

154 FERC ¶ 61,275
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Columbia Gulf Transmission, LLC

Docket No. RP16-302-001

ORDER DENYING REHEARING

(Issued March 31, 2016)

I. Background

1. In a January 21, 2016 order, the Commission instituted an investigation, pursuant to section 5 of the Natural Gas Act (NGA)¹ to determine whether the rates currently charged by Columbia Gulf Transmission, LLC (Columbia Gulf) are just and reasonable.² As here relevant, that order set the matter for hearing and directed Columbia Gulf to file a cost and revenue study within 75 days, based on actual data for the latest 12-month period including adjustments for known and measurable changes during that period.³ The order also permitted Columbia Gulf to submit a separate cost and revenue study reflecting adjustments for changes that Columbia Gulf projects it will undergo during an abbreviated six-month adjustment period following the 12-month period used in the cost and revenue study.⁴

2. On February 22, 2016, Columbia Gulf sought rehearing of the Commission's directive to file a cost and revenue study. Columbia Gulf claims the Commission exceeded its authority under NGA sections 5, 10, and 14 when it ordered Columbia Gulf

¹ 15 U.S.C. § 717(d).

² *Columbia Gulf Transmission, LLC*, 154 FERC ¶ 61,027 (2016) (January 2016 Order).

³ *Id.* PP 9-10.

⁴ *Id.* P 11.

to file a cost and revenue study and derive rates therefrom, which Columbia Gulf characterizes as the functional equivalent of an NGA section 4 rate filing. Columbia Gulf also claims the Commission improperly shifted the burdens of production and proof in directing the cost and revenue study, and acted arbitrarily and capriciously by relying on limited and inaccurate data to initiate its NGA section 5 investigation. For the reasons discussed below, we deny Columbia Gulf's request for rehearing.

II. Commission Determination

A. Legal Authority to Require Cost and Revenue Study

3. Columbia Gulf's request for rehearing primarily focuses on the January 2016 Order's directive that the pipeline file a cost and revenue study, including all schedules required for a section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations, with the exception of Statement P. Columbia Gulf contends this requirement exceeds the Commission's authority under the NGA. Columbia Gulf's arguments in support of this contention are similar to those that have been addressed and rejected in prior orders.⁵

4. Requiring Columbia Gulf to submit the information requested in the January 2016 Order does not improperly transform this section 5 proceeding into a section 4 proceeding, as Columbia Gulf contends. The January 2016 Order did not require Columbia Gulf to file any change in its existing rate schedules as contemplated by section 4. Nor did the January 2016 Order place any section 4 burden on Columbia Gulf to support its existing rates in the required cost and revenue study.⁶

5. Rather, the January 2016 Order directed the submission of a cost and revenue study to enable the Commission to carry out its responsibilities under NGA section 5 to ensure that Columbia Gulf's rates are just and reasonable. As the Commission has

⁵ See, e.g., *Bear Creek Storage Co. L.L.C.*, 138 FERC ¶ 61,019 (2012) (*Bear Creek*); *MIGC LLC*, 138 FERC ¶ 61,011 (2012) (*MIGC*); *Ozark Gas Transmission, LLC*, 134 FERC ¶ 61,062 (2011) (*Ozark*); *Kinder Morgan Interstate Gas Transmission LLC*, 134 FERC ¶ 61,061 (2011) (*Kinder Morgan*); *Natural Gas Pipeline Co. of America LLC*, 130 FERC ¶ 61,133 (2010) (*Natural*).

⁶ January 2016 Order, 154 FERC ¶ 61,027 at P 10 ("Columbia Gulf does not have an NGA section 4 burden in this section 5 proceeding"). See also *Natural*, 130 FERC ¶ 61,133 at PP 14-15; *Kinder Morgan*, 134 FERC ¶ 61,061 at P 22; *Bear Creek*, 138 FERC ¶ 61,019 at PP 28-29.

explained, the schedules and information required by section 154.312 are necessary to perform an appropriately thorough evaluation of Columbia Gulf's rates.⁷ With respect to the requirement that Columbia Gulf file Statements J-1 and J-2 summarizing its billing determinants and showing the derivation of each rate component of each rate, the Commission has explained that, in a section 5 proceeding, the value of such information "is not the actual per-units rates" themselves, but the "formulas used to develop" the rates.⁸ "[B]y illustrating how [Columbia Gulf's] rates are currently designed, the Statements J-1 and J-2 will enable all participants to determine whether to challenge [Columbia Gulf's] existing rate design, or seek lower rates solely by challenging the justness and reasonableness of the cost of service or billing determinants underlying [Columbia Gulf's] existing rates."⁹

6. In order to require Columbia Gulf to reduce its rates, the Commission will have the burden under NGA section 5 to show that its current rates are unjust and unreasonable and that any new rates imposed by the Commission are just and reasonable. For this reason, the cases relied upon by Columbia Gulf – such as *Public Service Comm'n of New York v. FERC*, and *Consumers Energy Co. v. FERC*, 226 F.3d 777 (6th Cir. 2000) – are inapposite.¹⁰ The Commission is simply requiring an informational filing of the type the *Consumers Energy* court found permissible under NGA section 10(a).¹¹ Consequently, it is inaccurate to conclude the Commission required Columbia Gulf to make a section 4 filing.

⁷ See, e.g., *MIGC*, 138 FERC ¶ 61,001 at PP 29-40.

⁸ *Id.* P 37.

⁹ *Id.* P 38.

¹⁰ Request for Rehearing at 9-10. See *Public Serv. Comm'n*, 866 F.3d at 490 ("FERC's attempted relocation of the expected dispute from § 5 to § 4 would shift the burden of proof from the Commission to the company"); *Consumers Energy*, 226 F.3d at 781 (finding that the Commission exceeded its section 4 authority by requiring "Consumers ... [to] file a petition for rate approval to justify its current rate or to establish a new maximum rate").

¹¹ *Consumers Energy*, 226 F.3d at 777 ("Should FERC wish [the pipeline] to make periodic informational filings, it may of course so require pursuant to § 10a of the NGA.") See also *Natural*, 130 FERC ¶ 61,133 at PP 22-24; *Bear Creek*, 138 FERC ¶ 61,019 at PP 44-46; *Kinder Morgan*, 134 FERC ¶ 61,061 at PP 33-35; *MIGC*, 138 FERC ¶ 61,011 at PP 56-58.

7. Columbia Gulf takes issue with the Commission's statement that sections 10(a) and 14(a) of the NGA authorize the Commission to require Columbia Gulf to submit the information required by the January 2016 Order to carry out its responsibility under NGA section 5 to ensure that the pipeline's rates are just and reasonable.¹² Columbia Gulf argues that the required study goes beyond a compilation of factual data by obligating it to file a full section 154.312 cost and revenue study, which includes a derivation of rates.¹³ Columbia Gulf argues these requirements necessitate Columbia Gulf to engage in subjective determinations regarding "the 'rate component of each rate' and, "[f]or each rate component of each rate schedule,' to (i) allocate the cost of service, (ii) refer to the appropriate billing determinants, and (iii) explain any changes from the methods used to derive the existing rates"¹⁴ which are the types of determinations typically only made pursuant to an NGA section 4 proceeding. Columbia Gulf contends that this requires it to derive rates that it does not support or wish to propose, and that such rates will be used by the Commission to satisfy its obligation under NGA section 5 to fix the new just and reasonable rate.¹⁵

8. The Commission finds this argument to be meritless.¹⁶ By requiring Columbia Gulf to submit a full section 154.312 cost and revenue study, including deriving per unit rates, the Commission is not requiring Columbia Gulf to present its position as to the just and reasonable rates that the Commission should establish in this proceeding. Rather, the Commission is requiring Columbia Gulf to provide factual information within its possession necessary for an evaluation whether Columbia Gulf's existing rates are just and reasonable, and, if not, how those rates should be modified.

9. As the Commission clarified in *Ozark Gas Transmission, L.L.C. (Ozark II)*,¹⁷ the Commission is not requiring Columbia Gulf to set forth its preferred cost allocation and

¹² January 2016 Order, 154 FERC ¶ 61,027 at n.10. *See Natural*, 130 FERC ¶ 61,133 at PP 16-24; *Bear Creek*, 138 FERC ¶ 61,019 at PP 32-33, 41-46; *Kinder Morgan*, 134 FERC ¶ 61,061 at P 24.

¹³ Request for Rehearing at 5-10.

¹⁴ *Id.* at 5-6.

¹⁵ *See id.* at 5, 7, 8.

¹⁶ *See Natural*, 130 FERC ¶ 61,133 at PP 16-24; *Bear Creek*, 138 FERC ¶ 61,019 at PP 32-33, 41-46; *Kinder Morgan*, 134 FERC ¶ 61,061 at P 24.

¹⁷ 134 FERC ¶ 61,193 at P 32.

rate design methodology in Statements I and J required by §§ 154.312(o) and (p). Rather, Columbia Gulf may complete those statements using the cost allocation and rate design methods underlying its existing rates, without indicating whether those methods constitute its currently preferred cost allocation and rate design methodology.¹⁸ Requiring Columbia Gulf to show in its cost and revenue study how its costs are currently allocated among its services and how its per-unit rates are currently designed provides important factual information necessary to the conduct of this NGA section 5 proceeding. Such information is required both for purposes of properly allocating the burden of proof under NGA section 5 and for purposes of enabling the Commission, on its own, to calculate just and reasonable rates for Columbia Gulf.¹⁹

10. With regard to the burden of proof, the Commission must know what cost allocation and rate design methodologies underlie the pipeline's existing rates to determine who has the burden of justifying a change in those methodologies. For example, as explained in prior cases, in a section 5 proceeding, parties seeking a rate reduction because the pipeline's cost of service has decreased or its throughput has increased, have no burden to support a continuation of the pipeline's existing rate design.²⁰ The NGA "allocates the burden of proving that a rate change is just and reasonable according to the source of the proposed change."²¹ Thus, if Trial Staff and other intervenors do not propose any change in Columbia Gulf's existing rate design, they have no burden to show that a continuation of the existing rate design is just and reasonable. But if Trial Staff or an intervenor proposes a change in Columbia Gulf's existing rate design, it would have the section 5 burden to demonstrate both that the existing rate design is unjust and unreasonable and that its proposed changed rate design is just and reasonable. By contrast, if Columbia Gulf seeks to modify its existing rate

¹⁸ If Columbia Gulf desires to use a revised cost allocation and rate design methodology in its cost and revenue study, it may do so. But, in that event, it must explain the changes from the existing methodology, as required by section 154.312(o)(3)(iv).

¹⁹ While section 154.312(f) requires the pipeline to show in Statement F-1 "the percentage rate of return claimed and the general reasons therefore," we will permit Columbia Gulf simply to use an illustrative return on equity in that statement, without taking any position as to whether that return is just and reasonable.

²⁰ See *Bear Creek*, 138 FERC ¶ 61,019 at P 36; *MIGC*, 138 FERC ¶ 61,001 at P 50; *Ozark II*, 134 FERC ¶ 61,193 at P 32.

²¹ *East Tennessee Natural Gas Co.*, 863 F.2d 932, 937 (D.C. Cir. 1988).

design in any subsequent evidence filed in this case, it would only have the burden to show that its proposed new rate design is just and reasonable.

11. Similarly, if a party presents sufficient evidence that Columbia Gulf's cost of service has decreased and/or its throughput has increased in order to satisfy its section 5 burden to show that Columbia Gulf's existing rates are unreasonably high, but no party presents evidence to support a change in Columbia Gulf's rate design, the Commission will then have the burden of persuasion under NGA section 5 to justify and fix new just and reasonable rates using Columbia Gulf's existing cost allocation and rate design methods. In order to meet that burden, the Commission must, of course, know what those cost allocation and rate design methods are. Thus, Columbia Gulf's existing cost allocation and rate design methods are squarely within the scope of this section 5 proceeding, and NGA sections 10(a) and 14(a) authorize the Commission to require Columbia Gulf to submit a cost and revenue study showing its existing cost allocation and rate design methods.

12. The Commission recognizes that, because Columbia Gulf's current rates are the result of a black box settlement, Columbia Gulf may be required to make certain assumptions concerning how that settlement may affect the cost allocation and rate design methods underlying Columbia Gulf's rates in effect before that settlement. But the fact that Columbia Gulf may have to exercise some degree of judgment does not improperly shift the burden of proof, or otherwise violate NGA section 5.²²

13. In *Interstate Natural Gas Ass'n of America v. FERC*,²³ the United States Court of Appeals for the District of Columbia Circuit rejected a contention similar to that made here by Columbia Gulf, and upheld a Commission order directing pipelines to file *pro forma* tariff sheets that went beyond the simple provisions of factual information. Rather, the order required each pipeline to state its opinion as to whether and how shippers on their system should be permitted to segment their capacity and to provide the specific tariff language implementing such plans. The pipelines asserted that requiring them to submit these filings impermissibly shifted the burden of proof and the Commission had effectively required them to make section 4 filings to defend their current rates. The court observed that the Commission would "shoulder the burden under § 5 of the NGA" with respect to any rate change and found "no violation of the NGA"

²² See, e.g., *Bear Creek*, 138 FERC ¶ 61,019 at P 38.

²³ *Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18, 38 (D.C. Cir. 2002) (*INGAA*).

with respect to “the Commission’s determination to extract information from the pipelines relevant to the practical issues.”²⁴

14. Columbia Gulf asserts that, in Order No. 710, the Commission recognized that requiring pipelines to provide information necessary to allocate costs among customers or to derive per-unit rates “would impermissibly cross the line between sections 4 and 5 of the NGA.”²⁵

15. But as the Commission has explained:

[T]he focus of Order No. 710 was to ensure that the Form 2 contains sufficient information to determine whether to initiate a section 5 proceeding. There was no intent in Order No. 710 to restrict the information that the Commission may require once it has determined that the Form 2 data justifies initiating a NGA section 5 proceeding and the Commission determines additional information is required to meet its burden of establishing whether the subject rates are just and reasonable, and if not, to establish just and reasonable rates to be thereafter followed by the pipeline.²⁶

16. Here, the Commission has analyzed Columbia Gulf’s Form 2s for 2013 and 2014, and estimated that Columbia Gulf’s return on equity for those calendar years as 17.3 percent, and 18.2 percent, respectively. In order to carry out a further examination of Columbia Gulf’s rates, the Commission requires additional information not included in the Form 2.²⁷

17. The information sought here is similar to data used in an NGA section 4 proceeding because the same data and calculations are needed to change rates regardless

²⁴ *Id.* See also *MIGC*, 138 FERC ¶ 61,011 at PP 53-54 (discussing *INGAA*); *Bear Creek*, 138 FERC ¶ 61,019 at PP 39-40 (same); *Natural*, 130 FERC ¶ 61,133 at P 17; *Kinder Morgan*, 134 FERC ¶ 61,061 at P 25 (same).

²⁵ Request for Rehearing at 13.

²⁶ *Natural*, 130 FERC ¶ 61,133 at P 26.

²⁷ See *Bear Creek*, 138 FERC ¶ 61,019 at P 43 (“the Commission never intended that the party bearing the burden of proof in a section 5 proceeding must carry that burden based solely on the data in the pipeline’s Form 2”).

of whether they are changed pursuant to NGA section 4 or section 5.²⁸ Consequently, this information solidly fits within the scope of this proceeding and Columbia Gulf, who possesses this data, has been requested to provide it.

18. With regard to Columbia Gulf's contention that the Commission has improperly shifted the burden of production and proof by requiring Columbia Gulf to file a cost and revenue study and derive rates, the January 2016 Order specifically stated that Columbia Gulf does not have an NGA section 4 burden in this section 5 proceeding.²⁹ In fact, in an attempt to avoid placing inappropriate burden on Columbia Gulf, the January 2016 Order exempted Columbia Gulf from submitting certain types of information.³⁰

19. The D.C. Circuit has held that the statutory burden of proof requirement in a section 4 proceeding "relates to the burden of persuasion ... not to the burden of production, and thus the identity of the party submitting evidence is not dispositive."³¹ Similarly, in this section 5 proceeding, the Commission has the burden of persuasion to show that Columbia Gulf's existing rates are unjust or unreasonable and may rely on any evidence in the record to satisfy that burden, regardless of the source of that evidence. The information required by the January 2016 Order – a cost and revenue study – includes information possessed by Columbia Gulf and encompasses cost allocation and rate design methods underlying Columbia Gulf's existing rates. Columbia Gulf is in the best position to demonstrate how it designed its rates.³² This information will assist the

²⁸ See *Natural*, 130 FERC ¶ 61,133 at P 20; *Bear Creek*, 138 FERC ¶ 61,019 at P 41.

²⁹ January 2016 Order, 154 FERC ¶ 61,027 at P 10.

³⁰ *Id.* The January 2016 Order exempted Columbia Gulf from filing Schedule P and nine months of post-base period adjustment data required by section 154.303(a). *Id.* P 9.

³¹ *Complex Consolidated Edison Co. of New York, Inc. v. FERC*, 165 F.3d 992, 1008 (D.C. Cir. 1999) (citing *City of Winnfield, La. v. FERC*, 744 F.2d 871 (D.C. Cir. 1984)).

³² See *Natural*, 130 FERC ¶ 61,133 at P 15; *Bear Creek*, 138 FERC ¶ 61,019 at P 47.

Commission in carrying out its responsibilities under NGA section 5. Thus, we do not find the burden of proof and production has shifted.³³

B. The Factual Basis For The Commission's Investigation

20. Columbia Gulf argues the Commission erred by relying on “stale data” to initiate its section 5 investigation. Columbia Gulf asserts that its system has historically transported natural gas northward from Gulf Coast production areas. But with increased gas production in the northeast and midwest, Columbia Gulf has attracted new shippers flowing gas southward on its system, while losing historic shippers that are no longer dependent upon Gulf Coast supply. Columbia Gulf thus asserts that the 2013 and 2014 cost data relied upon by the Commission reflects a short transitional period in which both north-to-south and south-to-north contracts were in effect on its system. Columbia Gulf maintains that this brief snapshot does not include the de-contracting by historic shippers that has since occurred.³⁴

21. In initiating a section 5 investigation, the Commission has previously relied upon the most recent Form 2 data sets to conduct its preliminary analysis.³⁵ Indeed, in the instant proceeding, the Commission did not depart from that process when it relied upon the data in Columbia Gulf's 2013 and 2014 Form 2s. As such, only the most recent annual data that Columbia Gulf itself provided to the Commission was used as justification for the section 5 investigation. However, to the extent there have been cost changes of the type alleged by Columbia Gulf, those changes should be reflected in the

³³ See *Bear Creek*, 138 FERC ¶ 61,019 at P 47; *MIGC*, 138 FERC ¶ 61,011 at PP 59-60; *Kinder Morgan*, 134 FERC ¶ 61,061 at PP 31-32.

³⁴ Request for Rehearing at 15-16.

³⁵ *Great Lakes Gas Transmission Limited Partnership*, 129 FERC ¶ 61,160 (2009); *Northern Natural Gas Company*, 129 FERC ¶ 61,159 (2009); *Natural Gas Pipeline Company of America LLC*, 129 FERC ¶ 61,158 (2009); *Kinder Morgan Interstate Gas Transmission LLC*, 133 FERC ¶ 61,157 (2010); *Ozark Gas Transmission, L.L.C.*, 133 FERC ¶ 61,158 (2010); *Kinder Morgan Interstate Gas Transmission, L.L.C.*, 134 FERC ¶ 61,061 (2011); *ANR Storage Company*, 137 FERC ¶ 61,136 (2011); *MIGC LLC*, 137 FERC ¶ 61,135 (2011); *Bear Creek Storage Company L.L.C.*, 137 FERC ¶ 61,134 (2011); *Viking Gas Transmission Company*, 141 FERC ¶ 61,118 (2012); *Wyoming Interstate Company, L.L.C.*, 141 FERC ¶ 61,117 (2012); *Tuscarora Gas Transmission Company*, 154 FERC ¶ 61,030 (2016); *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016); *Iroquois Gas Transmission System, L.P.*, 154 FERC ¶ 61,028 (2016).

cost and revenue study required by the January 2016 Order. That study is due on April 5, 2016, and thus the 12-month base period covered by that study should include most, or all, of calendar year 2015. Moreover, the January 2016 Order permits Columbia Gulf to file a separate cost and revenue study, reflecting adjustments for changes Columbia Gulf projects will occur during a six-month adjustment period following the 12-month base period used for the cost and revenue study.³⁶ Thus, the procedures we have established in this proceeding will provide Columbia Gulf a full opportunity to provide any information relevant to its assertion that the information it provided in its 2013 and 2014 Form 2s no longer reflects its current circumstances.

22. Finally, Columbia Gulf takes issue with the fact that the January 2016 Order noted the Cameron Access Project, which has an anticipated spring 2018 in-service date, may add additional capacity and revenue to Columbia Gulf's system.³⁷ The January 2016 Order clearly explained that the Commission was initiating its section 5 investigation based upon its preliminary analysis of the information provided by Columbia Gulf in its Form 2's for calendar years 2013 and 2014.³⁸ Consequently, Columbia Gulf's contention the Commission relied upon the Cameron Access Project in initiating its section 5 rate case bears no merit.

The Commission orders:

The Commission hereby denies Columbia Gulf's request, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁶ See January 2016 Order, 154 FERC ¶ 61,027 at P 11.

³⁷ Request for Rehearing at 16-17.

³⁸ January 2016 Order, 154 FERC ¶ 61,027 at P 9 (“The Commission finds that, based upon its preliminary analysis of the information provided by Columbia Gulf in its Form 2's for the calendar years 2013 and 2014, Columbia Gulf's currently effective tariff rates may be unjust and unreasonable.”).