133 FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gulf Transmission Company Docket No. RP09-423-004

ORDER DENYING REHEARING

(Issued October 8, 2010)

1. The City of Charlottesville, Virginia and the City of Richmond, Virginia (Cities) requested rehearing of the Commission's February 25, 2010 "Order on Technical Conference" (February 25, 2010 Order).[1] In that order, the Commission accepted Columbia Gulf Transmission Company's (Columbia Gulf) 2009 Transportation Retainage Adjustment (TRA) filing. On rehearing, Cities challenge the Commission's decision to not require Columbia to replace certain delivery meters. For the reasons discussed below, the Commission denies rehearing.

I. Background

2. The background of this case is discussed in detail in previous Orders issued in this proceeding.[2] Briefly, as pertinent to the issue raised on rehearing, this case arises out of Columbia Gulf's Annual TRA filings through which Columbia Gulf files to recover its cost of Company Use Gas (CUG) and Lost and Unaccounted-for-gas (LAUF). Section 33 of the General Terms and Conditions (GT&C) of its tariff requires Columbia Gulf to make an annual TRA filing on or before March 1 to be effective on April 1 updating its fuel retainage percentages. Columbia Gulf's fuel retainage percentages include two components. The first component, the current retainage

[1] *Columbia Gulf Transmission Co.*, 130 FERC ¶ 61,136 (2010).

[2] *Id. See also Columbia Gulf Transmission Co.*, 128 FERC ¶ 61,105 (2009).

percentage, recovers Columbia Gulf's projected CUG and LAUF for the upcoming April to March twelve-month period. The second component, the true-up component, reflects the reconciliation of Columbia Gulf's actual CUG and LAUF quantities in prior periods with quantities retained by Columbia Gulf for the preceding calendar year, i.e., the deferral period.

3. In Columbia Gulf's 2008 Annual TRA proceeding in Docket No. RP08-347-002, the Commission ordered Columbia Gulf to investigate and examine the causes of and potential solutions for the increased level of LAUF on its system and to report its findings in its 2009 Annual TRA filing.[3] Accordingly, in its 2009 TRA filing, among other things, Columbia Gulf reported on the scope and outcome of its LAUF investigation and its responses to that investigation.

4. Columbia Gulf reported that one of the most significant contributors to the increase in LAUF on its system was its installation of more accurate ultrasonic meters at three new receipt point interconnections in late 2006 through early 2008, while it still has somewhat less accurate orifice meters at certain delivery points. In particular, Columbia Gulf stated that its investigation determined that the orifice meters at its Leach A and Means E delivery stations, which record deliveries into Columbia Gas Transmission, LLC (Columbia Gas), were under measuring the actual deliveries to Columbia Gas.[4] Based upon flow tests performed by Southwest Research Institute (Southwest), Columbia Gulf determined that the under-measurement of deliveries at Leach A and Means E represented approximately 1.08 percent of its deliveries at Leach A and 0.5 percent of its deliveries at Means E based on historic average operating conditions. Therefore, Columbia Gulf increased the measured deliveries at those points by these percentages, which resulted in adjustments of approximately 3.2 MMDth and 2.1 MMDth for the periods 2007 and January through September of 2008, respectively.[5] Columbia Gulf reflected these adjustments in the true-up component in its February 27, 2009 TRA filing, thereby reducing the accumulated under-recovered LAUF balance that would otherwise be collected from Columbia Gulf's customers by more than 5 MMDth.

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[3] *Columbia Gulf Transmission Co.*, 125 FERC ¶ 61,255, at P 23 and Ordering Paragraph (B) (2008).

[4] In general, a pipeline's LAUF is calculated by subtracting its deliveries from its receipts. An under-measurement of deliveries increases the difference between receipts and deliveries and thus, if the difference cannot be explained, increases LAUF.

[5] Columbia Gulf, Transmittal, Appendix B at 2, Docket No. RP09-423-000 (filed Feb. 27, 2009).

5. A technical conference was held to discuss Columbia Gulf's July 1, 2009 TRA filing[6] and the results of its LAUF investigation. Afterwards, parties filed initial and reply comments. As pertinent here, the parties acknowledged that Columbia Gulf had made progress in discovering the sources of its increased LAUF and had put remedies in place for the compressor station leakage. However, the parties were concerned about the increase in LAUF caused by the difference between the two metering technologies and requested the Commission to require Columbia Gulf to replace the orifice meters by installing ultrasonic meters at the Leach A and Means E measuring stations.

6. Columbia Gulf disagreed with the arguments of the parties that it should be required to replace its orifice meters because the use of orifice meters is consistent with industry standards and conforms to its tariff measurement requirements.[7] Cities argued that Columbia Gulf did not explain how its metering operations complied with the measurement standards in its tariff and industry practices. Cities contended that the extent and level of the meter inaccuracy identified by Columbia Gulf negates any legitimacy to Columbia Gulf's claim that the Leach and Means meters as currently installed and operated remain acceptable based on compliance with any applicable standards.[8] Another party argued that GT&C section 26.10(c) requires that, if measurement equipment is found to be in error, it must be repaired and adjusted to record correctly.[9]

7. Columbia Gulf maintained that its measurement technology complies with its tariff and industry standards.[10] Columbia Gulf stated that its orifice meters were constructed, installed, and are operated per industry and American Gas Association (AGA) recommended practices.[11] Columbia Gulf explained that orifice meters continue to be acceptable measurement facilities, as illustrated by the facts that the AGA updated its report on orifice metering in 2000, is in the process of preparing another update and

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[6] *See* 128 FERC ¶ 61,105 at P 24-25 for a delineation of the specific issues the Commission directed the parties to address at the Technical Conference. The Technical Conference was held on September 24, 2009.

[7] Columbia Gulf Reply Comments at 6-9.

[8] Cities Reply Comments at 2 and notes 2-3.

[9] Washington Gas Light Initial Comments at 4.

[10] Columbia Gulf Initial Comments at 1.

[11] Columbia Gulf Reply Comments at 7, note 17 (recommended practices are set forth in the *AGA Report No. 3, Orifice Metering of Natural Gas Part 2: Specification and Installation Requirements*).

that pipelines, producers and local distribution companies continue to install orifice meters today. Columbia Gulf argued that just because new meter technology is being developed does not mean that existing technology should be immediately replaced.[12]

8. Columbia Gulf stated that, pursuant to section 26.10(c) of its tariff, when testing of the orifice meters at Leach A and Means E revealed measurement errors, it cleaned the meter runs, chemically cleaned the pipelines from one point to another and implemented a schedule for regularly cleaning the orifice plates. Columbia Gulf maintained that it did not find measurement errors in all the runs tested.

9. Columbia Gulf contended that the parties' assertion that the orifice meters should be replaced because they measure inaccurately or erroneously is a mischaracterization. Columbia Gulf explained that, when two different types of meters measure a particular volume of flows, it is almost impossible to have the measurements match each other exactly. To minimize the delta between measurements at the orifice and ultrasonic meters, Columbia Gulf stated that it made adjustments and has fully complied with its tariff requirements.

10. In the February 25, 2010 Order, the Commission found that Columbia Gulf had undertaken reasonable and prudent efforts to investigate and remediate the increase in retainage on its system, especially with respect to the increases in its LAUF. The Commission reasoned that, as Columbia Gulf pointed out, although there were smaller contributors to the large increase in LAUF, the record reflected that no single event other than the new interconnections and the shift in metering technology accounted for the increased LAUF over historic LAUF levels on Columbia Gulf's system. However, the Commission found no evidence on the record showing that the orifice meters are inconsistent with Columbia Gulf's tariff or industry standards. Further, the Commission recognized that "pipelines need reasonable discretion to manage the operations of their system,"[13] particularly with respect to decisions to construct, upgrade or replace facilities.[14]

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[12] *See* Columbia Gulf Reply Comments at 7.

[13] *Columbia Gulf Transmission Co.*, 130 FERC ¶ 61,136 at P 14 (*citing Northwest Pipeline Company*, 72 FERC ¶ 61,271, at 62,191 (1995) (holding that pipeline has discretion to determine when establishing system-wide entitlements is required to manage operations)).

[14] *Id.* (*citing Paiute Pipeline Company*, 109 FERC ¶ 61,139, at P 29 (2004) (recognizing that pipeline construction is discretionary, so long as the pipeline does not use its discretion in an unduly discriminatory basis) (*citing CNG Transmission Corp.*,

(continued…)

11. Moreover, the Commission found no evidence on the record to support a finding that Columbia Gulf's use of orifice meters is inconsistent with industry standards or that it has not complied with its tariff requirements if its measurement equipment is found to be in error. The Commission noted that Columbia Gulf had hired Southwest to test the Leach A and Means E measuring station orifice meters. Based upon those results, the Commission determined that Columbia Gulf had made the appropriate adjustments. Therefore, the Commission did not direct Columbia Gulf to replace the orifice meters. The Commission found the adjustments that Columbia Gulf had made in its July 1, 2009 TRA filing were reasonable and consistent with the tolerance levels set forth in Columbia Gulf's tariff.[15] Consequently, the Commission found that the retainage rates proposed in Columbia Gulf's July 1, 2009 TRA filing were just and reasonable. On March 29, 2010, Cities filed for rehearing of the February 25, 2010 Order.

12. In Columbia Gulf's 2010 TRA proceeding, the Commission required Columbia Gulf to make the same mathematical adjustments to account for the under-measurement occurring at the Leach and Means delivery stations, as it did in its 2009 TRA filing.[16] The Commission required Columbia Gulf to make those adjustments both for purposes of projecting its 2010 LAUF volumes based on actual LAUF during calendar year 2009 and for purposes of truing up over and under-recoveries of LAUF during 2009.[17]

13. The arguments Cities raise on rehearing and the Commission's decision are discussed below.

II. Discussion of Request for Rehearing

A. Cities' Arguments

14. On rehearing, Cities do not challenge the Commission's findings concerning the adjustments that Columbia Gulf made to quantities due to past recording errors. Rather,

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90 FERC ¶ 61,005, at 61,008 (2000); *United Gas Pipe Line Co*., 64 FERC ¶ 61,015, at 61,140, *reh'g granted, in part, on other grounds*, 65 FERC ¶ 61,006 (1993))).

[15] *See* Section 26.10(c) on Second Revised Sheet No. 241 to FERC Gas Tariff, Second Revised Volume No. 1.

[16] The 2009 TRA filing was based on activity during 2008, to which Columbia Gulf had applied mathematical adjustments through September 2008.

[17] *Columbia Gulf Transmission Co*., 131 FERC ¶ 61,156, at P 49-51 and P 56, *order deny'g reh'g*, 132 FERC ¶ 61,134 (2010).

the Cities challenge the Commission's decision to not require Columbia Gulf to replace the Leach A and Means E orifice meters with the new ultrasonic meters. They rely on section 26.10(c) of Columbia Gulf's GT&C to argue that Columbia Gulf's tariff requires it to replace the Leach A and Means A meters. That section provides, "[i]f, upon any regular or special testing, any measuring equipment is found to be in error, it will immediately be repaired and adjusted by the Operating Party to record correctly." That section also provides that, if certain conditions are met, "any quantities previously recorded by the tested equipment will be corrected to zero error for any period of error which is known definitely or agreed upon by the parties."

15. Specifically, Cities contend that section 26.10(c) places two independent obligations on Columbia Gulf. According to Cities, the first obligation requires the pipeline to repair and adjust any meters in error so that they record correctly on a going-forward basis and the second obligation requires it to correct any quantities that were previously recorded in error, subject to certain thresholds.

16. Cities state that section 26.10(c) strictly requires Columbia Gulf to repair and adjust any meters "in error" so that they "record correctly." Cities argue that it is indisputable that Leach A and Means E meters do not record "correctly," especially since recent testing revealed that there were recording errors in excess of 5,000,000 Dth. Cities further argue that Columbia Gulf has not taken steps to prevent such errors from continuing into the future but rather acknowledges that it continues to experience an "under-measurement problem" at Leach and Means and that mathematical adjustments are "not a long-term solution" to this problem.[18]

17. Cities maintain that section 26.10(c) unambiguously requires Columbia Gulf to repair any meters that are under-measuring or otherwise improperly recording. Because it believes section 26.10(c) mandates that when a meter is in error Columbia Gulf must repair and adjust the meter so that it records correctly, Cities argue that the Commission should have employed long-standing interpretive principles in construing it.[19] Cities assert that there is nothing ambiguous about the terms "in error" or "record correctly," nor did the Commission or Columbia Gulf assert that there was any ambiguity. Therefore, Cities contend there was no need to resort to extrinsic evidence of "industry standards" or anything beyond the plain text of the tariff. Cities further contend that there was also no need to consider what, if any, steps Columbia Gulf took to attempt to rectify

[18] Request for Rehearing at 5 and *citing* Columbia Gulf Answer in Docket No. RP10-134 at 26-27 (December 4, 2009).

[19] Request for Rehearing at 5 (*citing MMD Energy, Inc. v. California Independent System Operator Corp.*, 123 FERC ¶ 61,251, at P 80 (2008)).

its under-measurement problem because the tariff requires Columbia Gulf to adjust and repair its meters to make the meters "record correctly," which Cities argue Columbia Gulf has failed to do.[20]

18. Next, Cities argue that pipelines have no discretion to violate their tariff provisions. Cities argue that the case the Commission relied on in its February 25, 2010 Order was a decision that accepted a proposed tariff provision that expressly gave the pipeline sole authority to determine whether to construct certain facilities requested by its customers.[21] According to Cities, the issue here is whether Columbia Gulf complied with the terms of its existing tariff.

B. Commission Decision

19. The Commission denies rehearing. We disagree with Cities' argument that section 26.10(c) of Columbia Gulf's tariff requires Columbia Gulf to replace its Leach A and Means E orifice meters with ultrasonic meters. Contrary to the arguments raised by Cities, we find that our decision in this case is consistent with the requirements of Columbia Gulf's tariff.

20. Section 26 of Columbia Gulf's GT&C governs the measurement of gas deliveries by the operator of the measuring equipment. The provisions of section 26 relevant to the current issue are as follows:

> 26.1 Measuring station(s) and equipment shall be installed in accordance with Transporter's specifications, by which the volumes of gas delivered hereunder shall be determined.
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> 26.2 Orifice Meters – When orifice meters are used, the gas delivered shall be measured with meters designed, constructed and installed, and whose computations of volumes are made, in accordance with the provision of AGA Measurement Committee Report No. 3 of the American Gas Association ….[22]

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[20] Request for Rehearing at 6. Cities also argue there are no threshold error levels that apply to the obligation to repair and adjust faulty meters. *Id.* at 6-7.

[21] Request for Rehearing at 7 and note 13 (*citing Paiute Pipeline Co.*, 109 FERC ¶ 61,139 at P 29 (2004)).

[22] Part 3 of the AGA Report provides practical guidelines for the measurement of natural gas using orifice meters.

21. With regard to the Testing and Correction of Metering Errors, Section 26.10 provides in pertinent part:

> (a) The accuracy of all measuring equipment will be verified by its operator … at least once each year ….
>
> (b) …if measuring equipment is found to be in error, such that previous Recordings from the equipment must be corrected under this Section, the costs of any special testing, repair and calibration (including transportation) will be borne by the Operating Party ….
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> (c) If, upon any regular or special testing, any measuring equipment is found to be in error, it will immediately be repaired and adjusted by the Operating Party to record correctly. If (1) the total measurement adjustment for the period of error is greater than 500 Dth and the total error is greater that 1% or (2) the total measurement adjustment for the period of error is greater than 10,000 Dth, any quantities previously recorded by the tested equipment will be corrected to zero error for any period of error which is known definitely or agreed upon by the parties….
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> (d) In the event any measuring equipment is out of service, or is determined to be registering inaccurately and the error is not determinable by test, previous Recordings from such equipment, or the volumes of gas or quantities of energy received or delivered through such equipment will be estimated …. (2) . . . by correcting the error if the percentage of error is ascertainable by calibration, special test or mathematical calculation.

22. The Commission does not interpret these provisions as requiring Columbia Gulf to replace the Leach A and Means E orifice meters. Section 26.2 expressly contemplates that Columbia Gulf may use orifice meters at delivery points, subject to the requirement that "the gas delivered shall be measured with meters designed, constructed and installed, and *whose computations of volumes are made*, in accordance with the provisions of AGA Measurement Committee Report No. 3 of the American Gas Association [emphasis supplied]." Cities do not contest Columbia Gulf's assertion that its Leach A and Means E orifice meters satisfy the requirements of section 26.2.[23] Rather, they argue that, despite the fact those meters satisfy the requirements of section 26.2, section 26.10(c) nevertheless requires Columbia Gulf to remove those meters and replace them with more accurate ultrasonic meters. We disagree.

[23] Columbia Gulf reply comments at 7, note 17.

23. In order to properly interpret section 26.10(c), that section must be read together with the other provisions of section 26 of Columbia Gulf's GT&C so that all the provisions of section 26 are interpreted consistently. In light of the fact that section 26.2 permits use of orifice meters "whose computations of volumes are made" in accordance with the referenced AGA Measurement Committee Report, it is not reasonable to interpret section 26.10(c) as requiring replacement of orifice meters which satisfy that requirement. Section 26.10(c) does not contain any express language requiring the Operating Party to replace one type of meter with another type of meter. It simply provides that, if "any measuring equipment is found to be in error, it will immediately be repaired and adjusted by the Operating Party to record correctly." Thus, the focus of section 26.10(c) is on "repairing" and "adjusting" existing equipment which has been installed consistent with the other provisions of section 26, not removing that equipment and replacing it with a different type of equipment. Therefore, we find that the requirement of section 26.10(c) to repair and adjust delivery meters "to record correctly," as applied to orifice meters, is satisfied by repairing and adjusting the meters so that their "computations of volumes are made in accordance with" the requirements of AGA Measurement Committee Report No. 3, as required by section 26.2.

24. In this case, Columbia Gulf has complied with section 26.10(c). As required by that section, it tested the Leach A and Means E meters. When that testing revealed measurement errors, Columbia Gulf took action as required by section 26.10(c). It cleaned the meter runs, chemically cleaned the pipelines from one point to another and implemented a schedule for regularly cleaning the orifice plates. It is uncontested that once those actions were taken, the Leach A and Means E meters computed volumes in accordance with the requirements of AGA Measurement Committee Report No. 3, as required by section 26.2.[24] In other words, Columbia Gulf's orifice meters are not faulty meters that must be replaced, as Cities argue.

25. However, for purposes of Columbia Gulf's recovery of LAUF pursuant to the TRA mechanism set forth in section 33 of its GT&C, it was necessary to adjust the delivery volumes measured by the Leach A and Means E orifice meters. Columbia Gulf's investigation revealed that the mismatch between its use of ultrasonic meters to measure volumes at some receipt points and its use of orifice meters to measure volumes at the Leach A and Means E delivery points contributed to the increase in LAUF on its system. Tests by an expert in measurement and testing hired by Columbia Gulf showed that the orifice meter at Leach A was under-measuring deliveries at Leach A by approximately 1.08 percent and the orifice meter at Means

[24] Reliance on the fact that Columbia Gulf's orifice meters are consistent with industry standards is not a resort to extrinsic evidence to interpret Columbia Gulf's tariff, as Cities argue. Section 26 Columbia Gulf's GT&C includes the requirement that orifice meters must be consistent with industry standards. Thus, this fact is relevant to interpreting section 26 as a consistent whole.

E was under-measuring deliveries by 0.5 percent based on historic average operating conditions. Therefore, in order to obtain a just and reasonable calculation of the LAUF to be recovered through Columbia Gulf's TRA, it was necessary to make a mathematical upward adjustment to those deliveries based upon those test results. That adjustment was consistent with section 26.10(d)(2) providing for the correction of errors by mathematical adjustment where the percentage error is ascertainable by special test.

26. We find that the increased LAUF was not the result of any defect in the orifice meters themselves. Rather, the increased LAUF was caused because, of among other contributors, the orifice and ultrasonic meters are two different measuring technologies. We continue to find nothing in the record to dispute the fact that, when a pipeline has two different types of metering technology to measure a particular volume of flows, it is almost impossible to have the measurements match each other exactly. The tariff does not require Columbia Gulf to replace the orifice meters due to this difference in technologies but rather to correct quantities recorded in error, which Columbia Gulf has done. Therefore, consistent with the tariff provisions, we appropriately did not require Columbia Gulf to replace its orifice meters with the ultrasonic meters. As we stated in the February 25, 2010 Order, it is well established that "managers of a utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers."[25]

27. Contrary to Cities' argument, Columbia Gulf has met the requirements of its tariff. Columbia Gulf has identified the cause of the increased LAUF on its system, made adjustments and will, in its discretion, determine when and how to invest in the necessary metering upgrades to its delivery-side metering facilities. For these reasons, rehearing is denied.

The Commission orders:

The Cities' Request for Rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[25] *Columbia Gulf Transmission Co.*, 130 FERC ¶ 61,136 at P 19 (*citing New England Power Co*., 31 FERC ¶ 61,047, at 61,084 (1985); *aff'd sub nom. Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986), *quoted in, e.g., Dakota Gasification Co.*, Opinion No. 410, 77 FERC ¶ 61,271, at 62,154 (1996) and *Entergy Services, Inc.*, 124 FERC ¶ 63,026, at P 278 (2008)).