in its tariff a statement that it will only transport for others on off-system capacity pursuant to its existing open access tariff and rates.[39] The Commission stated that, upon the pipeline filing such tariff language, it would grant a generic waiver of the shipper must have title policy for any such transportation the pipeline subsequently provides.

28. As the Commission made clear in *Texas Eastern*, an essential predicate for permitting pipelines to acquire off-system capacity for sale to others without case-by-case prior approval is that the pipeline is at risk for the costs of that capacity. The Commission explained:

> Pipelines seeking to recover the costs of the acquisition will have to justify inclusion of the costs in a Section 4 rate filing where it will be examined like any other cost item. The at-risk condition allows a pipeline to proceed with a potentially beneficial acquisition without the delays inherent in the extensive review required by . . . [our prior policy], while at the same time protecting its ratepayers from the financial burden of paying for unneeded capacity. It also puts pipelines on a more equal footing with other capacity holders who are effectively at-risk.[40]

29. As Columbia Gas recognizes in its answer, its ability to recover off-system capacity costs through the TCRA mechanism means that it is not at risk for recovery of its costs of acquiring off-system capacity in the manner contemplated by our *Texas Eastern* policy. The TCRA allows Columbia Gas to flow through the costs of any prudently incurred off-system capacity costs, without filing a general section 4 rate case. It also includes a true-up mechanism allowing any such costs not recovered in one year to be recovered in the next year.

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[38] *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273.

[39] *Texas Eastern Transmission Corp.*, 95 FERC ¶ 61,056, at 61,140 (2001).

[40] *Texas Eastern Transmission Corp.*, 93 FERC at 61,886.

30. In light of this fact, Columbia Gas has agreed in its answer to revise its proposal so as to require that it obtain Commission authorization before obtaining any new off-system capacity contract to be used primarily for meeting new firm service demands. This will enable all parties to review and comment on the proposed contracts and how Columbia Gas shall be permitted to recover the costs of those contracts. The Commission will therefore direct Columbia Gas to file a revised Tariff Sheet No. 401 expressly stating that any such contracts will be subject to Commission authorization prior to being entered into. We believe that this condition will promote greater transparency with respect to these acquisitions, as well as address the concerns of the majority of the protestors.[41]

31. The Commission is not persuaded that it would be appropriate to subject off-system capacity used for operational reasons or to meet existing service commitments to such a pre-authorization requirement.[42] The Commission has previously recognized the benefits of Columbia Gas acquiring off-system capacity when required for operational reasons,[43] as well as to meet existing firm service commitments.[44] Columbia Gas' existing tariff authorizes it to acquire capacity on other pipelines for these purposes without obtaining prior authorization from the Commission, and the protesters have not justified modifying that authorization pursuant to section 5 of the NGA. The Commission agrees with Columbia Gas that requiring pre-authorization for all such acquisitions could prevent Columbia Gas from managing its system efficiently and preventing firm curtailments. Finally, we agree with Columbia Gas that imposing an

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[41] Protestors concerns that the proposed revisions would allow the pipeline to deviate from the Commission's incremental pricing policy, which requires a pipeline that proposes to expand its service offerings to price that expansion capacity on an incremental basis, assuming the cost of the new capacity is higher than that of the existing capacity should be brought forth when the Commission considers authorizing a specific offsystem capacity contract. The Commission does not believe a blanket ruling on this issue should be made at this time.

[42] We note that no parties raise concerns with Columbia Gas acquiring capacity on third-party pipelines for operational reasons and only one party raises concerns with acquiring capacity on third-party pipelines to meet existing service commitments.

[43] *See, e.g., Columbia Gas Transmission Corp.,* 93 FERC ¶ 61,064, at 61,176 (2000) (granting Columbia's request for authorization to acquire capacity on two other pipelines as a substitute for replacing, at a much greater cost, two deteriorated and unsafe lines on its system).

[44] *See, e.g., Columbia Gas Transmission, LLC,* 126 FERC ¶ 61,319, at P 5, P 19 (2009).

obligation on Columbia Gas to purchase off-system capacity to minimize firm service disruptions could unreasonably limit the potential options that Columbia Gas should have in responding to firm service outages.

B. Making Off-system Capacity Available to Shippers

32. Cities protests Columbia Gas' proposal to clarify that when it does not need the off-system capacity for operational reasons or to meet firm service commitments, it will offer that capacity to shippers on a primary firm basis. Cities points out that section 36(b) of Columbia Gas' GT&C requires that it credit amounts received through the release of capacity on upstream pipelines against the off-system capacity costs to be recovered through its TCRA.[45] Thus, Cities is concerned that Columbia Gas' proposal to offer to sell such capacity under its own tariff, rather than releasing the capacity under the capacity release program, will enable Columbia Gas to avoid the requirement to credit capacity release revenue. Cities requests that the Commission require Columbia Gas to revise Section 48.1 to "provide that when off-system capacity is not required for operational reasons or to meet firm service commitments, Columbia Gas will release the capacity if, and if and only if it is not able to successfully release the capacity it will offer to sell it to on-system customers."[46] Cities contends that such a requirement will ensure that off-system capacity does not remain idle.

33. In its answer, Columbia Gas asserts that Cities arguments should be rejected because they contradict the Commission's recognition that off-system capacity is often a more cost-effective measure of providing additional firm service then constructing new facilities.[47] Columbia Gas contends that such a proposed requirement would require Columbia Gas to undertake costly construction in lieu of contracting for idled off-system capacity. Therefore, Columbia Gas requests that it not be required to release off-system capacity rather than offering it to shippers on a primary firm basis.

34. The Commission rejects Cities protest. The Commission has previously required Columbia Gas to sell capacity obtained for operational uses on a primary firm basis to shippers when not needed for operational purposes.[48] In this filing, Columbia Gas has proposed tariff language to clarify that it may also release such capacity. As discussed in

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[45] Cities Protest at 5-6.

[46] *Id.* at 6.

[47] *See* Columbia Gas Answer at 8.

[48] *See Columbia Gas Transmission Corp.*, 126 FERC ¶ 61,319, at P 19 (2009).

the next section, it is consistent with Commission policy to permit pipelines acquiring off-system capacity to release that capacity pursuant to the Commission's § 284.8 capacity release regulations and the provisions of the off-system pipeline's tariff in the same manner as any other holder of capacity on the off-system pipeline. However, nothing in the Commission's capacity release regulations requires a shipper to release its capacity when it is not using that capacity. If Columbia Gas does not release off-system capacity, then, as the Commission has already required, it must offer such capacity for sale under its own open access tariff to the extent such is not needed for the operational purpose for which it was acquired or to meet the existing firm obligations.[49] The additional billing determinants resulting from such sales would be reflected in the design of Columbia Gas' TCRA rates, thus reducing Columbia Gas' per unit charges under its TCRA. In addition, the revenues from such sales would be reflected in the true-up component of the TCRA. Thus, any such capacity sales by Columbia Gas should benefit Columbia Gas' other shippers in a similar manner to any release of such capacity. Therefore, we are not persuaded to direct Columbia Gas to revise its tariff as Cities proposes.

C. Release of Off-system Capacity

35. The Indicated Shippers protest Columbia Gas' proposal to clarify that it can release any capacity it holds on a third-party pipeline under the capacity release program. Indicated Shippers express concern with the fact that Columbia Gas' proposal is silent as to whether it would intend to release off-system capacity at a rate above the applicable tariff rate if market circumstances permit.[50] The Indicated Shippers contend that this filing raises concerns with the Commission's determination in Order No. 712 to amend Section 284.8 of the regulations to eliminate the price ceiling for short-term capacity release transactions for one year or less.[51] The Indicated Shippers request that to ensure that pipelines have no incentive to acquire off-system capacity for the primary purpose of releasing it at a higher rate, the Commission should not permit the pipeline to sell the off-system capacity at any more than the lesser of its own rate or the rate of the third-party pipeline from which it acquired the capacity.[52]

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[49] *See id.*

[50] Indicated Shippers Protest and Request for Technical Conference at 3.

[51] *See id.* (citing *Promotion of a More Efficient Capacity Release Market*, FERC Stats. & Regs. ¶ 31,271 (2008)).

[52] *Id.* at 5.

36. Columbia Gas argues in its answer that the Commission has previously rejected the Indicated Shippers' argument that Columbia Gas should not be permitted to release capacity at higher than maximum rates.[53] Columbia Gas also contends that the concern that Columbia Gas will acquire off-system capacity solely for the purpose of releasing that capacity at a higher rate is unfounded.[54]

37. The Commission adopted its *Texas Eastern* policy during the two year experimental lifting of the price cap on short term capacity releases initiated by Order No. 637. In *Texas Eastern*,[55] the Commission held that when a pipeline acquires capacity on another pipeline, the acquiring pipeline should be permitted to release the capacity pursuant to the off-system pipeline's tariff. In such circumstances, it is similarly situated to other shippers on the off-system pipeline and thus should be permitted to make short-term releases with no rate cap. The Commission reached the same conclusion in an order concerning Columbia Gas.[56] Indicated Shippers has provided no reason why we should reach a different result with respect to Order No. 712's removal of the price cap for short-term capacity release. Moreover, as discussed above, Columbia Gas' TCRA mechanism requires it to credit capacity release revenues to its shippers. It follows that, if Columbia Gas does make short-term releases at above the maximum rate, those releases will benefit Columbia Gas' shippers. Therefore, consistent with our precedent, we will deny Indicated Shippers' objections to allowing Columbia Gas to release upstream capacity under their filed proposal.

D. <u>Direct Assignment of Penalties</u>

38. Columbia Gas proposes to add a new Section 48.3 to the GT&C, regarding the treatment of penalties incurred under off-system capacity contracts. Columbia Gas contends that it should be permitted to directly assign the costs of penalties incurred under off-system capacity contracts to shippers.

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[53] *See* Columbia Answer at 10 (citing *Columbia Gas Transmission Corp.*, 96 FERC ¶ 61,028, at 61,074-75 (2001)).

[54] *See id.* at 10.

[55] *Texas Eastern*, 93 FERC at 61,530.

[56] *Columbia Gas Transmission Corp.*, 96 FERC ¶ 61,028, at 61,074-75 (2001).

1. **Protests**

39. The Indicated Shippers contend that the proposal raises issues concerning the principle that the penalty should be incurred by the shipper in a position, through its conduct, to control the conduct giving rise to the penalty.[57] They raise concerns that the proposal could shift responsibility away from the responsible party, Columbia Gas, to Columbia Gas' shippers, who would have less ability to avoid the incurrence of the penalty on the third party pipeline. Specifically, they are concerned with the potential that "a pass-through of the third-party pipeline penalties would contravene the principle that penalties should be imposed on the responsible party."[58] The Indicated Shippers request that the Commission require Columbia Gas to submit additional information to allow for a complete evaluation of this proposal to pass through penalties, specifically information on how Columbia Gas would identify the shipper(s) to which it would pass through the penalty, or how the mechanism would operate.[59] Furthermore, if the Commission, permits this proposal, the Indicated Shippers request that it ensure that the shipper incur penalties only once for the same conduct.[60] Finally, the Indicated Shippers propose that the Commission convene a technical conference on this issue.[61]

2. **Answer**

40. In its answer, Columbia Gas clarified that it is only proposing to pass through penalties in circumstances where the shipper (not Columbia Gas) has control over the nomination and scheduling under the contract.[62] Columbia Gas agreed to provide shippers with adequate documentation for penalty pass-through, as well as granting the shipper the ability to challenge the imposition of the penalty directly with the third-party pipeline. Columbia Gas agrees with the Indicated Shippers' request clarification "that

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[57] Indicated Shippers Protest and Request for Technical Conference at 6.

[58] *Id.* at 7.

[59] *See id.* at 8.

[60] *See id.* at 9 (citing *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,267, at P 69 (2007) (finding that pipelines are prohibited from applying multiple penalties for the same infraction)).

[61] Id. at 8.

[62] *See* Columbia Gas Answer at 11.

shippers cannot be penalized twice for the same conduct."[63] Finally, Columbia Gas states that the requested technical conference is unwarranted.

3. **Determination**

41. The Commission will accept Columbia Gas' proposal, subject to Columbia Gas revising its tariff consistent with its answer. Columbia Gas is directed to revise its tariff to indicate that it will directly assign the costs of penalties incurred under off-system capacity contracts to shippers only when the shipper has control over nomination and scheduling. Additionally, we will require Columbia Gas to provide adequate documentation for penalty pass-through. We will also require that Columbia Gas permit shippers to have the opportunity to challenge the imposition of penalties occurred as a result of this tariff provision on a case-by-case basis. Finally, the Commission reaffirms the holding that pipelines are prohibited from applying multiple penalties for the same infraction[64] and finds that a technical conference on this issue is unwarranted.

E. **Renegotiation of Multiple Service Agreements**

42. Columbia Gas proposes to clarify section 4.1(b)(2) of the GT&C to permit Columbia Gas and a shipper to mutually agree to renegotiate the terms of multiple service agreements. Columbia Gas asserts that this change is consistent with the purpose of the provision, which is to allow the parties to have the flexibility to change service agreements.

1. **Protests**

43. The Indicated Shippers contend that the Commission should impose appropriate safeguards on this proposal. They request that the Commission clarify that authorization to renegotiate multiple service agreements as a single package must be at the shipper's request. The Indicated Shippers contend that absent such a clarification this provision could enable Columbia Gas to compel a shipper to extend a capacity for unwarranted capacity in order to retain desired capacity.[65]

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[63] Columbia Gas Answer at 12.

[64] *Columbia Gas Transmission Corp.*, 100 FERC ¶ 61,084, at P 201 (2002).

[65] Indicated Shippers Protest and Request for Technical Conference at 10.

2. **Answer**

44. Columbia Gas in its answer affirmed that any renegotiation of contracts will be through an arms-length negotiation and by the mutual agreement of the shipper.[66] Columbia Gas states that the purpose of the proposed revision is to clarify that shippers can renegotiate the terms of multiple service agreements at the same time.[67]

3. **Determination**

45. The Commission has approved tariff provisions permitting a pipeline and a shipper to mutually agree to an extension of the term of a service agreement before expiration of the agreement and before posting the capacity under the pipeline's ROFR provisions.[68] After reviewing the filing and the Indicated Shippers' protest, we find that permitting the parties to renegotiate the terms of multiple service agreements is just and reasonable. We will clarify, however, that such negotiations must be entered into freely by both Columbia Gas and the shippers. Furthermore, such a proposal should not be used as a process to enable one party to compel another party to accept unwanted capacity in order to retain desired capacity.

F. **Filing Requirement for Off-system Capacity Acquisitions**

46. In its protest, Washington Gas states that it would not be opposed to allowing Columbia Gas to acquire off-system capacity for a term of one year or less in response to specific circumstances.[69] Washington Gas requests that the Commission require Columbia Gas to discuss and support such an acquisition in a subsequent TCRA filing, along with requiring a full report of such an acquisition in the next subsequent TCRA filing.

47. As discussed above, we are requiring Columbia Gas to revise its proposal so as to require that it obtain Commission authorization before obtaining any new off-system capacity contract to be used primarily for meeting new firm service demands. Because

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[66] *See* Columbia Gas Answer at 12-13.

[67] *See id.*

[68] *See Tennessee Gas Pipeline Co.*, 119 FERC ¶ 61,126 (2007); *Northern Natural Gas Co.*, 118 FERC ¶ 61,053 (2007); *ANR Pipeline Co.*, 116 FERC ¶ 61,201 (2006); and *Texas Eastern Transmission LP*, 112 FERC ¶ 61,235 (2005).

[69] *See* Washington Gas Protest at 6.

such off-system capacity acquisitions will be approved on a case-by-case basis, there is not need to require Columbia Gas to support such acquisitions in its annual TCRA filings, With respect to other off-system capacity acquisitions, Washington Gas is in essence asking the Commission to require Columbia Gas to undergo the same reporting and filing requirement, as it proposed in response to the Millennium capacity issue in Columbia Gas' 2009 TCRA filing.[70] At this time, we are not persuaded to extend such a requirement to all future off-system capacity acquisitions. The Commission, however, will evaluate future TCRA filings and will continue to have the discretion to require further reporting, if needed.

G. <u>Other Matters</u>

1. <u>Reserved Capacity</u>

48. The Commission has reviewed Columbia Gas' proposal to reserve capacity for projects completed as part of Prior Notice Expansion Projects. No party objected to this proposal. Further, the Commission determines that this proposal is just and reasonable and should become effective May 1, 2010, as proposed.

2. <u>Evergreen Provision</u>

49. The Commission has reviewed Columbia Gas' proposal to revise the term language applicable to Rate Schedule GTS to allow these service agreements to continue from year to year after the primary term unless terminated by Columbia Gas or the shipper upon six months' prior notice. No party objected to this proposal. Further, the Commission finds that this revision is consistent with Commission policy and should become effective May 1, 2010, as proposed.[71]

3. <u>Limitations on ROFR for Off-system Capacity</u>

50. The Commission has reviewed Columbia Gas' request for authority to limit the amount of off-system capacity that may be subject to a regulatory ROFR to the extent Columbia Gas' operational needs change. No party objected to this proposal. Further,

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[70] *See Columbia Gas Transmission, LLC,* 128 FERC ¶ 61,071, at P 20 (2009).

[71] *See Texas Gas Transmission, LLC*, 122 FERC ¶ 61,185 (2008); *see also Questar Southern Trails Pipeline Co.*, 130 FERC ¶ 61,234, at P 7 (2010) (requiring the pipeline to either offer the evergreen provision to all of its similarly situated shippers by revising its tariff to include this option as part of the FT *pro forma* service agreement, or renegotiate an agreement without the impermissible non-conforming language).

the Commission finds that this revision is consistent with Commission policy and should become effective May 1, 2010, as proposed.[72]

<u>The Commission orders</u>:

(A) The tariff sheets listed in footnote no. 1 are conditionally accepted to become effective May 1, 2010, as proposed.

(B) Columbia Gas is hereby directed to submit a compliance filing with revised tariff sheets, within 30 days of the date of this order consistent with the discussion above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[72] *See Columbia Gas Transmission, LLC*, 128 FERC ¶ 61,071, at P 20 (2009).