149 FERC ¶ 61,092
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 31, 2014

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP15-6-000

Columbia Gas Transmission, LLC
5151 San Felipe
Suite 2400
Houston, Texas 77056

Attention: James R. Downs, Vice President
Rates and Regulatory Affairs

Dear Mr. Downs:

1. On October 1, 2104, Columbia Gas Transmission, LLC (Columbia) filed tariff records to revise the penalty provisions of the General Terms and Conditions (GT&C) of its FERC Gas Tariff.[1] Columbia proposes to revise the level of its penalties intended to deter conduct threatening system operations in order to effectively respond to the unpredictable conditions of the natural gas market. As discussed below, we accept the subject tariff records for filing, to be effective November 1, 2014, as proposed.

2. Currently, pursuant to Section 19 of its GT&C,[2] Columbia assesses penalties for: (1) takes in excess of 103 percent of total firm entitlements (TFE) during a Critical Day; (2) a failure to interrupt service; and (3) failure to comply with an operational flow order (OFO). Columbia's currently-effective penalties for such infractions are based on a price per dekatherm (Dth) equal to three times the midpoint of the range of prices reported for "Columbia Gas, Appalachia" as published in *Platts Gas Daily* price survey. In the instant filing, Columbia proposes to modify Sections 19.1, 19.2, and 19.3 of its GT&C to

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[1] Columbia Gas Transmission, LLC, FERC NGA Gas Tariff, Baseline Tariffs, Gen. Terms & Conditions, Penalties, 8.0.0.

[2] Pursuant to section 19.7 of its tariff, Columbia will not impose penalties under section 19 unless a Critical Day has been declared and is in effect on Columbia's system.

institute new penalties which would be the higher of: (1) a price per Dth equal to three times the midpoint of the range of prices reported for "Columbia Gas, Appalachia" as published in *Platts Gas Daily* price survey for all such quantities in excess of its total firm entitlements; or (2) a price per Dth equal to 150 percent of the highest midpoint posting at: (a) MichCon City-gate; (b) Transco, Zone 6 Non-N.Y.; or (c) Texas Eastern, M-2 Receipts.

3. Columbia asserts that while its existing penalty structure is sufficient in many instances, it cannot operate effectively if shippers have an economic incentive to ignore penalties intended to deter shipper conduct threatening system operations. Columbia states that during the past winter it experienced some of the coldest periods in decades and, at times, its current penalty levels were less than the spot price of natural gas and therefore not an effective deterrent. Columbia states that it will only assess the proposed penalties, which are based on MichCon City-gate, Transco, Zone 6 Non-N.Y., or Texas Eastern, M-2 Receipts, on days in which the price of gas at these points is higher than Columbia's currently-effective penalty levels. Columbia maintains that in order for penalties to perform as intended, they must serve as an effective deterrent to behavior that may threaten the operational integrity of Columbia's system. Columbia states that its index-based penalty proposal will accomplish such a result and is consistent with Commission precedent.[3]

4. Columbia states that it currently assesses a TFE penalty if a Shipper's takes on any day exceed 103 percent of its TFE during a Critical Day. Columbia states that its current penalty for a Shipper's failure to interrupt service is based on deliveries to or takes of gas from Transporter in excess of 103 percent of the sum of the lowered Scheduled Daily Receipt Quantity or lowered Scheduled Daily Delivery Quantity under all applicable Rate Schedules set by Transporter's interruption order. Columbia proposes to amend this structure by including a "safe harbor" of 1,000 Dth. Specifically, Columbia proposes

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[3] Columbia Transmittal letter at p.3, *citing*, *Carolina Gas Transmission Corp.*, 148 FERC ¶ 61,186, at PP 17-20 (2014) (approving – over protest – a switch from basing penalty levels on an average of price indices to the relevant market indices. Further, and consistent with Columbia's proposal, the Commission stated, "[g]iven the current increased gas prices experienced last winter and the operational restraints on Carolina's system, Carolina's current penalties may no longer act as a deterrent for actions that might threaten the pipeline's operations."); *See also, Algonquin Gas Transmission LLC*, 115 FERC ¶ 61,067 at 61,200 (2006) (approving the removal of a cap on index-based penalties to ensure that "penalties continue to bear the same proportionate relationship to current gas commodity prices"); *Viking Gas Transmission Co.*, 112 FERC ¶ 61,098 at 61,623-61,624 (2005); *Midwestern Gas Transmission Co.*, 112 FERC ¶ 61,345 at 62,507 (2005); *Guardian Pipeline, LLC,* 113 FERC ¶ 61,086 at 61,332 (2005).

under section 19.1 of its GT&C, that the penalty for excesses of TFE will be based upon the greater of 103 percent of the TFE or 1,000 Dth over the TFE. Under Section 19.2 of its GT&C, if a Shipper fails to interrupt service, the penalty will be the greater of: (1) 103 percent of the sum of the lowered Scheduled Daily Receipt Quantity or lowered Scheduled Daily Delivery Quantity; or (2) 1,000 Dths in excess of such quantities. Columbia contends that its proposed safe harbor tolerance of 1,000 Dths will allow its smaller shippers to manage operational restrictions more efficiently and effectively. Lastly, Columbia points out that penalty revenue collected will be distributed to non-offending shippers in accordance with section 19.6 of the GT&C.

5. Public notice of Columbia's filing was issued on October 2, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[4] Pursuant to Rule 214,[5] all timely filed motions to intervene and any unopposed 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 the proceeding or place additional burdens on existing parties.

6. On October 14, 2014, Indicated Shippers[6] filed comments and Atmos Energy Marketing, LLC (Atmos) filed a protest to the instant filing. On October 20, 2014, Columbia filed an answer. The Commission's Rules of Practice and Procedure do not permit answers to protests unless otherwise ordered by the decisional authority (18 C.F.R. § 385.213(a)(2) (2014)). In this instance, the Commission finds good cause to admit Columbia's answer because it will not delay the proceeding, it assisted the Commission in understanding the issues raised, and it will ensure a complete record. Therefore, for good cause shown, Columbia's answer is accepted.

7. Indicated Shippers state that they do not dispute the need for just and reasonable penalties at levels to deter non-compliance with authorized restrictions and do not challenge the general concept underlying Columbia's proposal to impose penalties based on off-system price indices. However, Indicated Shippers argue that the imposition of a penalty on all shippers system-wide based on a multiple of a single off-system price index is unjust and unreasonable. Indicated Shippers assert that Columbia's proposal fails to reflect the geographic extent of Columbia's system and the differences in off-

[4] 18 C.F.R. § 154.210 (2014).

[5] 18 C.F.R. § 385.214 (2014).

[6] Indicated Shippers are Anadarko Energy Services Company, ConocoPhillips Company, Cross Timbers Energy Services, Inc., Direct Energy Business Marketing, LLC, Interstate Gas Supply, Inc., Noble Energy, Inc., Shell Energy North America (U.S.), L.P. and SWEPI LP.

system markets. In addition, Indicated Shippers argue that exposure to penalties based on off-system price indices to which a contract does not have primary access and to which it is making no attempt to deliver is unjust and unreasonable. Indicated Shippers maintain that the very fact that Columbia has proposed three different indices in three different regions of its system is an implicit acknowledgement that different portions of its system could be affected by different regional markets. Accordingly, Indicated Shippers recommend that the Commission require Columbia to base its off-system price index on the geographic area in which the penalized conduct occurs, based on the relevant Operating Area.[7]

8. Indicated Shippers further recommend that Columbia be required to credit penalty revenues to non-penalized shippers, including replacement shippers. Finally, Indicated Shippers recommend that Columbia be required to establish a provision authorizing it to waive penalties for inadvertent scheduling errors that do not result in operational harm to Columbia's system.

9. Atmos states that it respects Columbia's determination that it needs additional penalty authority to properly manage its pipeline system but maintains that Columbia's proposal is unduly broad and could result in penalties that would be unjust, unreasonable and punitive. Atmos asserts that to apply a penalty based upon the highest of the three indices may be administratively easy, but is inappropriate for a pipeline system that is comprised of 40 market areas spread out over seven states and maintains that such action does not send the appropriate price signals. Atmos states that Columbia's penalties should be appropriately tailored for each of its market areas. Atmos reasons that, if a shipper violated an OFO in an area where natural gas prices were correlated or connected to Transco, Zone 6 Non-N.Y., then that shipper should pay an OFO penalty based on the index price for Transco, Zone 6 Non-N.Y. Atmos, therefore, argues that Columbia should be required to apply the "correct" index price for each of its market areas and not simply use the highest index price. Accordingly, Atmos requests that Columbia's proposal either be rejected or that Columbia be required to tailor the penalties to each of its market areas.

10. In its answer, Columbia argues that its penalty levels are designed to deter shippers from behavior that could disrupt system reliability. Columbia argues that its proposed penalty structure is not overly punitive but reflects the magnitude of risk to system operations and to Columbia's ability to provide reliable services.

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[7] The indices and Operating Areas proposed by Indicated Shippers are:

Michigan-Mich-Con:	Operating Areas 5 and 7
Transco Zone 6 Non-N.Y.:	Operating Areas 1, 2, 4 and 10
Texas Eastern M-2:	Operating Areas 3, 6 and 8

11. With respect to the recommendations that Columbia tie certain indices to specific Operating Areas to determine penalty amounts, Columbia answers that these recommendations ignore the operational realities of its postage-stamp system which has 37 storage fields and interconnects with dozens of other pipelines over a large area. Columbia states that it is impossible for it to determine if, for example, the gas in question came out of a storage field in Ohio versus a storage field in West Virginia. Columbia asserts that because of the way storage is integrated on its system, it cannot verify whether certain activity would only affect one specific Operating Area. Accordingly, Columbia maintains that a penalty cannot be directly tied to an index that is relevant to only one specific Operating Area or geographic region. Moreover, Columbia states that its system interconnects with dozens of other inter- and intra-state pipeline systems, and attempting to determine where a shipper sourced its gas, on any particular day, would merely lead to arguments with those that would have violated the OFO or Critical Day.

12. In regard to Indicated Shippers' recommendation to require Columbia to revise its currently-effective revenue crediting mechanism to include replacement shippers, Columbia states that the Commission has found Section 19.6(c) of its GT&C is just and reasonable and asserts that Indicated Shippers have not met their burden of proving that the section is unjust and unreasonable. Further, with respect to Indicated Shippers' recommendation to add a provision authorizing Columbia to waive penalties for inadvertent scheduling errors that do not result in operational harm, Columbia asserts that a new provision is not necessary because Section 19.5(d) of the GT&C already allows Columbia to waive penalties. Finally, Columbia states that its proposed safe harbor provision provides significant protection against inadvertent errors.

13. The Commission finds that Columbia's proposal is just and reasonable and consistent with the Commission precedent. In the instant filing, Columbia has filed solely to modify the manner in which penalties may be calculated. Because these penalties will be invoked only during a Critical Day, when by definition the system is threatened, and then only if the gas price at the subject points is higher than Columbia's currently-effective penalty levels, the Commission finds that such action is in keeping with the Commission precedent cited by Columbia approving high index-priced penalties to deter conduct that may threaten pipeline operations. Finally, the pipeline lacks an incentive to apply an unreasonably high penalty because it is required to credit the penalty revenues to the non-offending shippers.

14. Indicated Shippers assert that the proposed penalty provisions can diminish competition and throughput to the detriment of Columbia's customers, by causing suppliers to schedule and cut markets if they believe they are at risk of incurring even a small imbalance. The Commission finds that these penalties are reasonable and designed to discourage actions which would threaten reliability and that as such the proposed penalties are consistent with Commission policies. Moreover, Columbia is proposing to

increase its tolerance band before the imposition of the proposed penalties which should mitigate risk of small imbalances.

15. The Commission has stated in prior penalty proceedings that, "[T]he level of penalties necessary to deter the undesirable conduct is a matter of the exercise of reasonable judgment,"[8] and the Commission has previously determined that "pipelines may impose substantial penalties during critical periods."[9] As the Commission previously noted with respect to penalties on the Columbia system, "[T]he Commission's primary concern with respect to penalties such as those at issue here, which only apply to conduct that is harmful to the system, is that the penalties be high enough to act as an effective deterrent to the harmful conduct."[10] Therefore the fact that penalties may be high is important here primarily for the fact that such penalties will more effectively deter undesirable conduct.

16. We find that Columbia could reasonably conclude that its existing penalty level was no longer adequate given its showing that there were instances this past winter where Columbia's current penalty levels were less than the spot price of natural gas.[11] The fact that Columbia proposes to derive its penalties from the indices it has chosen is adequately explained by Columbia and based upon its need to manage a large reticulated system. In view of Columbia's explanation, we will not require a geographical tie between the indices chosen to derive the penalty and the transportation causing the penalty. Accordingly, we find that the level of penalties and the proposed manner of calculation proposed by Columbia to deter impairment of reliable service in this case is reasonable given its explanation of the unpredictable and volatile nature of the gas marketplace and the configuration of its system.

17. Indicated Shippers also assert that section 19.6(c) of Columbia's tariff provides in part that Columbia "shall credit the bills of Non-Penalized Shippers that are the original capacity holders (and not Replacement Shippers under [s]ection 14 (Release and Assignment of Service Rights) of the [GT&C] for such allocated amounts within 60 days of the end of the contract year." Indicated Shippers argue that the Commission should direct Columbia to credit penalty revenues to non-penalized replacement shippers, instead of limiting credits to original capacity holders. Indicated Shippers assert that this

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[8] *Columbia Gulf Transmission Co*., 119 FERC ¶ 61,268, at P 32 (2007).

[9] *AES Ocean Express LLC*, 111 FERC ¶ 61,291, at P 30 (2005).

[10] *Columbia Gas Transmission Corp.*, 113 FERC ¶ 61,191 (2005), *order on reh'g*, 115 FERC ¶ 61,134, at P 12 (2006).

[11] Columbia Transmittal letter at 2 and Appendix A.

modification is in accordance with the underlying purpose of Columbia's filing, because it would provide an incentive for compliance by providing penalty revenues to the shippers that actively managed their scheduled and actual quantities in compliance with the tariff.

18. The Commission declines to order Columbia to modify its tariff in the manner suggested by Indicated Shippers. Both Columbia, in its answer, and Indicated Shippers point out that the Commission did not require a specific type of penalty revenue mechanism or allocation formula to determine the manner in which shippers would receive any penalty revenue credits. The Commission determined that each pipeline should formulate an appropriate method for implementing penalty revenue crediting on its system.[12] In the instant filing, Columbia has not proposed to change the Commission-accepted tariff provisions which set forth its methodology to allocate penalty revenues to its shippers. Indicated Shippers have merely suggested the allocation be made in a different manner; they have not supported any finding that the manner in which Columbia is currently allocating penalty revenues is unjust and unreasonable. Further Indicated Shippers have not supported a finding that their suggestion is just and reasonable; they merely assert that their suggestion would be aligned with the purpose of Columbia's filing.

19. Lastly, Indicated Shippers recommend that Columbia be required to establish a provision authorizing it to waive penalties for inadvertent scheduling errors that do not result in operational harm to Columbia's system. The Commission's review of Columbia's tariff reveals that Section 19.5(d) provides that "Transporter may waive its right to collect all or any portion of the penalties assessed against Shipper, provided that any such waiver is granted in a nondiscriminatory manner." This language would appear to meet the concerns raised by Indicated Shippers. In any event, the Commission declines to require Columbia to further modify its tariff based upon the concerns as raised by Indicated Shippers.

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[12] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,315, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127, *order on reh'g*, 106 FERC ¶ 61,088, *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005). *See also Transcontinental Gas Pipeline Corp*., 96 FERC ¶ 61,352, at 62,317 (2001) ("Order No. 637 requires a pipeline to credit penalties to its shippers in a manner prescribed by the pipeline's tariff but does not dictate the methodology the pipeline must employ to allocate the penalty revenue.")

20. Accordingly, the Commission accepts the tariff record reflected in footnote no. 1 to be effective November 1, 2014, as proposed.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.