142 FERC ¶ 61,062
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC Docket No. RP12-1021-000

ORDER APPROVING CONTESTED SETTLEMENT

(Issued January 24, 2013)

1. On September 4, 2012, Columbia Gas Transmission, LLC (Columbia) filed with the Commission a Stipulation and Agreement of Settlement (Settlement) that represents a settlement of Columbia's base rate levels and other issues related to the repair and maintenance of Columbia's aging pipeline system. According to Columbia, the Settlement represents a collaborative resolution between Columbia and the vast majority of its shippers to address complex issues arising from recent and anticipated changes in pipeline safety requirements and the aging nature of Columbia's system. As discussed below, we approve the contested Settlement on the basis that it provides an overall just and reasonable result.

Background

2. Columbia states that the Settlement arose from Columbia's comprehensive evaluation of its interstate pipeline transmission facilities, which identified areas for rehabilitation or replacement in order to modernize its system, improve system integrity, and enhance service reliability and flexibility. According to Columbia, approximately 73 percent of the 12,000 miles of its system subject to the United States Department of Transportation's (DOT) regulation was constructed before the enactment of Federal pipeline safety standards in 1970. In addition, Columbia states that its system contains approximately 1,272 miles of bare steel pipeline, which is at higher risk for corrosion and failure. According to Columbia, this is significantly more bare steel pipeline than any other interstate pipeline subject to DOT regulation. Columbia states that the majority of its system cannot accommodate in-line inspection and cleaning tools.

3. Columbia also states that approximately 55 percent of its more than 300 compressor units were installed before 1970. Columbia states that it has 18 compressor facilities, with 57 compressor units, which must be available 100 percent

of the time during the November to March winter period in order to ensure that Columbia can make all of its firm deliveries.

4. Columbia states that its evaluation of its interstate facilities identified a number of specific rehabilitation and modernization projects that comprise its Modernization Program. Columbia states that pursuant to its Modernization Program, the pipeline will make significant capital expenditures over the next 10 to 15 years to modernize its interstate pipeline system infrastructure, and to enhance the system's reliability, safety and regulatory compliance. These projects focus on replacing high pressure bare steel pipelines and pipelines with a history of failure in locations where there is the greatest risk that a pipeline failure would cause a disruption of service or threaten public safety. These projects also focus on modernizing compressor units along constrained mainlines serving a broad customer base.

5. Columbia avers that the Settlement represents a fair and balanced resolution of numerous issues relating to Columbia's base rate levels, the Modernization Program, and the recovery of revenue requirements associated with the Program.

<u>The Settlement</u>

6. Columbia's September 4, 2012 Settlement generally provides for the following:

- An annual $35 million rate reduction (retroactive to January 1, 2012), and an additional base rate reduction of $25 million each year beginning January 1, 2014, both reductions to end on the effective date of Columbia's next Natural Gas Act (NGA) section 4 general rate case, or a subsequent NGA section 5 rate adjustment.

- Initial refunds to firm shippers of $50 million in two equal installments.

- A rate moratorium through January 31, 2018 and an NGA section 4 general rate filing obligation no later than February 1, 2019.

- A capital cost recovery mechanism (CCRM), through which Columbia would recover the revenue requirements associated with the Modernization Program.

- A revenue sharing mechanism under which Columbia will refund to its customers 75 percent of any base rate revenues it collects over $750 million in any year after January 1, 2012.

- The standard of review for future changes to the Settlement is the just and reasonable standard.

7. Pursuant to the Settlement, the CCRM would recover the costs (up to $300 million annually, subject to a 15 percent tolerance) associated with "Eligible Facilities" that have been placed in service and remain in service. The Settlement

includes an initial five-year term for the CCRM (January 1, 2014 –January 1, 2019) to recover costs Columbia incurs during the 2013-2017 period as part of the Modernization Project. Appendix E to the Settlement identifies the specific eligible replacement and upgrade projects that Columbia intends to undertake each year between 2013 and 2017, and the estimated costs of each project. Appendix E sets forth the location of each pipeline replacement and looping project and the number of miles of pipeline to be replaced or constructed in each project. Appendix E also identifies the location of each compressor unit to be replaced, the horse power of the replacement compressor unit, and which existing units will be converted to standby service.

8. Section 7.2 of the Settlement requires Columbia to obtain the consensus of 75 percent of the shippers paying the CCRM rate (determined by billing determinants) to add, remove or substitute Eligible Facility projects, or to modify an Eligible Facility. Columbia retains the discretion to unilaterally perform projects that it reasonably believes could lead to imminent unsafe conditions, including replacing bare steel pipeline, subject to the cost and scope limitations otherwise applicable to projects eligible for CCRM recovery. Columbia also agrees to a $100 million annual capital maintenance expenditure for transportation and storage projects that will not be recouped through the CCRM recovery mechanism, and to use any amounts less than $100 million spent in a given year as a reduction to plant investment. Storage and gathering projects are also specifically excluded from recovery as Eligible Facilities.

9. The Settlement provides for Columbia to earn a return on the capital costs included in the CCRM through a total net rate base multiplier of 14 percent, made up of a pre-tax rate of return of 12 percent, and Taxes Other Than Income of 2 percent. Columbia will recalculate the CCRM on an annual basis. Further, Columbia states that, in order to provide rate stability and safeguard shippers against losses in billing determinants, the Settlement requires Columbia to calculate the annual per unit CCRM rate based on the greater of (1) actual annual billing determinants for all non-incremental rate customers adjusted for discounting[1] or (2) an agreed-upon minimum level of billing determinants (billing determinant floor). The Settlement provides that in each annual CCRM filing, Columbia will true up any over or under-recovery of its CCRM revenue requirement during the preceding year.[2] However, if Columbia's discounted rate

[1] The Settlement treats the CCRM as an add on to Columbia's base rate and provides that Columbia will attribute any discounts to the total base rate, including the CCRM add-on, proportionately between the CCRM and the remainder of the applicable base rate.

[2] Section 7.7 of the Settlement provides that each CCRM Rate calculation will include an annual true-up so that any over- or under-recovery of revenue requirements

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transactions reduce Columbia's CCRM revenue below the level that would result from the billing determinant floor, Columbia must impute the revenue it would achieve by charging the maximum rate for service at the level of billing determinant floor. Columbia must also assume that all negotiated rate transactions are at the maximum rate. Absent agreement of the parties and approval of the Commission, the CCRM will not be used to recover Modernization Program costs incurred after 2017.

10. Columbia states that the CCRM will avoid "pancaking" NGA section 4 rate cases. Columbia also claims the CCRM will make the rate review process more efficient by limiting the scope of an annual review to whether Columbia's actual capital expenses in the past year meet its Eligible Facilities Plan. The Settlement also provides that Columbia will remove its existing daily scheduling penalty provision from its tariff.

11. The Settlement provides that Columbia will not propose any new cost tracking mechanism during the term of the Settlement.

12. The Settlement states that Columbia will not propose market based rates for new storage projects during the term of the Settlement.

13. The Settlement provides that it is not precedential and is being agreed to only in light of existing circumstances on Columbia's system, particularly that approximately 50 percent of Columbia's system was constructed prior to 1960 and approximately 55 percent of Columbia's compressor units were installed prior to 1970. In addition, Columbia's system contains approximately 1,272 miles of bare steel pipeline subject to DOT regulation, and the majority of the system cannot accommodate in-line inspection and cleaning tools.

14. The Settlement also provides for the severance of the direct interests of Contesting Parties, and an option for Columbia to withdraw the settlement offer if there are contesting parties that represent 10 percent or more of total peak day transportation entitlements on the system.

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from the previous year shall be recovered in the next succeeding CCRM Rate filing, calculated each year (subject to the annual and overall CCRM caps) by comparing the actual revenue requirements to the revenues received during the recovery period. The Settlement provides that each subsequent annual CCRM filing shall include revenue requirements related to Eligible Facilities placed in service during the prior November 1 through October 31 period, except that if the CCRM remains in place for the full five year Initial Term, the final year of the CCRM shall include revenue requirements related to the Eligible Facilities placed in service during November and December of 2017.

Comments on Settlement

15. Numerous customers from all sectors of the industry filed in support of the Settlement.[3] Those customers filing in support all note that given the unique circumstances of Columbia's system, the Settlement represents a fair and balanced resolution that allows Columbia to make critical necessary modernization upgrades to its system while providing its customers with real and meaningful benefits in terms of both improved services and flexibility through the modernization efforts, and rate relief and predictability. The supporting customers note that Columbia's system serves customers in eleven states and the District of Columbia and provides significant take away capacity for gas producers in the expanding Marcellus and Utica shale plays.[4] The customers state that they will benefit from increased operational flexibility and reliability, as well increases in public safety, as a result of the Modernization Program. Those customers also specifically identify the Settlement’s significant base rate reduction, the retroactive decrease in base rates, the $50 million in refunds, the revenue sharing provision and the rate predictability resulting from the moratorium as key rate components underlying their support of the Settlement. Exelon, NiSource, the Virginia Cities, and others also note that by allowing Columbia to recover the costs associated with the necessary system upgrades through the CCRM, it can avoid successive rate case filings and the inherent financial costs and distractions of resources associated with protracted litigation. Chesapeake notes that customers also benefit through Columbia's agreement to spend $100 million annually on maintenance, and the fact that the CCRM recovery mechanism is capped on both an annual and full program basis. It also approves of the fact that the CCRM proposal specifically identifies projects and provides shippers with the right to monitor and challenge Columbia's expenditures. In sum, Columbia's shippers support the Settlement because they find the CCRM to be a fair mechanism for Columbia to complete and recover the costs of needed system modernizations that will enable Columbia to maintain the integrity and reliability of its system and protect the public's safety, while also providing the customers with immediate and concrete benefits in the form of rate reductions and predictability.

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[3] Those filing comments in support of the Settlement include Cabot Oil and Gas Corporation (Cabot), Exelon Corporation (Exelon), the NiSource Delivery Companies (including Columbia Gas of Maryland), New Jersey Natural Gas Company and NJR Energy Services Company (NJR), Waterville Gas and Oil Company, The Cities of Charlottesville and Richmond, Virginia (Virginia Cities), Interstate Gas Supply, Indicated Shippers, Duke Energy of Ohio and Duke Energy of Kentucky, Antero Resources Appalachian Corporation, and Chesapeake Energy Marketing, Inc. (Chesapeake).

[4] *See, e.g.,* Comments of Cabot.

16. Only the Maryland Public Service Commission (Maryland PSC) opposes the Settlement. It asserts that the surcharge mechanism proposed to recover the costs of the Modernization Program is an inappropriate method to recover capital costs, and generally challenged the 14 percent rate base multiplier to be used to determine a pre-tax rate of return and taxes other than income taxes to be recovered through the CCRM. According to the Maryland PSC, it and the Commission have repeatedly considered trackers such as the CCRM to be inappropriate for core infrastructure spending because they reduce the pipeline's incentive to maximize revenues and minimize costs. The Maryland PSC also asserts that the CCRM would shift the burden of investment costs from Columbia to its customers, and its approval could start the slide down a slippery slope toward such mechanisms replacing rate cases as the primary method for recovering major investment costs. The Maryland PSC also argues that the Commission has consistently disallowed such mechanisms, including recently rejecting a similar surcharge to recover safety charges,[5] because recovering such costs in a surcharge is contrary to the requirement in the Commission's regulations[6] to design rates based on estimated units of service.

17. In its reply to the Maryland PSC's protest, Columbia asserts that the Settlement represents a comprehensive package that enjoys the unanimous support of Columbia's shippers, and that the CCRM and rate base multiplier challenged in the protest are two integral components of the indivisible Settlement. Columbia asserts that the Settlement includes numerous protections insisted on by its shippers to ensure that Columbia has the incentive to perform the modernization work efficiently and effectively, including specifically defining the Eligible Facilities for which costs may be recouped by the CCRM, and placing caps on the recoverable amounts so that Columbia is at risk for costs that fall outside the scope of the defined projects and for any costs that exceed the caps. Columbia further asserts that the Settlement contemplates significant shipper oversight through a requirement for annual meetings to review projects and costs for the past period and for the upcoming year. Columbia also states that the Settlement limits each annual rate filing to recovery of revenues related to Eligible Facilities that are placed in service between November 1 and October 31 of the prior year. Columbia also claims that the Settlement is consistent with, and supported by, the Commission's policy strongly supporting negotiated settlements as a means of providing regulatory certainty and administrative efficiencies for the Commission and the parties, by avoiding lengthy and costly rate proceedings. Finally, Columbia argues that the Commission should not

[5] Maryland PSC Protest at 2 (citing *Granite State Gas Transmission, Inc.*, 132 FERC ¶ 61,089 (2010) (*Granite State*)).

[6] 18 C.F.R. § 284.10(c)(2) (2012).

allow the Maryland PSC's protest to prevent Columbia's shippers from realizing the substantial benefits afforded by the Settlement.

Discussion

18. In order to approve Columbia's proposed Settlement over the objections of the Maryland PSC, the Commission must find that the settlement is just and reasonable.[7] In determining whether to approve a contested settlement under that standard, section 385.602(h)(1)(i)[8] of the settlement rules permits the Commission to decide the merits of the contested issues, if the record contains substantial evidence on which to base a reasoned decision, or if the Commission determines there is no genuine issue of material fact. In addition, as the Commission held in *Trailblazer*, even if some individual aspects of a settlement may be problematic, the Commission still may approve a contested settlement as a package if the overall result of the settlement is just and reasonable.[9]

19. As discussed more fully below, after considering the Maryland PSC's comments opposing the Settlement, the Commission finds that those comments do not raise any genuine issue of material fact. The Commission also finds that the overall result of the settlement is just and reasonable. Therefore, the Commission approves the Settlement for all parties, including the Maryland PSC and the local distribution companies subject to regulation by the Maryland PSC.

20. Maryland PSC's primary objection to the Settlement raises a policy issue, rather than any issue of fact: namely that the CCRM is contrary to the Commission's policy that capital costs incurred to comply with the requirements of the pipeline safety legislation should not be included in a cost-of-service tracking mechanism which guarantees the pipeline's recovery of those costs.[10] As Maryland PSC points out, the

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[7] *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,339 (1998), *reh'g*, 87 FERC ¶ 61,110 (1999), *reh'g*, 88 FERC ¶ 61,168 (1999) (*Trailblazer*) (citing *Mobil Oil Corp. v. FERC*, 417 U.S. 283, 314 (1974)).

[8] 18 C.F.R. § 385.602(h)(1)(i) (2012).

[9] *Trailblazer*, 85 FERC ¶ 61,345 at 62,342-3, explaining what that order described as the second of three approaches the Commission has used to approve contested settlements, without severing the contesting parties.

[10] *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171, at PP 47-48 (2003) (*Florida Gas*), distinguishing such capital costs from security-related costs which may be included in a surcharge mechanism under the policy set forth in *Extraordinary*

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Commission has stated that pipelines commonly incur capital costs in response to regulatory requirements intended to benefit the public interest, and recovering those costs in a tracking mechanism is contrary to the requirement, in section 284.10(c)(2) of our regulations to design rates based on estimated units of service.[11] This requirement means that the pipeline is at risk for under-recovery of its costs between rate cases, but may retain any over-recovery. As the Commission explained in Order No. 436, this gives the pipeline an incentive both to (1) "minimize costs in order to provide services at the lowest reasonable costs consistent with reliable long-term service"[12] and (2) "provide the maximum amount of service to the public."[13] Cost-trackers undercut these incentives by guaranteeing the pipeline a set revenue recovery. Thus, in accordance with this policy, in *Florida Gas* and *Granite State*, the Commission rejected proposals for safety cost trackers, with true-up mechanisms, made in NGA section 4 filings. The Commission has, however, permitted such a regulatory surcharge for pipeline safety costs in uncontested settlements.[14]

21. The Commission recently followed this policy when it rejected a protested proposal by CenterPoint Energy – Mississippi River Transmission, LLC (MRT), in an NGA general section 4 rate case filing, to recover regulatory safety costs through a tracker with a true-up mechanism.[15] The order in that proceeding noted, however, that while the Commission was rejecting MRT's proposed safety tracker consistent with existing policy, that decision was based in part on the fact that the DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) is in the early stages of developing regulations to implement the 2011 Act. The Commission stated that it is open to

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Expenditures Necessary to Safeguard National Energy Supplies, 96 FERC ¶ 61,299 (2001); *Granite State*, 132 FERC ¶ 61,089 at P 11.

[11] *Florida Gas*, 105 FERC ¶ 61,171 at P 47.

[12] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,665, at 31,534 (1985).

[13] *Id*. at 31,537.

[14] *See, e.g.*, *Florida Gas Transmission Co.*, 109 FERC ¶ 61,320 (2004); *Granite State Gas Transmission, Inc.*, 136 FERC ¶ 61,153 (2011).

[15] *CenterPoint Energy -Mississippi River Transmission, LLC*, 140 FERC ¶ 61,253 (2012) (*MRT*).

considering the need for additional action as the PHMSA process moves forward and pipelines face increased regulatory requirements.

22. In this case, the Commission finds that the Settlement and the CCRM provide a reasonable means for Columbia to recover the substantial costs of addressing urgent public safety and reliability concerns, without undercutting Columbia's incentives to operate efficiently and to maximize service to the extent that previously proposed and rejected surcharges would have done. As stated by Columbia, approximately half of its pipeline infrastructure regulated by the DOT is over fifty years old, approximately 55 percent of its compressors were installed before 1970 and there is limited horsepower back-up at many critical locations. In addition, the system contains approximately 1272 miles of potentially dangerous bare steel pipeline, many of its control systems run on an obsolete platform and because the older part of the system was not designed to accommodate in-line inspection, Columbia will only be able to inspect approximately thirty-five percent of the DOT regulated portion of its system using modern in-line inspection tools. Our approval of the Settlement and the CCRM will facilitate Columbia's ability to make the substantial capital investments necessary to correct these very significant problems and thus provide more reliable service while minimizing public safety concerns.

23. We find that the CCRM surcharge proposed by Columbia includes numerous positive characteristics that distinguish the surcharge from those we have rejected previously, and that work to maintain the pipeline's incentives for innovation and efficiency. First, the development of the CCRM began with Columbia and its shippers engaging in a collaborative effort to review Columbia's current base rates, leading to Columbia's agreement to reduce its base rates by $35 million retroactive to January 1, 2012, by another $25 million effective January 1, 2014, and to provide refunds to firm shippers of $50 million. Maryland PSC does not contest this aspect of the Settlement, which provides the shippers rate relief which could otherwise only be obtained pursuant to NGA section 5 and could not take effect in the retroactive manner provided by the Settlement. The Commission finds that these provisions of the Settlement assure that the base rates, to which the CCRM surcharge will be added, have been updated in a just and reasonable manner to reflect current circumstances on Columbia's system.

24. Second, the Settlement identifies, by pipeline segment and compressor station, the specific Eligible Facilities for which costs may be recovered through the CCRM, and the Settlement delineates and limits the amount of capital costs and expenses for each such project.[16] The Settlement also limits Columbia's ability to add or change projects. In

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[16] By contrast, the surcharge mechanisms proposed in *Florida Gas* and *MRT* contained only general definitions of what type of costs would be eligible for recovery,

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addition, it is significant that Columbia agrees to continue making annual capital maintenance expenditures of $100 million for transportation and storage projects, which it will not seek to recover through the CCRM recovery mechanism. These provisions of the Settlement should assure that the projects whose costs are recovered through the CCRM go beyond the regular capital maintenance expenditures which Columbia would perform in the ordinary course of business and that the projects are critical to assuring safe and reliable operation of Columbia's existing system. In addition, these provisions should minimize disputes in Columbia's annual CCRM filings concerning the need for particular projects.

25. Third, and critically important to our approval of the CCRM, is Columbia's agreement to (1) establish a billing determinant floor for calculating the CCRM and (2) impute the revenue it would achieve by charging the maximum rate for service at the level of billing determinant floor before it trues up any cost under-recoveries.[17] Also, any such true-up is limited to the $300 million annual cap and other related cost caps. These provisions, along with the required base rate reductions and the provision for Columbia to continue substantial capital maintenance investments that will not be recovered in the CCRM surcharge, subject Columbia to a continuing risk of cost under-recovery. These aspects of the Settlement thus alleviate the Commission's historic concern that surcharges which guarantee cost recovery are not appropriate for recovering capital costs, because they diminish a pipeline's incentive to be efficient and to maximize service provided to the public. These provisions of the Settlement also protect Columbia's shippers from significant cost shifts if Columbia loses shippers or must provide increased discounts to retain business.

26. Fourth, the CCRM would not be a permanent part of Columbia's rates. The Settlement provides that the CCRM will terminate on January 1, 2019, unless the parties agree to extend it and the Commission approves the extension. Thus, subject to extension requiring the consent of all parties, the CCRM is meant to recover a set amount of costs over defined period, and will not become a permanent part of Columbia's rates.

27. Finally, the surcharge is broadly supported, or at least not opposed, by all Columbia's customers. Based on all these factors, the Commission finds that Maryland

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leaving the pipeline considerable discretion as to what projects it would subsequently propose to include in the surcharge and creating the potential for significant disputes concerning the eligibility of particular projects.

[17] By contrast, the surcharge mechanisms proposed in *Florida Gas*, *Granite State*, and *MRT* did not include a comparable billing determinant floor.

PSC's policy objections to the CCRM mechanism do not justify rejection of the Settlement.

28. Maryland PSC's only other contention in opposing the Settlement is its statement that an NGA general section 4 rate case in this instance would provide the opportunity to determine whether the 14 percent rate base multiplier, inclusive of a 12 percent pre-tax rate of return and taxes other than income taxes of 2 percent for eligible facilities is just and reasonable. Rule 602(f)(4) of the Commission's regulations requires that, "any comment that contests a settlement by alleging a dispute as to a genuine issue of material fact must include an affidavit detailing any issue of material fact by specific reference." Maryland PSC did not file any affidavit with its comments demonstrating an issue of fact concerning whether the rate base multiplier provides an unreasonable return. Thus, we cannot find that its protest raised a genuine issue of fact with respect to the return to be included in the CCRM surcharge.[18]

29. The Commission also finds that all of Columbia's customers are likely to be in better position with the Settlement than without it. To the extent the Commission was to sever the Maryland PSC and local distribution companies it regulates,[19] those LDCs and Maryland consumers could not receive the immediate benefits of the Settlement, including the retroactive rate reduction and refunds. Moreover, while the severed parties would not be subject to the CCRM when it takes effect next year, Columbia would be free to file section 4 rate cases to increase the severed parties' rates at such time as the CCRM resulted in Columbia's overall rates exceeding its current rates.

30. The Settlement also includes numerous other significant benefits for Columbia's shippers which would not be available absent the Settlement. Aside from the significant retroactive rate reduction and refund payments already discussed, these include (1) the revenue sharing mechanism under which Columbia will refund to its customers 75 percent of any base rate revenues it collects over $750 million in any year after January 1, 2012, (2) a rate moratorium that will provide rate certainty until 2018, (3) a requirement for the pipeline to file an NGA section 4 general rate case by February 2019,

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[18] *See, e.g., San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation, et al.*, 128 FERC ¶ 61,004, at P 16 (2009); *Duke Energy Trading and Marketing, L.L.C., et al.*, 125 FERC ¶ 61,345, at P 31 (2008).

[19] *See Trailbazer*, 85 FERC ¶ 61,345 at 62,345, explaining that, if the Commission severs a public service Commission from a settlement, it must also sever the local distribution companies regulated by the public service Commission.

(4) the removal of Columbia's existing daily scheduling penalty, thus providing shippers greater flexibility to modify their daily takes to respond to unexpected changes in their need for gas without incurring additional costs, and (5) Columbia's agreement not to propose market-based rates for new storage projects during the term of the Settlement or to propose any additional cost tracking mechanisms.

31. The Commission finds that the very substantial benefits that will inure to Columbia's shippers through the Settlement outweigh the inclusion of an otherwise disfavored surcharge, particularly given the customer protections inherent in the CCRM. The Settlement is crafted to address undisputed circumstances on Columbia's system, namely that the system is aging and that Columbia needs to make significant upgrades and repairs to modernize the system and to ensure that it will be able to continue to provide reliable firm transportation service, consistent with public safety. The Commission concludes that the benefits of the Settlement render the overall Settlement package just and reasonable.

32. As we have stated repeatedly, the Commission favors collaborative efforts and settlements between pipelines and their shippers regarding rate and other contested issues, as such negotiated agreements conserve the Commission's time and resources. The instant Settlement is the result of an extensive and comprehensive effort on behalf of Columbia and its customers to review the pipeline's existing rates, to evaluate imminent issues with regard to the aging system, and to develop a plan to address and pay for the costs of modernizing that system. The Commission notes that the procedures undertaken by the pipeline and its customers are precisely the kind of pro-active discussions and communications between customers and the pipelines that the Commission has repeatedly encouraged, and we commend the parties for their efforts in reaching this agreement.

The Commission orders:

The Settlement is hereby approved as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Columbia Gas Transmission Corporation Docket No. RP12-1021-000

(Issued January 24, 2013)

WELLINGHOFF, Chairman, *concurring*:

I share the concerns about cost tracking mechanisms expressed in this proceeding by the Public Service Commission of Maryland. Cost tracking mechanisms reduce a pipeline's incentive for innovation, efficiency and cost minimization, and shift the risk embedded in the return on equity from the pipeline to the shippers.

I am voting to approve the instant settlement because Columbia's shippers have negotiated significant limits to this cost tracking mechanism that mitigate my concerns. In particular, the cost tracking mechanism is limited to specifically identified projects, establishes a billing determinant floor at maximum tariff rates, and is not permanent part of Columbia's rates. Further, Columbia agrees that it will not propose any new cost tracking mechanism nor market based rates during the term of the settlement. In addition, there are other significant consumer benefits to approving the settlement. The settlement provides for $50 million in refunds, an annual $35 million rate reduction (retroactive to January 1, 2012), and an additional base rate reduction of $25 million each year beginning January 1, 2014.

For these reasons, I am voting to approve the settlement. However, I encourage shippers of pipelines seeking to implement a cost tracking mechanism to consider additional limits to protect consumers. For example, I believe that it also would be appropriate for a pipeline to credit shippers all revenues from services provided over the facilities at issue that were not included in the rate design billing determinants and to explore a reduction in the return on equity that applies to those facilities.

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Jon Wellinghoff
Chairman