103 FERC ¶ 61,317
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

TransColorado Gas Transmission Company	Docket Nos. RP00-459-001, RP00-459-002 RP01-32-001, RP01-32-002 RP01-477-004, RP01-477-005 RP02-5-002, RP02-5-003

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued June 9, 2003)

1. This order addresses two filings submitted by TransColorado Gas Transmission Company (TransColorado). The first is the August 2, 2002 request for clarification and rehearing of the Commission's July 5, 2002 order (July 5 order)[1] in this proceeding accepting TransColorado's filing in compliance with Order Nos. 637,[2] 587-G,[3] and 587-L,[4] subject to certain modifications. The second is TransColorado's August 5, 2002 filing to

[1]100 FERC ¶ 61,043 (2002).

[2]Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,091 (Feb. 9, 2000); order on rehearing, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000); order on rehearing, Order No. 637-B, 92 FERC ¶ 61,062 (July 26, 2000); aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002).

[3]Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587-G, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,062, at 30,677-80 (Apr. 16, 1998); order on rehearing, Order No. 587-I, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,067, at 30,735-37 (Sept. 29, 1998).

[4]Standards for Business Practices of Interstate Gas Pipelines, Order No. 587-L, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,100 (June 30, 2000).

comply with the directives of the July 5 order. For the reasons discussed below, TransColorado's request for rehearing and clarification is denied. TransColorado's August 5 compliance filing is accepted, subject to the modifications and conditions discussed below. These actions benefit the public by permitting TransColorado to implement policies described in Order Nos. 637, 587-G, and 587-L which are designed to enhance competition in the natural gas industry.

I. Background

2. On August 2, 2002, TransColorado filed a request for rehearing and clarification of the July 5 order with respect to segmentation, discounts, forwardhauls and backhauls to the same point, and the Order No. 637 implementation schedule.

3. On August 5, 2002, TransColorado filed tariff sheets[5] in compliance with the Commission's July 5 order to: (1) implement the capacity release timeline under NAESB Standard 5.3.2, Version 1.5; (2) modify the segmentation procedures; (3) implement the Commission's rebuttable presumption discount policy; and (4) revise TransColorado's tariff to credit penalties to all firm, interruptible and negotiated rate shippers. In addition, TransColorado requests an effective date four months after issuance of a final order approving the tariff sheets of the last interstate pipeline in the Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan) group. TransColorado states that, since these companies share a common computer system, this effective date would allow the Kinder Morgan pipelines to modify their computer software and hardware in tandem.

II. Public Notice, Interventions and Protests

4. Public notice of TransColorado's August 5 compliance filing was issued on August 12, 2002. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2002)). No interventions or protests were filed.

III. TransColorado's Request for Rehearing and Clarification

5. TransColorado raises three issues on rehearing: (1) the Commission erred by requiring segmentation outside the shipper's primary path; (2) the Commission's

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[5] See Appendix.

discounting policy is contrary to Section 5 of the NGA; and (3) the Commission erred in allowing backhaul/forwardhaul to the same delivery point yet prohibiting TransColorado from collecting an overrun charge. These issues are addressed below.

A. Segmentation and Primary Point Rights

6. Order No. 637 requires pipelines to permit a shipper to make use of the firm capacity that it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible.[6] In the July 5 Order, the Commission addressed at length TransColorado's proposed tariff language governing segmentation and primary point rights. The Commission observed that pipelines must permit segmentation outside a shipper's primary path, subject to certain limitations, including the availability of capacity.

7. First, the Commission found that capacity segmentation, as envisioned in Order No. 637, is possible on TransColorado's system because the pipeline's receipt and delivery points are interspersed along the length of the system, not segregated at opposite ends of the system. The Commission found that TransColorado's proposed tariff language to limit shippers to segment capacity within their primary path was contrary to Order No. 637. The Commission stated that shippers should be given the right to segment beyond their primary path.[7] This follows from the fact that a shipper may move to any point within the zone for which it has paid even if that point is outside of the contractual path because a shipper has the right to utilize all points within the zone for which it has paid.[8]

8. Second, TransColorado was required to clarify its tariff provisions concerning flow reversals. Section 26(b) of TransColorado's General Terms and Conditions (GT&C) allows flow reversals in segmented transactions when operationally feasible. However, Section 26(d) contains a provision which requires that the direction of flow must be the same as the original path, but also contains provisions concerning the rate consequence of a reversal from a backhaul to a forwardhaul. Thus, Section 26(d) was internally inconsistent on the question of whether flow reversals are permitted and also inconsistent with Section 26(b) permitting flow reversals when operationally feasible. Order No. 637-A requires that pipelines permit flow reversals in segmented transactions, when operationally feasible.

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[6] 18 C.F.R. § 284.7(d) (2002).

[7] See, Algonquin Gas Transmission Co., 98 FERC ¶ 61,211 at 61,772 (2002).

[8] Order No. 637-A, FERC Stats. & Regs., Regulations Preambles (July 1996-December 2000) ¶ 31,099 at 31,591.

9. In its rehearing request, TransColorado argues that Order No. 637 does not require segmentation outside the path, and such segmentation may infringe on the rights of other shippers, let some shippers hoard capacity, and abrogate the contract bargain struck between the pipeline and shippers.

10. The Commission denies rehearing on this issue. TransColorado contends that the regulation adopted by Order No. 637 concerning segmentation (§ 284.7(d) does not require interstate pipelines to permit segmentation outside the path. That regulation requires an interstate pipeline to: "permit a shipper to make use of the firm capacity for which it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible [emphasis supplied].'[9] TransColorado contends that the only capacity for which a shipper contracts is the capacity from its primary receipt point to its primary delivery point, and therefore interprets the regulation as only requiring pipelines to permit capacity within the primary points to be segmented. TransColorado also argues that requiring it to permit a shipper to segment outside the primary path would allow the shipper to unilaterally abrogate its contract with the pipeline, since TransColorado's contracts with its shippers do not give the shipper the right to utilize portions of TransColorado's system that are not specified in the contract.

11. These contentions rest on a mistaken premise: that shippers' contracts with TransColorado only give them rights to use the portion of TransColorado's system lying between the primary receipt and delivery points listed in the contract. As the Commission explained in its order on remand[10] responding to the Court's decision in INGAA v. FERC, pipelines' contracts with their customers contain provisions incorporating the terms and conditions in the pipeline's tariff into the service agreement. Thus, the pipelines' standard service agreements automatically give shippers any increased rights which may be provided by changes in the terms and conditions of service in the pipeline's tariff. As a result, the Commission has consistently implemented its policies concerning firm shippers' rights to use points on a secondary basis and to segment their capacity by acting under NGA Section 5 to require pipelines to modify the terms and conditions of their tariffs to give such rights to their shippers. Since the customers' individual contracts with the pipeline provide for the customer to receive the service set forth in the terms and conditions of the tariff, as those terms may be changed from time to time, it has not been necessary to change the individual contracts to implement flexible point rights and segmentation, nor has the

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[9] TransColorado also relies on similar preamble language in Order Nos. 637 and 637-A.

[10] 101 FERC ¶ 61,127 at P 45-53.

Commission done so. Rather, once the relevant terms and conditions in the tariff are modified, the contracts automatically include the revised terms and conditions.

12. In Order No. 636, the Commission required pipelines to modify their tariffs to permit a firm shipper to use secondary points throughout the zones for which it is paying reservation charges.[11] In Order No. 636-B, the Commission clarified that, on a pipeline with postage-stamp rates such as TransColorado, firm shippers "pay reservation charges covering the entire system" and thus may use secondary points throughout the system. Consistent with this policy, a review shows that Section 26(f) of TransColorado's GT&C limits a shipper, replacement shipper or subreplacement shipper such that it can change to a new primary point only within the original path and only if the change does not create stranded capacity on TransColorado. Similarly, Section 9.3 restricts a shipper such that it can only flex to or use any point located within the path of service. These sections restrict a shipper's ability to use additional primary points and are inconsistent with the Commission's Texas Eastern/El Paso policy.[12] Under that policy, releasing and replacement shippers are both able to choose primary points consistent with their mainline contract demand and are not restricted to points within the contract path. Therefore, while TransColorado's contracts with its firm shippers only give them guaranteed, primary firm rights at the primary receipt and delivery points listed in their contracts, those contracts also give shippers the right to use secondary points throughout the system. Accordingly, the requirement in § 284.7(d) of the Commission's regulations that a shipper be permitted to segment "the firm capacity for which it has contracted" includes the right to segment the secondary firm capacity to which they have access pursuant to their contracts. The Commission therefore directs TransColorado to modify its tariff to remove these restrictions.

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[11] See Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 Fed. Reg. 13267 (April 16, 1992), FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶ 30,939 at 30,446-48 (April 8, 1992); order on reh'g, Order No. 636-A, 57 Fed. Reg. 36,128 (August 12, 1992), FERC Statutes and Regulations, Regulations Preambles January 1991- June 1996 ¶ 30,950 at 30,585(August 3, 1992); order on reh'g, Order No. 636-B, 57 Fed. Reg. 57,911 (December 8, 1992), 61 FERC ¶ 61,272 at 62,013(1992); reh'g denied, 62 FERC ¶ 61,007 (1993); aff'd in part and remanded in part, United Distribution Companies v. FERC, 88 F.3d 1105 (D.C. Cir. 1996); order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

[12] Order No. 637 at 31,304.

13. This interpretation of § 284.7(d) carries out the Commission's intent in Order No. 637 to foster competition in the transportation capacity market. In Order No. 637-A, the Commission held:

> Under Order No. 636, the firm transportation capacity held by shippers was to include the same flexibility the pipeline enjoyed when it provided bundled sales service, and the ability to use capacity flexibly, through the use of flexible point rights and segmentation, was part of the flexibility enjoyed by pipelines. Further, as the Commission found in Order No. 637, segmentation increases the number of capacity alternatives and so improves competition, and also is important in facilitating the development of market centers and liquid gas trading points. Based on these findings, the Commission determined that pipelines that operationally can permit segmentation, but do not, would be acting in an unjust and unreasonable manner.[13]

14. Since on a postage stamp system a firm shipper is paying a reservation charge for service on the entire system,[14] it may schedule a transaction from the upstream most receipt point on the system to the downstream most delivery point, even though its primary path may only cover a portion of the system. It follows that the shipper should also be able to segment that transaction into as many separate, simultaneous transactions, up to its contract demand, as it desires, subject to available capacity. It could do this either by nominating such segmented transactions for its own use or through capacity release. Such segmented transactions may be either wholly within the shipper's primary path, partly within and partly outside the primary path, or wholly outside the primary path.[15] When a pipeline performed bundled sale services, it could have engaged in such transactions, and therefore, consistent with Order No. 637-A, a firm shipper should have the same flexibility in the use of the firm capacity for which it is paying.

15. As explained in Great Lakes Gas Transmission,[16] requiring pipelines to permit such segmentation helps achieve the Commission's goal in Order No. 637 of fostering competition between the pipeline and shippers in the sale of pipeline capacity. Outside-

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[13]Order No. 637-A at 31,591.

[14]See Order No. 637-A at 31,591.

[15]Wyoming Interstate Company, 98 FERC ¶ 61,232 at 62,934 (2002), rejecting a proposal by a pipeline with a straight-line, single zone system to require that either a segmented transaction's receipt or delivery point be within the shipper's primary path.

[16]101 FERC ¶ 61,206 (2002).

the-path segmented transactions provide an alternative to purchasing capacity directly from the pipeline, and thus increase competition in the capacity market.

16. TransColorado is concerned that such outside-the-path segmentation may infringe on the rights of other shippers or let some shippers hoard capacity. It appears to believe that we have required pipelines to grant shippers "some 'super-right' to segment capacity" without regard to the rights of other shippers.[17] We have not done so. While a pipeline must permit segmentation outside a shipper's primary path, such segmentation is subject to several limits which address TransColorado's concerns. First, the Commission has required TransColorado to give outside-the-path transactions a lower scheduling priority than within-the-path secondary transactions. Therefore, any segmented transactions that use secondary points outside a shipper's primary path can only be scheduled to the extent mainline capacity is not being used by other shippers for either primary or secondary within-the-path transactions. Thus, outside-the-path segmented transactions cannot infringe upon other shippers' ability to schedule service using their primary points or using secondary points within their primary path.

17. Second, any segmentation by a shipper is subject to the rule against mainline overlaps in excess of contract demand. A pipeline is not required to permit segmentation in a situation where the nominations by a shipper or a combination of releasing and replacement shippers exceed the contract demand of the underlying contract on any segment.[18] Thus, for example, if a releasing shipper releases a segment outside its primary path to a replacement shipper, it is reducing its own rights to use secondary points outside its path to the extent the replacement shipper uses the released capacity. The rule against overlaps, as well as the lower priority for outside-the-path transactions, eliminate any danger that permitting such transactions would lead to hoarding of capacity. Accordingly, there is no operational basis for TransColorado's request for rehearing on this issue.

18. TransColorado also states that it negotiates discounted rates for some shippers based on the relatively short hauls provided for in their service agreements. It contends that in those circumstances the discounted rate shipper should be treated as only paying for capacity within its short-haul primary path. For purposes of implementing its policy that a firm shipper should be able to use secondary points and segment capacity on that portion of the system for which it is paying reservation charges, the Commission has not distinguished between shippers paying discounted rates and shippers paying the maximum rate. Thus, on a postage stamp system, a shipper is treated as paying a reservation charge for the entire system, regardless of whether it is paying the maximum reservation charge or a discounted

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[17] TransColorado rehearing request at 7.

[18] Order No. 637-A at 31,592.

reservation charge. Since discounts may be given for many competitive reasons other than shortness of haul, it would be unduly complex to distinguish between the treatment of discounted rates depending upon the reason the pipeline gave the discount. If a pipeline must give a significant number of discounts due to shortness of haul, that suggests that the pipeline's rates may not be sufficiently distance-sensitive, as required by § 284.10(c)(3)(ii). As Order No. 636-B suggested, a pipeline with postage-stamp rates that does not wish to give flexible point rights to short haul shippers throughout the system, should "consider developing smaller zones or mileage-based rates."[19]

B. Backhaul/Forwardhaul to the Same Delivery Point

19. The July 5 Order stated that TransColorado's proposal to permit backhauls and forwardhauls to the same point but charge an unauthorized overrun rate if contract rights are exceeded is contrary to the Commission's policy established in Order No. 637-A. In that order, the Commission stated that a forwardhaul and backhaul to a single point did not result in a capacity overlap even though the total amount received by the shipper exceeded contract demand.[20] Thus, there would be no unauthorized overrun in this circumstance, and no unauthorized overrun charge would be justified. However, the Commission stated that this policy was currently under review by the Commission as a result of the partial remand of Order No. 637 by the Court of Appeals for the District of Columbia Circuit in INGAA v. FERC, 285 F.3d 18 (D.C.Cir. 2002). The Commission accordingly stated it would not require a pipeline to allow a shipper to deliver full contract quantities via forwardhauls and backhauls to the same point until it had acted on the court's remand. The Commission also found that at least until it had acted on the remand it could not find that TransColorado's proposed charge for such hauls is just and reasonable.

20. On rehearing, TransColorado does not contest that it has the operational ability to permit forwardhauls and backhauls to the same point. TransColorado argues only that the Commission should permit it to charge an overrun rate, since the combination of segmented forwardhaul and backhaul nominations to a point could exceed the firm entitlements of the underlying contract. The Commission has now issued its order on

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[19] Order No. 636-B, 61 FERC at 62,013. See PG&E Gas Transmission, Northwest Corp., 98 FERC ¶ 61,365 at 62,565 (2002), finding that where shippers pay mileage-based rates such that they only pay for capacity within their path, they are not entitled to use capacity outside their path.

[20] Order No. 637-A at 31,593, citing Transcontinental Gas Pipe Line Corporation, 91 FERC ¶ 61,031 (2000).

remand[21] responding to the Court's decision in INGAA v. FERC. The remand order expressly rejected the contention that allowing shippers to have a forwardhaul and backhaul to the same point would allow shippers to get more than the capacity for which they have paid. The Commission held that, since a firm shipper must pay the costs of the entire zone, it may use all of the points in a zone for which it is paying on a secondary basis. Thus, when a shipper segments its capacity so as to obtain a forwardhaul and backhaul to the same point, each of which is up to its contract demand, "The shipper is getting no more than what it pays for."[22]

21. The Commission finds that the issues raised on rehearing by TransColorado regarding forwardhauls and backhauls to the same point have been addressed by the Commission's Order on Remand. Accordingly, TransColorado's request for rehearing is denied.

C. Discount Provisions

22. The July 5 Order directed TransColorado to remove proposed tariff language that provided that its discounts would not apply to secondary receipt or delivery points or to segmented capacity, unless TransColorado explicitly specifies in writing that such discounts shall apply. The Commission directed TransColorado to file tariff language implementing the CIG/Granite State[23] policy permitting a shipper to retain a discount when it moves to segmented points or secondary points through a streamlined request process in which the pipeline processes requests for discounts within two hours.

23. The Commission rejects TransColorado's argument that in adopting its discount policy, the Commission erred by departing from existing policy and precedent without providing a reasoned explanation and that the Commission failed to make the required findings under NGA Section 5 to impose its new discount policy on TransColorado.

24. In Order No. 637-A, the Commission found that the interaction of its segmentation policies and its current policy of permitting pipelines to limit discounts to particular points

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[21] 101 FERC ¶ 61,127 (2002).

[22] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, 101 FERC ¶ 61,127 (2002) at P 56.

[23] Colorado Interstate Gas Co., 95 FERC ¶ 61,321 at 62,120-21 (2001).

needs reexamination. The Commission determined that placing restrictions on discounted transactions could interfere with competition created through released capacity.[24]

25. In Colorado Interstate Gas Co.,[25] the Commission examined the effects of its existing discount policy on competition and found that if shippers with a discount would lose the discount and be subject to the maximum rate if they utilized their flexible point rights to move to a secondary point or segmented capacity which would use different points than the primary points contained in the contract, this would have the effect of restricting competition. The Commission, however, also recognized that if the discount were to apply automatically at secondary points, pipelines may give discounts for other than competitive reasons contrary to the discount policy. Therefore, the Commission found that it could best balance these interests by permitting the shipper to retain its discount when moving to secondary or segmented points, if the pipeline has granted a discount to a similarly situated shipper at the alternate point. This allows a shipper to better compete with primary capacity offered by the pipeline and with other shippers at the alternate points. This policy applied the general requirement that pipelines must not engage in undue discrimination by ensuring that a shipper with a discounted contract can continue to receive a discount at points where it is similarly situated to other shippers receiving a discount.

26. Thus, the Commission has found that a pipeline's failure to provide a shipper's contract discount or the prevailing discount at a secondary point where the shipper is similarly situated to other shippers is discriminatory. The Commission has also found that it is unreasonable for a segmenting shipper with a discount to pay the maximum rate at alternative points regardless of market conditions. If the shipper has to pay the maximum rate at segmented points, the segmented transaction could not compete on an equal footing with pipeline capacity and competition would be unduly restricted. Thus, the Commission has found that failing to provide discounts at secondary points is discriminatory and that it is unjust and unreasonable.

27. However, TransColorado's tariff would permit it to prevent shippers from retaining discounts at alternate points where they are similarly situated to other shippers receiving discounts. Accordingly, we have found, pursuant to NGA Section 5, that the tariff is discriminatory and unjust and unreasonable. Revising the tariff consistent with our CIG/Granite State policy will render the tariff just and reasonable and not unduly discriminatory. Also, since as discussed above, TransColorado's contracts incorporate the terms and conditions in its tariff, this revision to its tariff will also render its existing contracts just and reasonable and not unduly discriminatory.

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[24] Order No. 637-A at 61,595.

[25] Colorado Interstate Gas Co., 95 FERC ¶ 61,321 at 62,120-21 (2001).

28. TransColorado also argues that if the Commission retains its discount policy on segmentation, it should remove the requirement for two-hour processing of requests to retain discounting.

29. The Commission also denies TransColorado's request for rehearing concerning the two-hour response time for retaining discounts. The Commission finds no basis for exempting TransColorado from the requirement that it process within two hours any request to transfer an existing discount. In Order No. 637, the Commission sought to foster a more competitive market for the sale of pipeline capacity by enabling released capacity to compete on a comparable basis with pipelines' sale of their primary capacity. As part of that effort, the Commission required pipelines to provide purchasers of released capacity the same ability to submit a nomination at each of four standard scheduling periods as shippers purchasing capacity from the pipeline.

30. As the Commission explained on rehearing of Granite State,[26] the two-hour processing of discount retention requests is necessary in order to implement this scheduling equality requirement. The two-hour processing time is necessary so that shippers holding discounted contracts can similarly take advantage of the four nomination opportunities. For example, replacement shippers frequently want to use receipt or delivery points different from those in the releasing shipper's contract. If a releasing shipper holding a discount contract and a replacement shipper want to structure a capacity release using alternate points at any one of these four nomination opportunities, the two shippers need to know the capacity price that will apply in order to determine whether to proceed with the capacity release transaction. If the releasing shipper were to lose its discount price as a result of a capacity release at an alternate point, it might not be willing to enter into the release in the first place. On the other hand, if the discount shipper were to retain its discount price the capacity release transaction would be economic. Thus, in order to make the Commission's regulation effective and promote competition in the capacity market, the pipeline must inform shippers whether they retain a discount in sufficient time so that the shippers can submit nominations at each of the four scheduling opportunities.

31. In Granite State, the Commission stated that "pipelines can raise specific factual conditions on their pipeline that they believe warrant a change in the application of the discount policy to their pipeline.'[27] However, TransColorado has not provided specific factual conditions applicable to its pipeline system that would support its claim that it

[26] Granite State Gas Transmission, Inc., 98 FERC ¶ 61,019 (2002).

[27] Granite State, 98 FERC ¶ 61,019 at 61,055 (2002).

should not be required to implement the two-hour processing requirement. The Commission finds that any burden this imposes on pipelines is justified by the benefits of promoting competition in the pipeline capacity market.

32. TransColorado has not demonstrated why a request to retain a discount in connection with a transaction that will be in effect for an extended term requires more time than a short term request, nor has it shown that two hours is insufficient time to evaluate a shipper's long-term request. TransColorado has only made general assertions that certain requests to retain discounts would be more complex or require higher approval level but has not provided any support for its position. In evaluating a request to retain a discount, the pipeline must consider whether the new transaction is similarly situated to the transaction for which discounts have already been given at the new point. This need not involve a detailed analysis. For example, if the discounts given to existing shippers at the new point are all for relatively short-term transactions of a month or less and the shipper seeks to retain its existing discount in connection with a long-term release transaction of a year or more, the pipeline could find the long-term release transaction not similarly situated based on the difference in term.

33. The Commission also rejects TransColorado's request for an exemption from the two-hour processing requirement for transactions that will not take effect until a number of days later. The Commission has explained that the two-hour requirement "will provide shippers with flexibility to determine how much advance notice of a pipeline discount determination the shipper requires to structure the business transaction."[28] Even where a transaction will not take effect for a number of days, the shipper may need to have a quick decision concerning retention of the discount in order to complete its intended transaction. Finally, with regard to TransColorado's assertion that the required response time must fall on a business day, the Commission has clarified that the two-hour processing time does not require the pipeline to process requests overnight or over a weekend.[29]

IV. TransColorado's Compliance Filing

A. Scheduling Equality

34. The July 5 order directed TransColorado to comply with Section 284.12(c)(1)(ii) of the Commission's regulations by, at a minimum, revising its filing to comply with Standard

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[28] Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 at 62,037 (2001).

[29] National Fuel Gas Supply Corp., 98 FERC ¶ 61,123 (2002) and Granite State Gas Transmission, Inc., 98 FERC ¶ 61,019 (2002).

5.3.2 (Version 1.5) of the NAESB[30] Standards. On August 1, 2002, TransColorado filed tariff sheets in Docket No. RP02-460-000 to comply with Order No. 587-O,[31] which adopted the Version 1.5 standards. By unpublished letter order dated September 30, 2002, the Commission accepted the filing. The Commission finds that TransColorado has complied with the directives on scheduling equality set forth in the July 5 order. However, the tariff sheets proposed in this proceeding do not fully reflect the revisions accepted in the September 30 order. TransColorado is therefore directed to revise its tariff within 30 days to reflect the tariff revisions accepted in the September 30 order.

B. Segmentation

July 5 Order

35. The July 5 order directed TransColorado to clarify its tariff (1) to permit segmentation outside a shipper's primary path and (2) to permit flow reversals in segmented transactions, when operationally feasible. The July 5 order further directed TransColorado to delete the provision requiring forwardhauls that were originally backhauls to be subject to the maximum rate. The July 5 order stated that such forward- hauls should be subject to the rebuttable presumption that they are similar to other discounted transactions at the same points. Finally, the July 5 order noted that the policy regarding forwardhauls and backhauls to a single delivery point was currently under review by the Commission as a result of the partial remand of Order Nos. 637, et al., by the Court of Appeals for the District of Columbia Circuit.[32] The Commission, therefore, did not approve any charge for such hauls in the July 5 order.

August 5 Filing

36. TransColorado added Section 26(d) to its GT&C to permit shippers to segment capacity outside their primary path, subject to certain conditions. Segmentation outside of

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[30] North American Energy Standards Board, formerly the Gas Industry Standards Board (GISB).

[31] Standards for Business Practices and Interstate Natural Gas Pipelines, Order No. 587-O, 99 FERC ¶ 61,146 (2002).

[32] Interstate Natural Gas Ass'n v. FERC, 285 F.3d 18 (D.C. Cir. 2002).

a shipper's primary path is allowed as long as it does not (1) adversely impact the rights of other shippers to flex to secondary points or (2) impair TransColorado's ability to perform its contractual obligations. TransColorado states that the Commission's goal in permitting capacity segmentation is to enable firm shippers to use their capacity flexibly "without infringing on the legitimate rights of other shippers."[33]

37. TransColorado also added Section 26(e) which provides that shippers may nominate reverse flows via a segmentation request as long as TransColorado determines that such reverse flows are operationally feasible. TransColorado also deleted the language in Section 26 that required charging the maximum rate for forwardhauls that were originally backhauls.

38. Finally, regarding forwardhauls and backhauls to a single delivery point, TransColorado notes that the Commission gave pipelines a choice as to whether to provide for such hauls in their tariffs. TransColorado states that it has elected not to include in Section 26 the option for shippers to have forwardhauls and backhauls to a single point but that it intends to comply with the Commission's directives on this issue as appropriate when the Commission takes action on the partial remand. On November 26, 2002, TransColorado submitted a letter in this proceeding stating that it was not filing revised tariff sheets to comply with the Commission's October 31, 2002 Order on Remand[34] at that time because it did not have tariff sheets in effect that govern segmented transactions. TransColorado stated that any revisions necessary to comply with the Order on Remand will be made in the compliance filing to implement the Commission's future order on its pending proposed tariff sheets in this proceeding.

Commission Ruling

39. The Commission finds that TransColorado has generally complied with the July 5 order directives on segmentation, with one exception. Section 26(d) permits shippers to segment capacity outside their primary path if the request does not adversely impact shippers' rights to access secondary points. This provision appears to address the priority of service to secondary points between segmenting and non-segmenting shippers, rather than imposing a limitation on segmentation based on operational concerns. However, Section 8.1(a)(ii)(2) of the GT&C establishes the scheduling priority for service as follows: firm service at primary points and primary paths, secondary firm service within the path, secondary firm service outside the path, and interruptible service. It appears that the

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[33] TransColorado cites Order No. 637-A.

[34] Regulation of Short-term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, 101 FERC ¶ 61,127 (2002).

"adverse impact" language in Section 26(d) is not only unnecessary (because the priority of service is delineated in Section 8.1) but is inconsistent with Section 8.1 to the extent it implies that requests to segment to secondary points outside the primary path would not be granted if other shippers were using that capacity on a secondary basis. The Commission directs TransColorado to modify Section 26(d) to remove the adverse impact language or explain why it is necessary and how it would apply in conjunction with Section 8.1.

40. With regard to backhauls and forwardhauls to a single delivery point, the Commission will require TransColorado to file revised tariff sheets to expressly permit segmented transactions consisting of forwardhauls up to contract demand and backhauls up to contract demand to the same point at the same time.

C. Discounts

July 5 Order

41. The July 5 order directed TransColorado to file tariff sheets implementing the rebuttable presumption policy described in CIG/Granite State,[35] along with a procedure for processing requests to retain discounts at each scheduling opportunity provided by the pipeline.

August 5 Filing

42. TransColorado states that it revised Sheet Nos. 210, 235, and 266 to reflect references to the Commission's new discount policy and also included language recognizing that such requests received on any business day will be processed on a reasonable efforts basis within two hours. Section 9.7 of the GT&C states that a shipper may request that a discount be retained at an alternate point unless inconsistent with the transportation service agreement (or related discount agreement). TransColorado will respond on a reasonable efforts basis to any request submitted by 4:00 p.m. CCT on a business day within two hours, provided that requests received between 4:00 p.m. CCT on a business day and 9:00 a.m. CCT on the following business day will be deemed to have been received by 9:00 a.m. CCT, and TransColorado will respond by 11:00 a.m. CCT. Further, if a request is to be effective more than 24 hours in the future, TransColorado will respond

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[35] Colorado Interstate Gas Company, 95 FERC ¶ 61,321 (2001); Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 (2001), reh'g denied, 98 FERC ¶ 61,019 (2002).

within two business days or two hours prior to the time timely nominations are due for the day on which the discount is to be effective, whichever is sooner.

Commission Ruling

43. TransColorado's revised tariff sheets do not fully comply with the Commission's discount policy and July 5 directives. Section 9.7 of the GT&C contains the following language that limits the applicability of the discounts: "unless inconsistent with the transportation service agreement (or related discount agreement)..." That language is unnecessary and serves to undermine rather than implement the Commission's rebuttable presumption policy regarding retention of discounts at alternate points.[36] TransColorado is directed to remove this language from its tariff.

44. In addition, the "reasonable efforts basis" language in Section 9.7 is too broad. TransColorado must revise its tariff to remove that language. Similarly, the time frames included in TransColorado's tariff do not correspond exactly with the Commission's discount policy. In particular, the Commission requires that any requests for discounts received after 4:00 p.m. must be acted on by no later than 8:30 a.m. CCT the next business day.[37] TransColorado must revise its tariff accordingly.

45. Finally, the Commission rejects TransColorado's proposal that the time period for processing transactions for which the discount would not take effect until more than 24 hours in the future would be two business days, but not less than 2 hours prior to the timely nomination deadline. Under TransColorado's proposal, a shipper negotiating for a transaction to take effect in two days would receive only two hours notice prior to the nomination deadline. The Commission has explained that the two-hour requirement "will provide shippers with flexibility to determine how much advance notice of a pipeline discount determination the shipper requires to structure the business transaction."[38] For example, if a shipper wants 10 hours within which to make its decision, it would make its request to TransColorado at least 12 hours in advance. TransColorado's proposal conflicts with Commission policy because it deprives the shipper of its ability to determine how much advance notice of TransColorado's discount decision it will receive. In the example above, under TransColorado's proposal, if the shipper places its request 12 hours in advance it only receives two hours notice, rather than the 10 hours it requires. Even where a transaction will not take effect for a number of days, the shipper may need to have a quick decision concerning retention of the discount in order to complete its intended transaction.

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[36] See Trailblazer Pipeline Company, 103 FERC ¶ 61,074 (2003).

[37] See, e.g., Questar Pipeline Co., 100 FERC ¶ 61,212 at P 59 (2002).

[38] Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 at 62,037 (2001).

Finally, with regard to TransColorado's assertion that the required response time must fall on a business day, the Commission has clarified that the two-hour processing time does not require the pipeline to process requests overnight or over a weekend.[39]

D. Penalties

46. The July 5 order directed TransColorado to revise its penalty revenue crediting mechanism so that interruptible and negotiated rate shippers will also receive such revenue credits. TransColorado has revised Sheet No. 247B to credit such revenues to firm, interruptible and negotiated rate shippers. The Commission finds the revision is in compliance with the July 5 order.

E. Effective Date

47. TransColorado requested that implementation of proposed tariff language be effective four months after issuance of a final order approving the tariff sheets of the last Kinder Morgan interstate pipeline in its group.[40] TransColorado states that, since these companies share a common computer system, the proposed effective date would allow the Kinder Morgan pipelines to modify their computer software and hardware in tandem. Therefore, in order to make the necessary computer systems modifications to comply with the Commission's directives, TransColorado requests a waiver of Section 154.101(e)(4), which requires an effective date for the proposed tariff sheets.

48. The Commission issued orders in Kinder Morgan and Natural with an effective date of December 1, 2003.[41] The Commission will thus require TransColorado to file revised tariff sheets to be effective on December 1, 2003, consistent with Kinder Morgan and Natural.

The Commission orders:

(A) TransColorado's request for rehearing and clarification is denied.

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[39] National Fuel Gas Supply Corp., 98 FERC ¶ 61,123 (2002) and Granite State Gas Transmission, Inc., 98 FERC ¶ 61,019 (2002).

[40] This group consists of Kinder Morgan, Natural Gas Pipeline Company of America, Trailblazer Pipeline Company and Canyon Creek Compression Company.

[41] Kinder Morgan Interstate Gas Transmission LLC, 103 FERC ¶ 61,216 (2003) and Natural Gas Pipeline Company of America, 103 FERC ¶ 61,174 (2003).

(B) TransColorado's August 5 compliance filing is accepted subject to the conditions in the body of this order.

(C) The tariff sheets listed in the Appendix are accepted effective as discussed in the body of this order, subject to further revisions as required by this order.

(D) TransColorado must make a filing to comply with the tariff modifications set forth in this order within 30 days of the issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX
Proposed Tariff Sheets
First Revised Volume No. 1

Sixth Revised Sheet No. 102
Fifth Revised Sheet No. 112
Seventh Revised Sheet No. 200
Fourth Revised Sheet No. 210
Sixth Revised Sheet Nos. 212 and 213
Third Revised Sheet No. 220
Seventh Revised Sheet No. 222
Fifth Revised Sheet No. 223
Third Revised Sheet No. 224
Fourth Revised Sheet No. 228
Seventh Revised Sheet No. 230
Original Sheet No. 230A
Eighth Revised Sheet No. 232
Fourth Revised Sheet No. 235
Second Revised Sheet No. 246A
Original Sheet Nos. 246 B and 246C
Ninth Revised Sheet No. 247
Third Revised Sheet No. 247B
Second Revised Sheet No. 257
Original Sheet Nos. 257A to 257I
Fourth Revised Sheet No. 262
Third Revised Sheet No. 265
Second Revised Sheet No. 266
First Revised Sheet Nos. 267 and 268
Third Revised Sheet Nos. 401 and 403