

127 FERC ¶ 61,085  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gulf Transmission Company

Docket No. RP09-275-000

ORDER ACCEPTING REVISED TARIFF SHEETS, SUBJECT TO CONDITIONS  
AND FURTHER REVIEW

(Issued April 24, 2009)

1. On January 26, 2009, in Docket No. RP09-275-000, Columbia Gulf Transmission Company (Columbia Gulf) filed revised tariff sheets<sup>1</sup> proposing modifications to its tariff to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A.<sup>2</sup> The tariff sheets listed in the Appendix are accepted effective February 26, 2009, as requested, subject to the conditions below and further review.

**I. Summary of the Proposal**

2. In Order Nos. 712 and 712-A, the Commission removed the maximum rate ceiling on capacity releases of one year or less, which take effect within one year after the pipeline is notified of the release. The Commission also modified its regulations in order to facilitate asset management arrangements by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. The Commission further clarified that its prohibition on tying does not apply to conditions associated with gas inventory held in storage for releases of firm storage capacity. Finally, the Commission waived its prohibition on tying and bidding requirements for capacity release made as part of state-approved retail access program. Columbia Gulf proposes several changes to the capacity release provisions in section 14 of the General Terms & Conditions (GT&C) of its tariff to reflect the various changes in the capacity release

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<sup>1</sup> See Appendix A for complete listing of revised tariff sheets.

<sup>2</sup> *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008) (Order No. 712), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008) (Order No. 712-A).

regulations made by Order Nos. 712 and 712-A. Columbia Gulf requests waivers necessary to place the proposed tariff sheets in effect February 26, 2009.

## **II. Notice of Filing and Responsive Pleadings**

3. Public notice of Columbia Gulf's filing was issued on January 29, 2009, with interventions and protests due on or before February 9, 2009. Pursuant to Rule 214,<sup>3</sup> all timely 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. On February 19, 2009, Columbia Gulf filed an answer in this proceeding. While the Commission's regulations do not permit the filing of answers to protests,<sup>4</sup> the Commission grants Columbia Gulf's request for leave to answer because it provides additional information that will aid in our decision making process.

4. East Ohio Gas Company (East Ohio Gas) filed a limited protest. Atmos Energy Corporation (Atmos); the Easton Utilities Commission, the City of Charlottesville, Virginia and the City of Richmond, Virginia (the Cities); the Interstate Natural Gas Association of America (INGAA) and the American Gas Association (AGA) filed comments. The comments and limited protests are discussed in detail below.

## **III. Discussion**

5. For the reasons discussed below, the Commission finds that Columbia Gulf's proposed tariff revisions are generally consistent with the Commission's capacity release policies and Order Nos. 712 and 712-A. Accordingly, the Commission accepts Columbia Gulf's filing, subject to conditions and further review as discussed below.

### **A. Posting and Information**

6. Section 14.1(b) (Release Notice) of the GT&C sets forth the information which a releasing shipper must transmit to Columbia Gulf to initiate a request to release capacity, including both information relevant to all releases whether or not subject to bidding, such as the quantity of the release, and information only relevant to releases subject to bidding, such as the bid evaluation methodology. Columbia Gulf proposes to revise section 14.1(b) to add requirements that the releasing shipper include in the notice whether the replacement shipper is an asset manager or a marketer participating in a state-regulated retail access program. Section 14.2(b) (Posting: Notice to Transporter,

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<sup>3</sup> 18 C.F.R. § 385.214 (2008).

<sup>4</sup> 18 C.F.R. § 385.213.

Informational Posting) of the GT&C requires the releasing shipper to provide to Columbia Gulf, and post on its Electronic Bulletin Board, certain information regarding transactions exempt from bidding, as defined in section 14.2(a), including the information section 14.1(b) requires to be included in the Release Notice, the price and term of the release, and the identity of the replacement shipper. Columbia Gulf proposes to revise section 14.1(b) to add a requirement that the releasing shipper also provide to Columbia Gulf and post, the asset manager's delivery obligation.

7. The Cities request clarification of two issues related to the posting of information. First, they ask that the Commission require further clarification of section 14.1(b) as it relates to entities that are exempt from bidding, including asset managers and entities participating in state-regulated retail access programs.<sup>5</sup> The Cities assert that since such entities are exempt from bidding, they should not be required to provide the information required by section 14.1(b) to Columbia Gulf, as it relates to bidding procedures and requirements. Rather, the Cities assert, such entities should only be required to provide information that is relevant to capacity releases to asset managers and participants in state-regulated retail access programs. The Cities also ask that the Commission require Columbia Gulf to clarify that the failure to provide bidding-related information by an entity exempt from bidding, will not render that submitted notice as deficient.

8. Second, the Cities seek clarification of section 14.2(b), asserting that the Commission has limited the scope of information that must be disclosed by Releasors engaging in capacity release to asset management arrangements.<sup>6</sup> The Cities seek clarification from the Commission that the posting requirements in revised section 14.2(b) related to asset management agreements are limited and that all commercially sensitive information pertaining to the asset management agreements will remain confidential. The Cities argue that for releases pursuant to asset management arrangements and pursuant to state-regulated retail access programs, only the information provided under section 14.2(b) or the Commission's regulations, should be posted.

9. Columbia Gulf responds that the Commission should reject the Cities' first request for clarification of section 14.1(b), that a shipper in a capacity release transaction that is exempt from competitive bidding is not required to provide information that relates to bidding procedures and requirements. Columbia Gulf states that since 1993 its tariff has required releasing shippers to provide this information with respect to all releases, including those that are exempt from competitive bidding. Columbia Gulf asserts that the Cities have failed to show why releases to asset managers and market participants in retail access programs should be treated differently from other releases exempt from

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<sup>5</sup> See, e.g., GT&C sections 14.1(b)(7), (11) and (14).

<sup>6</sup> Order No. 712 at P 172-175

competitive bidding. In response to the Cities' second request for clarification, Columbia Gulf argues that while commercially sensitive aspects of asset management arrangements are not required to be disclosed as "special terms and conditions,"<sup>7</sup> posting the rate to be charged is required for all releases, including asset management arrangements and marketing participants in retail access programs.<sup>8</sup>

### **Commission Determination**

10. The Commission accepts the Cities' first request, that Columbia Gulf clarify that a releasing shipper making a release that is not subject to bidding need not provide information in its notice to Columbia Gulf pursuant to section 14.1(b) relating specifically to bidding procedures, but must only supply information that is relevant to capacity releases that are exempt from bidding. Further, the Commission finds reasonable the Cities' request that Columbia Gulf clarify that the failure to provide bidding-related information by an entity exempt from bidding, will not render that submitted notice as deficient. We direct Columbia Gulf to revise its tariff within 15 days, to incorporate the above clarifications.

11. The Commission denies Cities' second request for clarification. The Commission finds that the Cities is incorrect in its belief that the Commission limited, in Order No. 712, the information necessary for posting releases implementing qualified asset management arrangements. To the contrary, in Order No. 712, we stated that:

any posting under section 284.13(b) that relates to a release to implement an [asset management agreement] should include: (1) the fact that the release is to an asset manager, and (2) the delivery or purchase obligation of the [asset management agreement], *in addition to the information required to be posted for all capacity releases.*<sup>9</sup>

12. As such, the Commission did not limit the posting of information for releases to implement asset management arrangements to the items enumerated in the new regulation. The Cities is correct that in Order No. 712 the Commission clarified that we did not intend to require that commercially sensitive details of an asset management arrangement, such as the pricing of any sales of the gas commodity and any profit sharing arrangements between the releasing and replacement shipper, be disclosed.<sup>10</sup> However,

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<sup>7</sup> Columbia Gulf Answer at 4, citing 18 C.F.R. § 254.13(b)(1)(viii).

<sup>8</sup> Columbia Gulf Answer at 5, citing 18 C.F.R. § §284.13(b)(1)(iii).

<sup>9</sup> Order No. 712 at P 175 (emphasis added).

<sup>10</sup> Order No. 712 at P 174.

aside from adding language as directed by Order No. 712 for releases to implement asset management arrangements and retail unbundling, Columbia Gulf proposed no tariff changes that would indicate the need to disclose such confidential information concerning the asset management arrangement. Thus, we find the changes proposed by Columbia Gulf consistent with Order No. 712.

## **B. Discounts**

13. Atmos states that Columbia Gulf should clarify or propose a “flow through” policy with regard to discounted commodity and fuel rates applicable to a qualified AMA. Atmos asserts that such a clarification of policy is necessary in light of the fact that a general refusal to allow “flow-through” of such discounts would impede asset management transactions, and is, as a result, not in conformance with the established general principles of Order Nos. 712 and 712-A.<sup>11</sup> Atmos suggests that Columbia Gulf should be required to implement language in its tariff that requires the “flow-through” of all such discounts from releasing shipper to a qualified asset manager in order to promote the stated goals of Order No. 712, namely the creation of an efficient and competitive capacity release program and the promotion of the use of asset management arrangements as a critical component to that program.

14. East Ohio Gas urges the Commission to accept Columbia Gulf’s proposed tariff sheets, conditional on the outcome of the Commission’s ruling on the issue of whether the Commission should require pipelines, as they implement Order Nos. 712 and 712-A, to allow releasing shippers to pass through discounted or negotiated usage or fuel charges under releases to asset managers under asset management agreements,<sup>12</sup> and releases to marketers under state-regulated retail access programs.<sup>13</sup>

15. In its comments, INGAA argues that the Commission should not decide the issue of an asset manager’s right to the same discounted or negotiated usage or fuel charge as the releasing shipper in the individual Order No. 712 compliance proceedings. Rather, INGAA asserts that the Commission should address these issues in a generic proceeding

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<sup>11</sup> Atmos states that it previously raised the discount “flow-through” issue and filed similar comments in Docket Nos. RP09-70-000, RP09-222-000 and RP09-227-000, where the company stated that the pipelines should include provisions allowing asset managers to receive the same discounts provided to the primary firm shipper releasing such capacity for the purpose of facilitating bona-fide asset management.

<sup>12</sup> 18 C.F.R. § 284.8(h)(3).

<sup>13</sup> 18 C.F.R. § 284.8(h)(4).

because they are of industry-wide scope and have been raised in numerous Order No. 712 compliance filings.

16. In its comments, AGA urges the Commission to act expeditiously to resolve these issues, regardless of whether it proceeds through a generic rulemaking or case-by-case adjudication, because continued regulatory uncertainty could discourage parties from entering into asset management agreements. AGA contends that releasing shippers should be permitted to pass through discounted or negotiated usage and fuel charges to asset managers or retail choice marketers, consistent with the goal of facilitating asset management agreements and retail choice programs.

17. Columbia Gulf, in its answer, acknowledges that this issue is currently pending before the Commission in Texas Eastern's Order No. 712 compliance filing.<sup>14</sup> Columbia Gulf states that it will review its tariff when the Commission issues a decision in Texas Eastern's compliance filing and assess if any changes to its capacity release provisions might be warranted. However, Columbia Gulf states that at this time, it neither proposes the terms proposed by Texas Eastern, nor proposes to be subject to such terms.

#### **Commission Determination**

18. The issue of whether a pipeline must provide an asset manager or replacement shipper the same discounted or negotiated usage and fuel rates as it has given the releasing shipper only arises to the extent that the pipeline has provided such discounts or negotiated rates to the releasing shipper. The Commission does not permit pipelines to offer discounts below their minimum rates, which are based on the variable costs allocated to the service to which the rate applies.<sup>15</sup> Therefore, a pipeline such as Columbia Gulf using a Straight-Fixed Variable (SFV) rate design cannot discount its usage charges, because those usage charges only contain variable costs. The Commission has also held that pipelines may not discount their fuel retention rates, because fuel and lost and unaccounted for (LAUF) gas are variable costs.<sup>16</sup> Thus, the issue of the "flow-through" of discounted usage and fuel charges to an asset manager/replacement shipper does not arise on Columbia Gulf's system. However, pipelines with negotiated rate authority may enter into negotiated rate agreements which are not bounded by their tariff maximum and minimum rates. Columbia Gulf has negotiated rate authority, and thus

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<sup>14</sup> See *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 21 (2008) (Texas Eastern).

<sup>15</sup> 18 C.F.R. § 284.10(c)(4)(ii) and (5)(ii)(A).

<sup>16</sup> *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 (2002).

does have authority to enter into negotiated rate agreements providing for fuel retention rates (and usage charges) that vary from those in its tariff.

19. The Commission has held that the usage charge to be paid by the replacement shipper is a matter between the replacement shipper and the pipeline, and the releasing shipper cannot bind the pipeline to accept any particular usage charge from the replacement shipper. Therefore, the pipeline “generally should not be required to give the replacement shipper the same discount” of the usage charge that it gave the releasing shipper.<sup>17</sup> In *El Paso*, the Commission explained that:

the discount in the usage charge negotiated between the releasing shipper and El Paso is related only to the contract between the releasing shipper and the pipeline and to the transportation services actually performed by El Paso for the releasing shipper under that contract and is not relevant to other contracts and services to other shippers, including replacement shippers.<sup>18</sup>

20. While pipelines are not subject to a blanket requirement that they must give replacement shippers the same usage charge discounts (or negotiated usage and fuel rates) given to the releasing shipper, pipelines are subject to the Commission’s general policy that selective discounts must be given on a not unduly discriminatory basis to similarly situated shippers.<sup>19</sup> These same policies apply to negotiated usage and fuel charges.

21. Order No. 712 did not modify the Commission’s existing policy concerning the pipeline’s offering usage charge discounts to replacement shippers.<sup>20</sup> Nor did Order No. 712 address any issue concerning the offering of negotiated usage and fuel charges to replacement shippers. However, Order No. 712’s modification of the Commission’s regulations to facilitate asset management agreements does raise the following issues in this proceeding:

(1) whether it would be unduly discriminatory for Columbia Gulf to deny an asset manager/replacement shipper the same negotiated usage and fuel and LAUF

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<sup>17</sup> *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,309 (1992) (*El Paso*).

<sup>18</sup> *Id.*

<sup>19</sup> *See Williston Basin Interstate Pipeline Co.*, 85 FERC ¶ 61, 247, at 62,028-30 (1998).

<sup>20</sup> *Texas Eastern*, 125 FERC ¶ 61,396 at P 21.

charge that was provided to the releasing shipper, at least during periods when the asset manager is using the released capacity to satisfy the delivery or purchase obligation contained in the release to the asset manager;<sup>21</sup>

(2) if a negotiated rate agreement between Columbia Gulf and the releasing shipper provides that the discount or negotiated rate is only applicable at certain specified receipt or delivery points as permitted by Commission policy,<sup>22</sup> should the asset manager/replacement shipper's use of those points be considered to be within the usage contemplated by Columbia Gulf when it granted the negotiated rate to the releasing shipper? For this reason, should Columbia Gulf be required to offer the same negotiated rate to the asset manager/replacement shipper at those points, but not at any other point?

(3) whether Columbia Gulf should be required to include in its tariff a provision concerning the circumstances under which it would provide similar negotiated usage and fuel charges to an asset manager/replacement shipper; or

(4) whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant negotiated usage and fuel and LAUF charges to the asset manager/replacement shipper on a case-by-case basis, subject to a general requirement of no undue discrimination.

22. Before deciding these issues, the Commission requires additional information from Columbia Gulf, and will give the parties an opportunity to provide supplemental comments. The Commission directs Columbia Gulf to file the following information within 30 days of the date of this order: (1) how many of Columbia Gulf's existing firm shipper contracts include negotiated usage and fuel rates, (2) how many of any such contracts limit the negotiated rate to specific points, (3) a general description of how Columbia Gulf intends to determine whether to grant negotiated usage and fuel charges to asset manager/replacement shippers, and (4) what factors it will consider in determining whether to grant such negotiated rates. Other parties may file comments within 20 days of the date of Columbia Gulf's filing.

23. With respect to the request by INGAA that the Commission pursue these issues in a generic proceeding, the Commission will consider the need for such a proceeding after

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<sup>21</sup> See section 284.8(h)(3) of the Commission's regulations, as revised by Order No. 712-A, 18 C.F.R. § 284.8(h)(3) (defining a release to an asset manager).

<sup>22</sup> *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210, at P 5 and 22, *reh'g denied*, 112 FERC ¶ 61,038, at P 19 (2005).

analyzing the parties' responses to the above request for information and comments concerning the specific circumstances on Columbia Gulf's system.

**C. Miscellaneous Proposed Tariff Language**

24. East Ohio Gas states that it largely agrees that Columbia Gulf's proposed tariff changes meet the requirements of Order Nos. 712 and 712-A. However, it identifies several clarifying edits that it suggests the Commission should require Columbia Gulf to make its tariff more accurately reflect the Commission's amended capacity release regulations and policies stated in Order 712. First, East Ohio Gas recommends modifying section 14.1(b)(8) of Columbia Gulf's tariff, a provision that Columbia Gulf has not proposed to change. East Ohio Gas explains that section 14.1(b)(8) contains an outdated temporal reference and the language does not conform to the requirement of Order No. 712.<sup>23</sup> Second, East Ohio Gas asserts that section 14.3(a) of Columbia Gulf's tariff erroneously omits the language "if the release is to take effect on or before one year from the date on which the pipeline is notified of the release"; language that is pursuant to Order No. 712-A.<sup>24</sup>

25. In its answer, Columbia Gulf agrees to incorporate the clarifying revisions as requested by East Ohio Gas. First, Columbia Gulf states it will revise section 14.1(b)(8) to reflect the permanent removal of the rate cap for releases with a term of one year or less. Second, Columbia Gulf explains that it will revise section 14.3(a) to provide that releases must take effect on or before one year from the date the pipeline is notified of the release.

**Commission Determination**

26. Parties have raised several suggested tariff revisions, and Columbia Gulf has agreed to revise their tariffs to incorporate such revisions. The Commission finds that the above language is reasonable and in compliance with Order No. 712. Accordingly, the Commission finds the instant filing, as modified herein, to be compliant with Order Nos. 712 and 712-A, subject to further review as discussed herein.

**D. Refunds**

27. Section 14.9(b) (Refunds) of Columbia Gulf's GT&C states that in the case of a capacity release where the releasing shipper has released capacity at a rate in excess of the rate it paid for such capacity, the pipeline will not be obligated to pay refunds to the

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<sup>23</sup> 18 C.F.R. § 284.8(h)(1) (2008).

<sup>24</sup> 18 C.F.R. § 284.8(b)(2) (2008).

releasing shipper, to the extent that the releasing shipper's profit on the release exceeds the pipeline's refund obligation.<sup>25</sup> Instead, any refunds to the replacement shipper in this situation will be paid by the releasing shipper.

28. Although no party challenged section 14.9(b) (Refunds) of Columbia Gulf's GT&C, the Commission finds that Columbia Gulf must modify section 14.9(b) to exempt short-term capacity release transactions not subject to the price cap from that subsection's provisions for the same reasons we are requiring Columbia Gas Transmission, LLC, to modify its similar tariff provision.<sup>26</sup> When a capacity release is subject to the price cap, it is appropriate to reduce the pipeline's refund obligation to a releasing shipper by the amount of any profit the releasing shipper made on the release. The pipeline could only have a refund obligation to the releasing shipper if the releasing shipper was paying a rate in excess of the final just and reasonable rate determined in the rate case. Therefore, any profit the releasing shipper obtained by releasing its capacity at a rate in excess of its own rate must represent payments by the replacement shipper in excess of the just and reasonable rate, which the pipeline credited or paid to the releasing shipper. Because the replacement shipper's payments are now in the hands of the releasing shipper rather than the pipeline, it is reasonable to require the releasing shipper to refund them directly to the replacement shipper, rather than return them to the pipeline for the pipeline to make the refund to the replacement shipper.<sup>27</sup>

29. However, this analysis is inapplicable to releases which are no longer subject to the price cap as a result of Order No. 712. In that situation, the replacement shipper's rate is final and not subject to refund, with the result that the releasing shipper is entitled to retain its entire profit from the release. Therefore, the pipeline must make a full refund to the releasing shipper of the amount by which the releasing shipper's rate exceeded the final just and reasonable rate, and neither the pipeline nor the releasing shipper need make any refunds to the replacement shipper. Columbia Gulf is directed, within 15 days of the date of this order, to revise section 14.9(b) consistent with this discussion.

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<sup>25</sup> This occurs when the releasing shipper releases the capacity at a rate higher than the rate it is paying the pipeline. Section 14.9(b) refers to the profit as "Releaser's Margin."

<sup>26</sup> *Columbia Gas Transmission, LLC*, 127 FERC ¶ 61,085, at P 15-16 (2009).

<sup>27</sup> *Transwestern Pipeline Co.*, 61 FERC ¶ 61,332, at 62,256 (1992).

The Commission orders:

(A) The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on February 26, 2009, subject to conditions and further review, as discussed above in the body of this order.

(B) Waiver of the 30-day notice requirement is granted to permit the revised tariff sheets to become effective on February 26, 2009.

(C) Columbia Gulf is directed to file additional information, within 30 days of the date of this order, consistent with the discussion above. Parties may file additional comments within 20 days of the date of Columbia Gulf's compliance filing.

(D) Columbia Gulf is directed to file revised tariff sheets, within 15 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.

Appendix A

Columbia Gulf Transmission Company  
Docket No. RP09-275-000  
FERC Gas Tariff  
Second Revised Volume No. 1

Tariff Sheets Accepted Effective: February 26, 2009

Fifth Revised Sheet No. 191  
Ninth Revised Sheet No. 191 A  
Ninth Revised Sheet No. 192  
Ninth Revised Sheet No. 193  
Tenth Revised Sheet No. 194