138 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC Docket No. RP11-2253-000

ORDER ON TECHNICAL CONFERENCE

(Issued January 20, 2012)

1. On July 28, 2011, in the captioned docket, the Commission issued a Suspension Order that directed Commission Staff to convene a technical conference to examine the issues raised in the filing made by Columbia Gas Transmission, LLC (Columbia) to update its Transportation Cost Rate Adjustment (TCRA) surcharge.[1] Columbia filed its TCRA update outside the usual annual filing schedule in order to recover unanticipated increases in third-party transportation costs incurred to fill its northern Ohio storage fields in preparation for the upcoming winter heating season. On September 8, 2011, Commission Staff convened a technical conference. In the instant order, the Commission accepts the updated TCRA surcharge.

Background

2. Section 36 of the General Terms and Conditions (GT&C) of Columbia's tariff provides for it to recover its "Operational 858[2] costs" through a tracking mechanism. Section 36.1(a) defines Operational 858 costs as "costs incurred for the transmission and compression of gas by others … including amounts paid to upstream pipelines for contracts retained as a result of Transporter's Order No. 636 restructuring, or utilized in

[1] *Columbia Gas Transmission, LLC*, 136 FERC ¶ 61,062 (2011) (Suspension Order).

[2] The '858' designation refers to this account's place in the Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, 18 C.F.R. § 201 (2011).

Transporter's post-restructuring operations." Section 36.2 requires Columbia to make an annual TCRA rate filing on or before March 1 of each year to be effective April 1. The TCRA rates include two components: (1) the "Current Operational TCRA Rate," which recovers Operational 858 costs Columbia projects it will incur during the April to March annual period the TCRA rate will be in effect, and (2) the "Operational TCRA Surcharge," which trues up over- and under-recoveries during the preceding calendar year. Section 36.4(a)(1) and (2) of the GT&C provides that each component of the TCRA rates shall be allocated to the applicable rate schedules "on an as-billed basis and in a manner consistent with Transporter's currently effective cost allocation and rate design." Section 36.2 also permits Columbia to make TCRA Filings at such other times as it determines necessary, but such periodic filings may only adjust the Current Operational TCRA Rate, and not the Operational TCRA Surcharge.

3. On July 1, 2011, Columbia filed revised tariff records[3] to update its TCRA surcharge outside the usual annual schedule, as permitted by section 36.2. Columbia stated that, as a result of unanticipated increases in third-party transportation costs, a Periodic TCRA Filing was necessary and requested that the TCRA rates be revised, effective August 1, 2011, so that it could recover $9,882,332 in incremental Operational 858 costs. Columbia explained that there are two primary reasons for the increase in Operational 858 costs: (1) reduced receipts in northern Ohio hindering Columbia's ability to fill its northern Ohio storage fields, and (2) scheduled construction on Columbia's Line 1278 and Line P.

4. Columbia alleged that since the commencement of the storage injection season on April 1, 2011, Columbia has had reduced receipts into northern Ohio, which has adversely affected Columbia's ability to fill its northern Ohio storage fields. Columbia explained that this was because increased supply from both Marcellus and other sources of production are displacing supply historically received from ANR Pipeline Company (ANR) for Columbia's northeastern markets. Columbia argued that this reduction in receipts was hindering its ability to fill the northern Ohio storage fields and serve northern Ohio markets. Columbia stated that if it continued to be unable to fill its northern Ohio storage fields it might have trouble meeting its firm storage withdrawal obligations in the upcoming winter season.

5. Columbia requested that the Commission grant two waivers of GT&C section 36.4(a)(1) regarding the calculation of TCRA rates so that it could recover the incremental $9,882,332 in Operational 858 costs. First, Columbia proposed to recover the incremental costs over the period August 1, 2011 through March 31, 2012, rather than

[3] *See* Appendix.

over a twelve-month period ending July 31, 2012 as directed by section 36.4(a)(1). Columbia explained that this waiver would help prevent any issues with overlapping TCRA rates when it makes its next annual TCRA filing on or before March 1, 2012. Second, Columbia proposed to include costs that were incurred on or after April 1, 2011, rather than only including costs that will be incurred on or after the effective date of this filing (August 1, 2011), as directed by section 36.4(a)(1). Columbia explained that this waiver would more closely align the recovery of these costs with their incurrence, as well as prevent a more significant increase in TCRA rates in Columbia's next annual TCRA Filing.

6. Several parties filed comments in opposition to Columbia's Filing, challenging both Columbia's decision to use third-party transportation to solve the northern Ohio storage problem and also the manner in which Columbia implemented that decision. Based upon review of the filing, the Commission determined that further review was necessary and required a technical conference be held. Staff convened the technical conference on September 8, 2011. After the conference, the parties submitted Initial Comments on October 11, 2011, and submitted Reply Comments on October 25, 2011, which are discussed below.

Discussion

7. Columbia states in its initial comments that, in the past three years, receipts on its system from Marcellus production in the southwest part of its system have increased from almost zero to nearly half a Bcf/day of flowing supply. Columbia notes that, while the increase in production has benefitted Columbia's shippers and the industry as a whole through reduced gas costs and easier access to supply, these market changes have also affected shippers' supply decisions. In particular, gas purchased in northern Ohio has become more expensive than gas purchased at Columbia's pool. The result has been a decrease in receipts onto Columbia's system in northern Ohio from ANR Pipeline Company and Panhandle Eastern Pipeline Company as shippers have purchased increased Marcellus volumes and thus scheduled increased receipts onto the southwest part of Columbia's system.[4]

8. Columbia states the reduction in receipts in northern Ohio raises two primary issues. In the summer, Columbia must have sufficient flowing gas in northern Ohio to

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[4] Columbia states that for much of the past twenty years, receipts into northern Ohio were at levels in excess of 200,000 Dth/day; however, in the 2011 injection season these receipts decreased to less than 50,000 Dth/d.

inject into its northern Ohio storage fields.[5] Columbia states that as a result of reduced supply in northern Ohio, by June 1, 2011, inventory in Columbia's northern Ohio storage fields was 10 Bcf below the five-year historical average. In the winter, Columbia notes it must have sufficient flowing supply to serve its northern Ohio markets in Toledo and Lima. Although Columbia was experiencing an overall increase in supply due to the increase Marcellus volumes, Columbia states that this supply was located in the wrong place to address the lack of receipts in northern Ohio. Columbia states that it currently does not have sufficient pipeline capacity on its own system to move Marcellus production to northern Ohio where it is needed. Therefore, Columbia argues that it had two options in deciding how to address the reduction in receipts: issue an operational flow order requiring shippers to nominate increased receipts in northern Ohio or contract for additional third party capacity to move some of the Marcellus supply from the southern portion of its system into northern Ohio.

9. No party argues in its post-technical conference comments that a problem did not exist on the Columbia system, or that Columbia should not have attempted to address the northern Ohio flowing gas shortfall. The only objections raised concern, first, whether the costs are eligible for TCRA recovery, and second, whether Columbia should have addressed the conceded problem in a different manner, such as by issuing an OFO, rather that purchasing additional third party capacity. They argue that an OFO would have had the effect of allocating the costs in a more reasonable manner.

A. Pipeline Authority to Use TCRA

1. Comments

10. Joint Intervenors[6] state that Columbia's TCRA Filing seeks recovery of a discrete set of contract costs, incurred in response to a perceived storage emergency earlier this year. As a short-term response to emergency system conditions, Joint Intervenors state the TCRA Filing is inconsistent with Commission precedent regarding cost trackers generally and Columbia's TCRA mechanism specifically.

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[5] Columbia has over 35 storage fields located throughout its system. It operates its storage service as an integrated whole. Therefore, shippers nominate injections into a generic storage delivery point, rather than designating the particular storage field where the gas should be injected. Columbia is then responsible for determining where to inject the gas into storage, based upon such operational considerations as where the gas is likely to be needed when shippers nominate withdrawals for delivery to their delivery points.

[6] United States Gypsum Company, Calpine Energy Services, L.P. and Stand Energy Corporation.

11. Joint Intervenors state that Columbia's TCRA mechanism recovers third-party transmission costs "paid to upstream pipelines for contracts … utilized in Transporter's post-restructuring operations." In the past, Joint Intervenors note that Columbia has claimed that it is "expressly authorized" to recover through the TCRA any "third-party transportation contract that Columbia uses to provide service to Columbia's shippers under the terms and conditions of Columbia's tariff." As a general matter, Joint Intervenors aver that piecemeal ratemaking and cost trackers are not favored by the Commission. When tracker mechanisms are permitted, Joint Intervenors state the Commission has directed that they "should track only those costs related to normal pipeline operations," and has found it unreasonable for trackers to recover costs due to unusual, non-recurring events. Specifically, Joint Intervenors state that on rehearing in *CIG*, the Commission explained that if non-recurring costs could be recouped through cost trackers it would turn the trackers into a free insurance policy that places the full risk on shippers and provide a disincentive to the pipeline to properly maintain and insure its facilities.[7]

12. Consistent with these precedents, Joint Intervenors state the Commission previously rejected an attempt by Columbia to recover through the TCRA third-party transportation costs associated with an emergency response to a line disruption, applying its holding that "tracking mechanisms should track only those costs related to normal pipeline operations."[8] Joint Intervenors state that the storage-related third-party transportation costs in this case are the type of short-term, emergency costs that fall outside the scope of a permissible cost tracker. Therefore, Columbia's interim TCRA filing is inconsistent with Commission policy and should be rejected.

13. In addition, Joint Intervenors state that using the TCRA mechanism to shift complete responsibility to shippers for the unpredictable cost impacts incurred over time due to diminished northern Ohio receipts would be inconsistent with well-established Commission precedent and should be disallowed. Joint Intervenors state the Commission has previously addressed the allocation of system cost responsibility in light of market-driven demand reductions in the mid-1990s in context of pipeline "capacity turnback" concerns, where shippers had terminated their contracts and left the system. The Commission rejected proposals to shift costs onto remaining system customers and required pipelines to share with the shippers the cost responsibility for addressing turned-

[7] *Colorado Interstate Gas Co.*, 123 FERC ¶ 61,183, at P 16 (2008) (*CIG*).

[8] *Columbia Gas Transmission, LLC*, 126 FERC ¶ 61,319, at PP 20-22 (2009).

back capacity.[9] Joint Intervenors state Columbia's reduced receipts in northern Ohio result from valid, market-driven shipper service decisions and just as it was inappropriate for pipelines to expect recovery of all capacity turnback costs from their remaining shippers, it is inappropriate now for Columbia to expect its TCRA shippers to bear all future third-party transportation costs incurred due to reduced northern Ohio receipts.

14. Joint Intervenors urge the Commission to require Columbia to share responsibility for the third-party transportation costs incurred to address the operational issues engendered by Columbia's reduced northern Ohio receipts. As with capacity turnback, Joint Intervenors state requiring Columbia to share the costs of addressing its northern Ohio receipts problem would provide an appropriate incentive to aggressively and efficiently resolve that challenge while also safeguarding the interests of existing customers, primarily captive customers, against pipeline overreaching. Joint Intervenors note that Columbia sold a substantial amount of firm transportation to Marcellus Shale producers and, in so doing, gained incremental revenue that it has not shared with existing ratepayers. Having done so, Columbia cannot now evade responsibility for the third-party transportation costs associated with diminished northern Ohio receipts caused by that same Columbia-supported supply surge. Joint Intervenors further note that such cost sharing already constitutes one element of the settlement recently submitted by Columbia and its shippers to resolve outstanding TCRA issues in Docket Nos. RP10-401-000 and RP11-1822-000.

15. Columbia states that Joint Intervenors' request to reject the filing on the grounds that the Commission has previously rejected the recovery of "emergency" transportation costs through the TCRA mechanism is inconsistent with Commission precedent, citing a October 2009 Order[10] where the Commission reconsidered its holding in an earlier March 2009 order cited by Joint Intervenors. Columbia also notes that the two cases relied upon by Joint Intervenors with regards to capacity turnback are irrelevant to this proceeding since both cases relate to the costs of unsubscribed capacity in the context of a general section 4 rate case and Joint Intervenors fail to demonstrate how this applies to the instant proceeding, a limited section 4 proceeding pursuant to a Commission-approved tracker mechanism that expressly authorizes Columbia to recover all of its prudently incurred Operational 858 costs.

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[9] *See, e.g., El Paso Natural Gas Co.,* 72 FERC ¶ 61,083 (1995) and *Natural Gas Pipeline Company of America,* 73 FERC ¶ 61,050 (1995).

[10] *Columbia Gas Transmission, LLC*, 129 FERC ¶ 61,037, at P 32-33 (2009).

16. Columbia states that Joint Intervenors' and ProLiance's arguments that Columbia should have issued an OFO or chosen some other method besides using third party transportation to redirect supply into northern Ohio should be rejected since the fact that other methods may have been available is irrelevant and what matters under section 4 of the NGA is whether the method Columbia chose was just and reasonable. Columbia states it took measures expressly authorized by its tariff to address the situation and those actions benefitted shippers because they allowed Columbia to maintain firm service and ensure sufficient storage inventory to meet its firm service demands this winter.

2. Commission Determination

17. Columbia's present filing is consistent with recent Commission orders on its TCRA mechanism. Joint Intervenors argue that the Commission previously rejected an attempt by Columbia to recover through the TCRA third-party transportation costs associated with an emergency response to a line disruption, noting a March 2009 Order that stated, "tracking mechanisms should track only those costs related to normal pipeline operations."[11] However, in an October 2009 Order, "the Commission conclude[d] that the March 2009 Order erred," overturning the very holding on which Joint Intervenors now rely.[12]

18. In the October 2009 Order, the Commission explained that section 36.1(a) of Columbia's GT&C defines the Operational 858 costs that may be recovered through the TCRA broadly as "costs incurred for the transmission and compression of gas by others … including amounts paid to upstream pipelines for contracts … utilized in Transporter's post-restructuring operations." The October 2009 Order found that Columbia's cost of purchasing capacity on another pipeline in order to continue providing service to customers affected by the rupture of Columbia's Line 1278 satisfied this definition. The Commission reasoned that "Columbia incurred these costs to purchase transportation service on other pipelines in order to ship gas to its shippers. These costs were thus incurred to obtain transmission of gas by other pipelines under contracts utilized in Columbia's post-restructuring operations."[13] Moreover, the Commission expressly held that "Columbia's tariff definition of Operational 858 costs eligible for recovery through the TCRA does not limit such costs to those incurred during routine operations," pointing out that the Commission had previously allowed Columbia to recover through its TCRA

[11] Joint Intervenors Initial Comments at 8 (quoting *Columbia Gas Transmission, LLC*, 126 FERC ¶ 61,319 at P 20-22).

[12] *Columbia Gas Transmission, LLC*, 129 FERC ¶ 61,037, at P 29-33.

[13] *Id.* at P 29.

third party transportation costs incurred to continue providing service when Columbia's system was out of service for construction.[14]

19. For the same reasons, the costs at issue in this case satisfy the section 36.1(a) definition of "Operational 858 costs" eligible for recovery in the TCRA. Columbia incurred these costs to purchase transportation service on another pipeline in order to ship gas to its northern Ohio storage fields, where all parties agree it will be needed in order for Columbia to provide service to shippers in northern Ohio during the winter. These costs are thus "amounts paid to upstream pipelines for contracts … utilized in Transporter's post-restructuring operations," as required by section 36.1(a).

20. In addition, as Columbia notes, the two cases relied upon by Joint Intervenors for the proposition of requiring the sharing of capacity costs were general section 4 rate case proceedings, in which pipelines were proposing to recover the costs of unsubscribed capacity resulting from capacity turnback and the pipelines had no existing tariff mechanism for recovering those costs. In contrast, this proceeding is a limited section 4 filing addressing whether Columbia's Operational 858 costs are acceptable for recovery under its Commission-approved tracker mechanism and there is no issue concerning capacity turnback. Having found that the costs at issue here are the type of costs eligible for recovery under the TCRA, the Commission could only deny recovery of those costs in the TCRA based upon a finding that Columbia's incurrence of those costs was imprudent, and as discussed in the next section there is no basis for such a finding. Therefore, the Commission will deny Joint Intervenors' request to require Columbia to share responsibility for third-party transportation costs. With regard to Joint Intervenors' argument that the present filing is piecemeal and short-term, we consider that argument in the section below.

21. Columbia has requested two waivers to the calculation of its out-of-cycle filing. First, Columbia proposes to recover the incremental costs over the period August 1, 2011 through March 31, 2012, rather than over a twelve-month period ending July 31. Second, Columbia proposes to include costs that were incurred on or after April 1, 2011, rather than only including costs that will be incurred on or after the effective date of this filing (August 1, 2011). For good cause, we grant the waivers. By making these two adjustments, Columbia provides shippers with a more stable TCRA rate, so that Columbia will not be under-recovering in this current period and then over-recovering after March 31, 2012.

[14] *Id.* at P 32 (*citing Columbia Gas Transmission Corp.*, 105 FERC ¶ 61,041, at P 8-9 (2003)).

B. Whether OFO Should Have Been Used to Address Shortfall in Northern Ohio Receipts

1. Comments

22. Joint Intervenors and ProLiance state Columbia has not justified that the use of third-party transportation contracts to address the shortfall of receipts in northern Ohio was appropriate in light of other potential options available to the pipeline. Joint Intervenors believe that Columbia chose the use of third-party transportation contracts, as opposed to other potential options, largely because the TCRA offers the potential to pass all costs through to shippers. Joint Intervenors and ProLiance propose that Columbia should have issued OFOs instead of making use of its TCRA mechanism in order to address the shortfall of receipts in northern Ohio. Joint Intervenors argue that OFOs are the "primary solution proposed by Order No. 636 for dealing with situations like the pipeline's reduced northern Ohio receipts."[15] Joint Intervenors argue that while Columbia claimed that any OFO issued would be virtually system-wide in application and pose daunting administrative challenges and have far-reaching impacts, Columbia's tariff obligates it to attempt to "direct such OFOs to those Shippers causing the condition that necessitates issuance of the OFO."[16] In addition, Joint Intervenors note Columbia's tariff empowers the pipeline to issue OFOs directing shippers to utilize primary receipt points[17] and to require shippers to deliver gas to their primary receipt points under Rate Schedule FTS, NTS, TPS, or GTS service agreements.[18] Joint Intervenors also state that section 49 of Columbia's tariff permits the pipeline to buy gas "to the extent necessary to … otherwise protect the operational integrity of Transporter's system."[19] However, Joint Intervenors note that it appears Columbia's primary concern with the gas purchase option is the absence of any clear, TCRA-type mechanism for recouping the costs of those purchases.

23. ProLiance states that Columbia has not shown that the acquisition of off-system capacity was in fact the least-cost solution. ProLiance states that while Columbia admits it considered possible market impacts to the price of natural gas in its decision making

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[15] Initial Comments of Joint Intervenors at 12.

[16] *Id.* at 12-13 (quoting GT&C Section 17.1(a)).

[17] GT&C Section 17.1(f).

[18] GT&C Section 17.2(b).

[19] Initial Comments of Joint Intervenors at 13 (quoting GT&C Section 49.1).

process, it should not be the decision of a pipeline to determine which market outcomes its shippers may or may not prefer. ProLiance states that Columbia provided no factual support as to what the market impacts might have been or that the acquisition of off-system capacity was in fact the least-cost solution. Under Columbia's solution shippers with other capacity options are being asked to subsidize other shippers through an increase in the TCRA rates.

24. ProLiance states that Columbia's presentation at the technical conference and Commission precedent clearly support the OFO option as the most reasonable solution to the northern Ohio receipts issue. ProLiance notes that Order No. 636-B states a pipeline "can make its shippers inject gas into the system with their contract quantities…when and where necessary to maintain the system's operational integrity and to enable the pipeline to provide no-notice service."[20] ProLiance states that during the Order No. 636 proceedings, Columbia filed comments where it recognized that there's a need to preserve the pipeline's ability to manage its system and that Columbia's due diligence in remedying a problem would be the issuance of an OFO to the relevant parties that own supply.[21]

25. ProLiance states that instead of its suggested remedy, Columbia selected an option based on its own speculative conclusions without sufficient input from its shippers or detailed analysis. In addition, ProLiance suggests that it is not necessarily accurate that shippers would have been negatively impacted by an OFO, as Columbia assumed. ProLiance states that Columbia provided no factual support as to what the market impacts might have been if it had issued an OFO.

26. Columbia states it opted to contract for additional third party capacity because it believed that issuing an OFO would have been significantly more expensive for shippers than the corresponding increase in the TCRA rates. In its Reply Comments, Columbia argues that it is ludicrous to suggest that maintaining an OFO indefinitely with an associated $12/Dth penalty[22] is a better outcome for shippers than a TCRA increase of $0.0036/Dth.

27. Columbia states neither Joint Intervenors nor ProLiance have contested the fact that there were operational issues that needed to be addressed. Columbia states that while

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[20] Order 636-B, 61 FERC ¶ 61,272, at 62,010 (1992).

[21] Joint Reply Comments of Columbia Gas Transmission *et al*. to comments of Order 636 Compliance Filing Under RS92-5 *et al*., March 22, 1993.

[22] Assuming a gas cost of $4/Dth.

it has experienced a significant increase in receipts on its system from Marcellus production it does not have sufficient pipeline capacity on its own system to move Marcellus production to northern Ohio where it is needed.

28. Columbia states that what Joint Intervenors and ProLiance are really objecting to is the fact that they are being asked to pay any portion of the costs incurred to protect service to all shippers. In addition, Columbia states that purchasing gas was not an option because the gas would belong to Columbia and not the customers who would need it in the summer and Columbia does not have a cost recovery mechanism for gas purchases. Columbia argues that the other options presented thus far would have been significantly more expensive for shippers than the increase in the TCRA rates.

29. Several parties,[23] in addition to Columbia, oppose the use of OFOs to address Columbia's lack of receipts in northern Ohio. These parties state that OFOs are more appropriate for short-term, emergency-like conditions and were not designed to deal with this type of longer-term, structural condition. The parties also argue that complying with an OFO would be more onerous and administratively burdensome and would likely have resulted in substantial increases in commodity gas costs for all of Columbia's shippers. Generally, these shippers argue that Columbia appears to have considered all reasonable options, under the circumstances, and selected a reasonable short-term solution.

30. Old Dominion states that while it does not challenge the reasonableness of Columbia's interim TCRA, it takes exception to Columbia's allegation that shippers are to blame for not changing their gas supply arrangements to prevent the need for Columbia to contract for third-party transportation. Old Dominion states that Columbia's EBB postings show that Columbia did not make the pleas for voluntary shipper action to address the storage issue as Columbia claims, but instead that Columbia proceeded with third-party transportation contracts as it was notifying shippers of the possibility of doing so. Old Dominion states it cannot prove that with more clear and timely communication shippers would have changed their receipts in order to bring northern Ohio storage injections to a reasonable level, however, Columbia cannot justify the interim TCRA by pointing to communications with its customers before the third-party contracts were executed.

[23] NiSource Distribution Companies (NDC), Independent Oil and Gas Association of West Virginia, Inc. (IOGA), City of Charlottesville, Virginia and the City of Richmond, Virginia (Cities), National Grid Gas Delivery Companies (National Grid) and Baltimore Gas and Electric (BGE).

2. <u>Commission Determination</u>

31. The protestors have provided no basis for the Commission to refuse to permit Columbia to recover the subject costs in its July 28, 2011 interim TCRA Filing. When, as here, a pipeline has an approved mechanism in its tariff for the flow-through of a particular type of cost and the pipeline makes a limited section 4 filing to recover newly incurred costs pursuant to that mechanism, the Commission's authority to disallow recovery of the cost or order refunds is limited. As the Commission explained in Opinion No. 410,[24]

> Since the pipeline's limited section 4 filing would not propose to change the approved flowthrough mechanism, the Commission would have to proceed under section 5 to make any change in that mechanism. For example, if the Commission desired to modify the type of costs currently eligible for recovery under the flowthrough mechanism, it would have to proceed under section 5 and the revision to the flowthrough mechanism could only take effect prospectively. The only rate change initiated by the pipeline in such a limited section 4 filing is the inclusion in the approved flowthrough mechanism of newly incurred costs. The Commission could, therefore, order refunds of the resulting proposed rate increase, in the limited circumstance of a finding that the costs were not of the type authorized for recovery under the approved flowthrough mechanism or that the pipeline was imprudent in incurring the new costs.

32. In this case, the Commission has found in the preceding section that the subject costs are the type of Operational 858 costs authorized for recovery in Columbia's approved TCRA tariff mechanism. In addition, no party has requested that the Commission take action under NGA section 5 to modify the TCRA at this time, and in any event, as set forth above, such action could only be prospective. Therefore, the Commission cannot disallow recovery of the costs Columbia has proposed to recover in its July 28, 2011 TCRA Filing, or order refunds, unless the Commission finds that Columbia's incurrence of those costs was imprudent. The protestors' arguments for disallowance of these costs do not justify a finding that Columbia's incurrence of these costs was imprudent.

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[24] *Dakota Gasification Co.*, 77 FERC ¶ 61,271, at 62,146 (1996) (Opinion No. 410).

33. The Commission's standard for reviewing prudency is based on the 'reasonable person' test and is well established:

> [M]anagers of a utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers. In performing our duty to determine the prudence of specific costs, the appropriate test to be used is whether they are costs which a reasonable utility management (or that of another jurisdictional entity) would have made, in good faith, under the same circumstances, and at the relevant point in time. We note that, while in hindsight it may be clear that a management decision was wrong, our task is to review the prudence of the utility's actions and costs resulting there from based on the particular circumstances existing either at the time the challenged costs were actually incurred, or the time the utility became committed to incur those expenses.[25]

34. No one disputes that Columbia incurred the costs at issue in order to address a serious operational problem affecting its ability to provide service to its customers. Columbia must inject gas into its northern Ohio storage fields during the summer in order to be able to serve the winter demand of its customers located in that part of Ohio. However, the availability of less expensive Marcellus shale gas on the southwestern part of Columbia's system has reduced receipts onto the northern Ohio part of Columbia's system. Therefore, those receipts are insufficient, by themselves, to enable Columbia to inject the required volumes into its northern Ohio storage fields. In addition, Columbia does not currently have sufficient pipeline capacity on its own system to move the Marcellus shale gas to northern Ohio where it is needed. Columbia chose to address this undisputed problem by purchasing capacity on another pipeline to move some of the Marcellus shale gas to the northern Ohio storage field.

35. Joint Intervenors and ProLiance contend that, instead, Columbia should have issued an OFO requiring shippers to put gas onto its system in northern Ohio. In support of this contention, they first assert that Columbia faced an affirmative obligation, either pursuant to Order No. 636 or to its tariff, to use OFO authority as "the primary

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[25] *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 61,271 (1996), and *Entergy Services, Inc.*, Opinion No. 505, 130 FERC ¶ 61,023, at P 51 (2010).

solution"[26] during the time frame at issue. We do not read Order No. 636 as mandating that pipelines must rely on OFO authority, to the exclusion of other possible solutions, in dealing with issues such as the northern Ohio receipts problem. While Order No. 636-B stated a pipeline "*can* make its shippers inject gas into the system," [27] Joint Intervenors and ProLiance have cited nothing in Order No. 636 requiring pipelines to rely on OFOs. In any event, subsequently in Order No. 637, the Commission adopted section 284.12(c)(2)(iv) of its regulations, providing that "a pipeline must take all reasonable actions to minimize the issuance and adverse impacts of operational flow orders."[28] Order No. 637 explained that the imposition of OFOs may severely restrict the purchase and transportation alternatives available to a customer, and accordingly the Commission sought to discourage the practice of "favor[ing] OFOs as the first option, not the last resort."[29] While Columbia's tariff provides it the authority to issue OFOs for a variety of reasons, including "to have adequate supplies in the system to deliver upon demand (including injection of gas into the mainline, providing line pack, and injecting gas into storage at the right place and time),"[30] its tariff clearly states that Columbia shall have the right to issue these directives, not the requirement to do so in each situation.

36. In deciding not to exercise the option of issuing an OFO requiring shippers to put gas onto its system in northern Ohio, Columbia took into account the fact that such an OFO would have the effect of requiring the shippers subject to the OFO to purchase the more expensive supplies available in northern Ohio, rather than the less expensive Marcellus shale gas. By contrast, Columbia's decision to purchase capacity on other pipelines to move some Marcellus shale gas to northern Ohio enabled all shippers on its system who desired to purchase less expensive Marcellus shale gas to do so. Thus, Columbia's actions were consistent with the very concern that Order No. 637 raised with

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[26] Joint Intervenors Initial Comments at 12.

[27] Order 636-B, 61 FERC at 62,010 (emphasis supplied).

[28] 18 C.F.R. § 284.12(c)(2)(2011).

[29] *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 P 31,312, *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 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[30] GTC, Section 17.1(a).

respect to OFOs – that they may restrict the purchase and transportation alternatives available to gas purchasers.

37. Joint Intervenors and ProLiance prefer the OFO alternative, because they believe it would impose the costs of addressing the problem of a lack of gas supplies in northern Ohio on shippers located on that part of Columbia's system, whereas the TCRA allocates the costs of purchasing capacity on other pipelines to move gas to northern Ohio on shippers throughout Columbia's system. However, as Columbia points out, its purchase of off-system capacity to address the problem has only caused a $0.0036 per Dth increase in its TCRA. In addition, the TCRA mechanism includes a Commission-approved method of allocating the Operational 858 costs among Columbia's shippers,[31] and no party suggests that Columbia has failed to allocate the subject costs in the Commission-approved manner. Columbia's use of third-party capacity to address the issue was supported by several parties, who expressed concerns about the adverse impacts of other possible solutions.

38. The Commission concludes that Columbia's actions at issue in this proceeding were prudent and consistent with Commission policy. While there may have been other potential remedies available, Columbia's purchase of third-party transportation contracts to address the shortfall of receipts in northern Ohio was authorized under its tariff. As receipts in northern Ohio fell below historical averages during the 2011 storage injection season, Columbia stated it was faced with two options – either impose stringent operating restrictions or contract for third-party transportation service to transport growing gas supplies being delivered in the southwestern part of its system to northern Ohio receipt points. Columbia chose the latter. The Commission believes this to have been a reasonable exercise of Columbia's broad discretion in incurring costs necessary to provide services to its customers.

C. The Interim Nature of the Filing

1. Comments

39. Columbia states that it has been working with its customers to develop a long-term solution to declining receipts in northern Ohio and will continue to do so. Consistent with Commission precedent, Columbia states it will be required to demonstrate that any costs it seeks to recover through a future TCRA or other filing are just and reasonable.

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[31] Section 36.4(a)(1) and (2) of the GT&C provides that each component of the TCRA rates shall be allocated to the applicable rate schedules "on an as-billed basis and in a manner consistent with Transporter's currently effective cost allocation and rate design."

Accordingly, Columbia states there should be no concern that Commission approval of the instant filing would automatically guarantee approval of a subsequent filing. In addition, Columbia states that in order to allow it and its shippers to move forward with a workable solution Columbia and its shippers need certainty from the Commission regarding the steps that have been taken to date. Therefore, Columbia requests the Commission issue an order in this proceeding no later than January 2, 2012.

40. Old Dominion requests that the Commission clarify in any order accepting this filing that the interim TCRA is to be accepted in light of the unique circumstances occurring on Columbia's system and the Commission's acceptance should not be viewed as general precedent or endorsement of the use of the TCRA in the future to force onto customers costs that can be avoided or reduced through reasonable measures. Old Dominion also requests that the Commission direct Columbia to continue its discussions with customers and commit to making an informational filing or other filing within a time certain providing the status of those discussions and possible solutions to the larger issues.

41. Cities supports and agrees with comments that urge the Commission to limit the scope of its ruling to the scope of the limited circumstances relating to the need for the transportation service to re-route gas to northern Ohio and that acceptance of cost recovery under these circumstances be a one-time event.

42. Joint Intervenors note that the Commission is under no obligation to act on an out-of-cycle TCRA Filing within a defined period and suggests the Commission hold determination of the filing in abeyance pending the outcome of Columbia's ongoing discussion with its shippers and, if a more appropriate, consensus solution has not been developed by the time Columbia files its next annual TCRA Filing, the Commission should then consolidate the two TCRA dockets for disposition on the merits.

43. In their initial Comments, Indicated Shippers state that in view of the limited scope of this proceeding, the evolving nature of the facts, the relatively small surcharge component attributable to the third-party contracts and Columbia's willingness to work with its shippers to develop a just and reasonable long-term solution to the problem of declining injections into northern Ohio storage, further proceedings on the interim TCRA do not appear warranted. However, Indicated Shippers request that the Commission accept these costs and Columbia's proposed treatment of the costs as a short-term interim fix for what appears to be a long-term problem, without making any determination as to whether this approach would constitute an acceptable long-term solution to the operational concerns.

44. In their reply comments, however, Indicated Shippers state that by actions taken within a week of filing its Reply Comments, Columbia has called into question its continued willingness to work with its shippers and called into question whether the

Commission's previous orders exempting Columbia from key elements of Order No. 637 and allowing Columbia to pass-through specific operating costs should now be re-examined. Indicated Shippers state Columbia's recent restrictions to secondary flexibility under Rate Schedule SST and the manner in which Columbia imposed them, directly contradicts Columbia's assurances of its willingness to work with shippers stated in Columbia's Initial Comments. Consequently, Indicated Shippers now request that the Commission defer action on this filing pending the results of further discussions to develop solutions to the operational challenges posed by the new firm services that Columbia has contracted for, including but not limited to the northern Ohio storage injection problem created by Columbia's having contracted for the new firm services.

45. National Grid concurs with comments that the Commission accept Columbia's Filing as a one-time interim solution that will not be regarded as precedential in any future proceeding and agrees with Old Dominion that the Commission should direct Columbia to make an informational or other filing addressing the issues raised by the decline in receipts in northern Ohio and setting forth Columbia's future plans for dealing with the operating circumstances on its system within a time certain, such as ninety days from the date of a Commission order in this case.

46. BGE states that it disagrees with comments that this filing can be viewed as the first in a series of requests by Columbia to recover unpredictable levels of costs associated with the repeated cycles of short-term third-party transportation contracts and that BGE would oppose any such repeated submissions by Columbia. However, BGE states it does not believe that Columbia has such intent if its customer meetings to arrive at a long-term solution are to be credited with being serious undertakings. BGE believes a more reasonable approach for moving forward than the perpetual issuance of OFOs would be for the Commission to clarify in any acceptance of Columbia's Filing, as suggested by Old Dominion, that the use of the interim TCRA in this particular instance should not be viewed as general precedent or endorsement of the use of the TCRA in the future.

47. On December 16, 2011, several shippers[32] filed jointly to request that the Commission issue an order in this proceeding by January 5, 2012, so that Columbia and its customers can effectively plan on how to address the system and market changes discussed in the filing. The parties state that they are actively evaluating a potentially

[32] Atmos Energy Marketing, LLC, BGE, Cities, Columbia, IOGA, NDC, Orange and Rockland Utilities, Inc., Piedmont Natural Gas Company, and PSEG Energy Resources & Trade, LLC. The parties state that state that Washington Gas Light Company supports the motion.

lower-cost solution that would require certain tariff modifications, but that reaching a settlement would first require that the Commission rules on certain issues that have been raised in this proceeding.

2. **Commission Determination**

48. We have already found in the above section of this order that it was prudent in these particular circumstances for Columbia to attempt to address a shortfall in receipts in northern Ohio during the 2011 storage injection season by contracting for off-system capacity. That determination is solely related to the facts and circumstances presented in this proceeding. The Commission makes no finding in this proceeding whether the purchase of capacity on other pipelines is an appropriate long-term solution to Columbia's operational problems if the shortfall in northern Ohio receipts continues. Any future attempt by Columbia to recover additional Operational 858 costs will be addressed on the facts and circumstances germane to that filing.

49. We are encouraged that several shippers have stated in this proceeding that Columbia has been working with them in earnest on such a long-term solution. The record demonstrates that the supply disruptions that threatened northern Ohio supplies this winter will continue and perhaps grow more severe in the foreseeable future. Accordingly, a longer-term solution is desirable. The Commission encourages parties to reach settlements in complex situations such as the present one, and further believes that the resolution of these issues should result in a savings in time and expense for all parties involved.[33] We also note the legitimate requests by some shippers to have access to Columbia's projected Operational 858 costs on an ongoing basis, rather than waiting for the next TCRA Filing.

50. Accordingly, we direct Columbia to post on its website a status report on efforts to address this issue within 30 days from the date of this order, and to provide monthly updates as necessary. These status reports should provide the additional details on the Operational 858 costs requested by shippers and should also provide a brief summary of the current efforts to reach a long-term agreement with shippers.

[33] We note that the Commission's Dispute Resolution Service is available if the parties so choose. The Director of the Dispute Resolution Service is Deborah Osborne, who can be contacted at 202-502-8831 or 877- FERC-ADR (877-337-2237). *See also* http://www.ferc.gov/legal/adr/drs.asp.

<u>The Commission orders</u>:

(A) The tariff records listed in the Appendix are accepted, effective August 1, 2011, and are no longer subject to Commission review.

(B) Columbia shall post status reports on its internet website as detailed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX

Columbia Gas Transmission, LLC
Baseline Tariffs
FERC NGA Gas Tariff

Tariff Records Accepted Effective, August 1, 2011:

Currently Effective Rates, FTS Rates, 4.0.0
Currently Effective Rates, FTS-APX Rates, 4.0.0
Currently Effective Rates, NTS and NTS-S Rates, 4.0.0
Currently Effective Rates, ITS Rates, 4.0.0
Currently Effective Rates, GTS Rates, 4.0.0
Currently Effective Rates, OPT Rates, 4.0.0
Currently Effective Rates, TPS Rates, 4.0.0
Currently Effective Rates, SST Rates, 4.0.0