

112 FERC ¶ 61,118  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Tennessee Gas Pipeline Company

Docket No. RP04-215-001

v.

Columbia Gulf Transmission Company

ORDER AFFIRMING INITIAL DECISION

(Issued July 25, 2005)

1. On March 12, 2004, Tennessee Gas Pipeline Company (Tennessee) filed a complaint against Columbia Gulf Transmission Company (Columbia Gulf) alleging unlawfully discriminatory and anti-competitive behavior by Columbia Gulf in the control and operation of its portion of the Blue Water Project (BWP).<sup>1</sup> Tennessee's complaint states that Columbia Gulf denied Tennessee's request for a new interconnection on the BWP at Egan, Louisiana, in violation of the Commission's interconnect policy.<sup>2</sup>
2. Tennessee's complaint was set for trial before a Presiding Administrative Law Judge (ALJ), who found that the denial of the requested receipt point violated Commission policy, and directed that the construction of the interconnection be allowed.<sup>3</sup> This order affirms the ALJ's findings.

---

<sup>1</sup>The Blue Water Project is a natural gas system located primarily offshore of Louisiana jointly operated by Tennessee and Columbia Gulf since 1971. *See* Tennessee's Complaint at 2.

<sup>2</sup> *See Panhandle Eastern Pipeline Company*, 91 FERC ¶ 61,037 (2000) (*Panhandle*).

<sup>3</sup> *Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 110 FERC ¶ 63,041 (2005). Tennessee also describes several specific incidents, which Tennessee states show discriminatory conduct by Columbia Gulf. Tennessee claims that Columbia Gulf required, without justification, that Tennessee provide credit assurances as a result of continuing imbalances on the Blue Water system, failed to confirm the nominations of Tennessee's shippers using Tennessee's BWP capacity, and denied improperly Tennessee's request for a CO<sub>2</sub> waiver. The ALJ found that Tennessee did not show these actions to be unduly discriminatory.

### **Background**

3. The BWP is a horse-shoe shaped natural gas system, located primarily offshore of Louisiana, which extends to and terminates at two on-shore points. On August 31, 1971, the Federal Power Commission issued a certificate of public convenience and necessity to Tennessee and Columbia Gulf authorizing the construction and coordinated operation of the BWP.<sup>4</sup> In June 1972, Tennessee and Columbia Gulf entered into the BWP Operating Agreement. Since then, Tennessee and Columbia Gulf have coordinated operations and shared capacity on the BWP pursuant to the terms of the BWP Operating Agreement.<sup>5</sup>

4. The BWP consists of the Western Shore Line (WSL), which terminates at Egan Louisiana, the Blue Water Offshore Header (Offshore Header), and the Eastern Shore Line (ESL), which terminates at Cocodrie, Louisiana. Generally, the WSL is operated and maintained by Columbia Gulf, and the Offshore Header and ESL are maintained and operated by Tennessee. The WSL, the upper left portion of the U, begins onshore as a single-phase system and extends southward approximately 41 miles to the onshore Pecan Island liquid separation, dehydration and compression facility (the Pecan Island Facility) and then continues southward as a multi-phase system approximately 72 miles to Vermillion 245.<sup>6</sup> From Vermillion 245, the BWP extends eastward approximately 73 miles to Ship Shoal 198 (the Offshore Header) as a multi-phase system. The upper right portion of the U is the ESL, which extends approximately 61 miles northward from the Ship Shoal 198 to the Cocodrie facility at Cocodrie, Louisiana. The Cocodrie facility provides liquid separation, dehydration, and compression for the eastern terminus of the BWP.<sup>7</sup>

5. The Egan complex at the Egan, Louisiana terminus of the WSL consists of four meter stations, each station serving as a delivery point into a different interstate pipeline. Egan A is the delivery point into Columbia Gulf. Egan B is the delivery point into

---

<sup>4</sup> *Tennessee Gas Pipeline Co.*, 46 FPC 605 (1971). Construction of certain onshore portions of the BWP, including the delivery point at Egan, Louisiana, where Tennessee seeks to establish a receipt point, was authorized in *Columbia Gulf Offshore Pipeline Co.*, 41 FPC 231 (1969).

<sup>5</sup> Tennessee's Complaint at 6; *see also* Ex. No. TGP-21.

<sup>6</sup> Ex. No. CGT-21 at 4-5. The Pecan Island Facility is owned jointly by Columbia Gulf and Tennessee and operated by Columbia Gulf.

<sup>7</sup> *Id.* at 5.

Tennessee.<sup>8</sup> Egan C is the delivery point into Transcontinental Gas Pipeline Corporation (Transco). Egan D is the delivery point into Texas Gas Transmission, L.P. (Texas Gas). Producers who wish to take their supply to Egan are able to reach downstream markets on each of these four pipelines. Columbia Gulf and the other downstream pipelines are not able to accept unprocessed gas into their onshore systems downstream of the Egan complex. Processing of gas transported on the WSL is performed at the non-jurisdictional Blue Water Gas Plant (BWGP), located onshore on the WSL, and operated by one of its owners, ExxonMobil Gas and Power Marketing Company (Exxon Mobil).

6. Columbia Gulf and Tennessee share capacity on both the WSL and ESL. Specifically, on the WSL, Columbia Gulf's capacity is 902.8 MMcf/d, while Tennessee's capacity is 475.8 MMcf/d. WSL total capacity is 1,378.6 MMcf/d. On the ESL, Columbia Gulf's capacity is 198.7 MMcf/d, while Tennessee's capacity is 1,314.6 MMcf/d.<sup>9</sup> ESL total capacity is 1,513.3 MMcf/d.

7. One of Tennessee's stated purposes in requesting the Egan interconnection is to use the BWP to assist more efficiently in meeting its balancing requirements.<sup>10</sup> The ESL does not connect directly with any Columbia Gulf facilities, and Columbia Gulf's ESL volumes are delivered to Tennessee at Cocodrie.<sup>11</sup> In 1996, Tennessee and Columbia Gulf entered into a Reciprocal Operating Lease Agreement (the Reciprocal Lease) allowing Tennessee to lease firm capacity from Columbia Gulf on the South Pass 77 system (jointly owned by the two pipelines and located near the ESL) and allowing Columbia Gulf to lease firm capacity from Tennessee on its Muskrat mainline from South Pass 77 to Egan, Louisiana.<sup>12</sup> The Reciprocal Lease, filed with the Commission and approved in 1997,<sup>13</sup> allows Tennessee and Columbia Gulf to displace deliveries between South Pass 77 and Egan by taking the physical volumes that were delivered into

---

<sup>8</sup> See Ex. No. CGT-1 at 12. Tennessee's request is to make Egan B a bi-directional station by installing a bi-directional meter, allowing both the receipt and delivery of gas.

<sup>9</sup> See Exhibit CGT-4.

<sup>10</sup> Complaint at 2.

<sup>11</sup> See Columbia Gulf's Answer To Complaint at 9.

<sup>12</sup> *Tennessee Gas Pipeline Co. & Columbia Gulf Transmission Co.*, 78 FERC ¶ 61,182 (1997). See Tennessee's Complaint at 7.

<sup>13</sup> *Id.*

the WSL by producers, for the account of Tennessee's shippers, at Egan.<sup>14</sup> Tennessee states that this method of displacement is a substitute for constructing an actual pipeline connection from Tennessee's Muskrat line to Columbia Gulf's system at Egan.<sup>15</sup>

8. Currently, gas supplies are attached on all three portions of the BWP and flow both east and west, with a null point (a point where gas will flow either east or west, depending upon system pressure push) which moves depending on supply patterns and the operation of the BWP. Under current operating conditions, the null point has drifted along the least restrictive path, toward the ESL. That is the least restrictive path because the ESL is longer than the WSL, has two parallel loops along its entire length, and the pressure is generally lower than on the WSL.<sup>16</sup>

9. In recent years gas volumes transported on the WSL have declined to such an extent that extraordinary measures have become necessary to balance the deliveries between Columbia Gulf and Tennessee. At present, approximately 280-320 MMcf/day are transported on the WSL, and approximately 350-375 MMcf/day on the ESL.<sup>17</sup> The natural tendency of volumes from the Offshore Header is to flow towards Cocodrie. Thus, in order to pull volumes towards the WSL, Columbia Gulf would have to operate the compression facilities at the Pecan Island Facility. However, no compression is running at the Pecan Island Facility, because Columbia Gulf claims that the compressors at the facility are not designed to operate at lower flow volumes on the WSL.

10. Tennessee states that Columbia Gulf has not made any modifications to the compressors, but instead has requested that Tennessee restrict flow into Cocodrie on the eastern end of the Offshore Header, and raise pressure on the Offshore Header. Tennessee witness Goodman states that Columbia Gulf uses compression facilities at the Vermillion 245 platform to perform the service that the Pecan Island facilities should perform, *i.e.*, to pull gas north off the Offshore header at the Vermillion 245 platform.<sup>18</sup> Tennessee states that Columbia Gulf also insists that the valve on the Vermillion 245 platform (the SDV-7 valve) remain closed in an effort to force gas up the WSL.<sup>19</sup> As the

---

<sup>14</sup> If necessary, gas is also delivered to Columbia Gulf from the Offshore Header at Vermillion-245. CGT-1 at 10-11.

<sup>15</sup> Tennessee's Complaint at 7.

<sup>16</sup> *Id.*

<sup>17</sup> Brief On Exceptions of Columbia Gulf at 13.

<sup>18</sup> *See* Exhibit TGP-9, Prepared Direct Testimony of Michael L. Goodman (Goodman Direct Testimony) at 12.

<sup>19</sup> *Id.* at 10.

imbalances affect both owners, Tennessee states that it has agreed to take these actions.<sup>20</sup> Currently, valve 245 is closed, which limits the impact of a receipt point at Egan. Only when the valve is opened does the threat of larger quantities of gas moving from Columbia Gulf's west to Tennessee's east become severe. Nonetheless, the result has been that the WSL is isolated from the rest of the BWP.<sup>21</sup>

11. According to Tennessee, the volumes on the WSL available for delivery at Egan have declined to such an extent that displacement is no longer an efficient means of providing deliveries between South Pass 77 and Egan.<sup>22</sup> Additionally, Tennessee states that there has been a decrease in supplies flowing on its 500 Line, which flows north of the eastern portion of the BWP. Tennessee has also experienced constraints on its 100 and 800 Lines, which flow north of the western portion of the BWP. Tennessee therefore seeks to shift volumes from its constrained western 100 and 800 Lines to its eastern 500 Line. However, Tennessee's Muskrat Line, which flows from west to east, is operating at full capacity and currently constitutes a bottleneck on Tennessee's system.<sup>23</sup> Tennessee will not reverse the direction of flow on the Muskrat Line.<sup>24</sup> As a result, Tennessee requested a direct interconnection between the Muskrat line and Egan through installation of a receipt meter at Egan, Louisiana (the Egan interconnection) from Columbia Gulf.<sup>25</sup> The gas to be delivered by Tennessee for delivery into, and then out of, Egan B, is from onshore supply resources in east Texas.<sup>26</sup>

### **Issues and Initial Decision**

12. On May 6, 2004, the Commission issued an order establishing hearing procedures for resolution of Tennessee's complaint to be held in abeyance pending settlement discussions.<sup>27</sup> On May 11, 2004, the Chief Administrative Law Judge appointed a

---

<sup>20</sup> *Id.* at 20-21.

<sup>21</sup> *Id.* at 24.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> *See* Exhibit S-1, Direct Testimony of Staff witness Kevin Pewterbaugh, at 5.

<sup>24</sup> *See* Exhibit S-3, Direct testimony of Staff witness Meagan McComb, at 21, *citing* S-11, Tennessee's Answer to # 7, second set of data requests.

<sup>25</sup> *Id.*

<sup>26</sup> *See* Brief on Exceptions of Columbia Gulf at 15.

<sup>27</sup> *Tennessee Gas Pipeline Co. v. Columbia Gulf Transmission Co.*, 107 FERC ¶ 61,121 (2004).

settlement judge and initiated settlement procedures. Despite numerous settlement discussions the parties were unable to reach an agreement. Prior to the hearing, the parties filed a Joint Statement of Contested Issues on November 23, 2004, identifying three issues in dispute:<sup>28</sup> (1) does the Commission's pipeline interconnection policy, as set forth in *Panhandle*, apply to Tennessee's request for an interconnection at Egan, Louisiana, regardless of the existence of the joint Operating Agreement? The ALJ found that *Panhandle* applies. (2) if *Panhandle* applies, are its standards met in this case? The ALJ found that *Panhandle's* standards are met. (3) were Columbia Gulf's decisions: a) not to confirm the nominations of shippers using Tennessee's Blue Water Project capacity; b) to deny Tennessee's request for a CO2 waiver; and c) to request adequate assurances for payment, improper and relevant to the issue of Tennessee's request for an interconnection? The ALJ found that Tennessee failed to show Columbia Gulf's actions unduly discriminatory and anticompetitive.

13. The Commission Trial Staff, Columbia Gulf, and Tennessee filed briefs on exceptions and briefs opposing exceptions to the ALJ's initial decision.<sup>29</sup> We address in this order all of the issues raised and litigated at hearing, and the findings made in the Initial Decision opposed on exception.

#### **I. Does the *Panhandle* Policy Apply?**

14. The Commission's interconnection policy as set forth in *Panhandle* "enables a party desiring access to a pipeline to obtain an interconnection if it satisfies five conditions."<sup>30</sup> The five conditions require that: (1) the party seeking the interconnection bear the cost of construction of the interconnection; (2) the proposed interconnection not adversely affect the pipeline's operations; (3) the proposed interconnection and resulting transportation not result in diminished service to the pipeline's existing customers; (4) the proposed interconnection not cause the pipeline to be in violation of any applicable environmental or safety laws or regulations with respect to the facilities required to

---

<sup>28</sup> 110 FERC at 65,081.

<sup>29</sup> The initial decision identifies parties who filed timely motions to intervene in this proceeding. *See* 110 FERC at 65,079. A motion to intervene out of time was filed by Enterprise Gas Processing, LLC, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. For good cause shown, the motion will be granted.

<sup>30</sup> *Panhandle*, 91 FERC ¶ 61,037 at 61,141 (2000).

establish an interconnection with the pipeline's facilities; and (5) the proposed interconnection must not cause the pipeline to be in violation of its right-of-way agreements or any contractual obligations with respect to the interconnection facilities.<sup>31</sup>

### **Positions of the Parties**

15. Columbia Gulf claims that the Operating Agreement addresses the addition of new receipt and delivery points of the BWP, and that any application of the *Panhandle* policy modifies the Operating Agreement in violation of the *Mobile-Sierra* doctrine.<sup>32</sup> Columbia Gulf insisted further that *Panhandle* was adopted to assist in meeting the goals set forth in Order No. 636 to ensure all shippers meaningful access to the pipeline transportation grid.<sup>33</sup> Columbia Gulf stated that *Panhandle* has no application where parties have contractually agreed to the circumstances under which new points of interconnection will be added.<sup>34</sup>

16. Tennessee argued that *Panhandle* expressly anticipates that contractual agreements such as the Operating Agreement be reviewed to assure no violation thereof, and that *Panhandle* applies to this case. Trial Staff supported Tennessee's position.

### **Initial Decision**

17. The ALJ found that Columbia Gulf's arguments "lack substantive legal or factual merit,"<sup>35</sup> and that the Commission's *Panhandle* interconnection policy applies to Tennessee's request.<sup>36</sup> The ALJ noted that, in *Panhandle*, the Commission stated that new policy allows a "broader range of entities to have access to the pipeline grid and

---

<sup>31</sup> The policy has been discussed in a number of cases, including the following: *ANR Pipeline Co. v. Transcontinental Gas Pipeline Company*, 91 FERC ¶ 61,066, *reh'g denied*, 93 FERC ¶ 61,277 (2000); *Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043 (2001); *Nornew Energy Supply, Inc. and Norse Pipeline L.L.C.*, 98 FERC ¶ 61,018 (2002); *Discovery Gas Transmission LLC*, 107 FERC ¶ 61,124 (2004); *AES Ocean Express LLC v. Florida Gas Transmission Co.*, 107 FERC ¶61,276 (2004).

<sup>32</sup> Columbia Gulf's Initial Brief at 11-12, *citing United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "*Mobile-Sierra* doctrine").

<sup>33</sup> *Id.* at 18, *citing Panhandle*, 91 FERC at 61,141 (2000).

<sup>34</sup> *Id.* at 19.

<sup>35</sup> 110 FERC at 65,083.

<sup>36</sup> 110 FERC at 65,082-083.

promotes competition on open-access pipelines,”<sup>37</sup> thus maximizing the use of the pipeline grid and both affording customers more energy alternatives and lessening the impact of energy supply disruptions on the entire nation.<sup>38</sup>

18. Further, the ALJ found that application of the Commission’s *Panhandle* policy to Tennessee’s request appropriately takes into consideration the terms of the Operating Agreement. The ALJ found that the mere existence of the Operating Agreement does not preclude the application of the five conditions, but rather *Panhandle* requires an examination as to whether the requested interconnection violates the Operating Agreement.<sup>39</sup> The ALJ addressed Columbia Gulf’s *Mobile-Sierra* arguments further under the fifth *Panhandle* condition.

### **Exceptions**

19. Columbia Gulf continues to argue that application of the *Panhandle* policy in this case is not possible because the Operating Agreement “specifically addresses the addition of new receipt and delivery points.”<sup>40</sup> Columbia Gulf states that the Operating Agreement includes specific terms and conditions providing the standards under which a new receipt point might be added to the BWP. Columbia Gulf argues that the issue is not whether the Operating Agreement is violated by using the *Panhandle* standards to determine whether a receipt point is appropriate; rather, the issue is whether the Commission modifies the Operating Agreement.<sup>41</sup> If so, *Mobile-Sierra* is violated.

20. Trial Staff states that Columbia Gulf seeks to change the Commission’s interconnection policy by effectively eliminating the first four *Panhandle* conditions. Tennessee argues that Columbia Gulf would add, without authority, a new *Panhandle* condition: that a party seeking an interconnection must show that it has no agreement

---

<sup>37</sup> *Id.*, at 61,142. The Initial Decision noted that the *Panhandle* order stated that considering “the increased maturity of gas markets, as well as improvements in industry operating standards and conditions . . . continued use of the ‘similarly-situated’ standard as a basis for allowing pipelines to deny interconnections impedes the Commission’s ability to maximize the use of the national pipeline grid...” *Panhandle*, 91 FERC at 61,140 (2000).

<sup>38</sup> Initial Decision, 110 FERC at 65,082, *citing Panhandle* at 61,141.

<sup>39</sup> 110 FERC at 65,082.

<sup>40</sup> Brief on Exception of Columbia Gulf, at 17-19.

<sup>41</sup> *Citing Atlantic City Elect. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002), *appeal following remand*, 329 F.3d 856 (D.C. Cir. 2003) (*Atlantic City*) and *Texaco, Inc. v. FERC*, 148 F.3d 1091 (D.C. Cir. 1998) (*Texaco*).

regarding new receipt and delivery points with the pipeline with whom the interconnect is sought.<sup>42</sup> Further, Tennessee states that *Mobile-Sierra* applies only where the Commission “abrogates private contracts that do not contemplate [Commission] reform.”<sup>43</sup> Tennessee also notes that a “reasonable construction” of a contract has been held not to constitute “a unilateral change in the contract.”<sup>44</sup>

### **Commission Ruling**

21. The *Mobile-Sierra* doctrine addresses the burden that must be met before the Commission can modify a contract. A reasonable construction of a contract does not constitute a contract modification triggering the *Mobile-Sierra* doctrine.<sup>45</sup> As discussed further below, we affirm the ALJ’s finding that this interconnection is consistent with, and necessitates no modification of, the Operating Agreement. Therefore, the *Mobile-Sierra* doctrine is not implicated here.

## **II. Are the Panhandle Conditions Met?**

22. At issue in the instant matter are four of the five *Panhandle* conditions. Specifically, Columbia Gulf, Tennessee, and Trial Staff disagree as to whether Tennessee has demonstrated that: 1) Tennessee is willing to bear the costs of the construction (the first *Panhandle* condition); 2) the proposed interconnection will not adversely affect Columbia Gulf’s operation (the second *Panhandle* condition); 3) the proposed interconnection and any resulting transportation will not diminish service to the Columbia Gulf’s existing customers (the third *Panhandle* condition); and 4) the proposed interconnection will not cause Columbia Gulf to be in violation of any contractual obligations with respect to the interconnection facilities (the fifth *Panhandle* condition). No party suggests that the fourth *Panhandle* condition, that the proposed interconnection not cause the pipeline to be in violation of any applicable environmental or safety laws or regulations with respect to the facilities required to establish the proposed interconnection, is not satisfied.

---

<sup>42</sup> Brief of Tennessee Opposing Exceptions at 14-15.

<sup>43</sup> Brief Opposing Exceptions at 17, citing *Union Pacific Fuels, Inc. v. FERC*, 129 F.3d 157, 161 (D.C. Cir. 1997).

<sup>44</sup> *Id.*, citing *Town of Norwood, Massachusetts v. FERC*, 217 F.3d 24, 26 (1<sup>st</sup> Cir. 2000).

<sup>45</sup> *Town of Norwood, Massachusetts v. FERC*, 217 F.3d 24, 26 (1<sup>st</sup> Cir. 2000).

**Panhandle Standard One: Whether Tennessee Agreed to Bear the Costs of the Proposed Interconnection?**

**Positions of Parties**

23. Tennessee stated that it agrees to pay the construction costs of its proposed Egan interconnection and therefore satisfied the first *Panhandle* condition.<sup>46</sup> Columbia Gulf stated that Tennessee has only agreed to pay for the cost of constructing a bidirectional meter at Egan B, but has not agreed to pay for the costs associated with other facility modifications that may be required if a new bidirectional meter is added at Egan B, such as modifications to the platform at Vermillion 245.<sup>47</sup> Therefore, Columbia Gulf contended that Tennessee has not satisfied the first *Panhandle* condition.

24. Trial Staff stated that the record demonstrates that Tennessee has satisfied the first *Panhandle* condition.<sup>48</sup> Trial Staff explains that Columbia Gulf's contention should be rejected because it improperly expands the first *Panhandle* condition to include all costs associated with other facility modifications which may or may not result from Tennessee's proposal, *i.e.*, costs that are "premature and speculative."<sup>49</sup>

**Initial Decision**

25. The ALJ found that Tennessee has agreed to pay for the costs of construction of a receipt meter at Egan, Louisiana and therefore has satisfied the first *Panhandle* condition. The ALJ also found that the potential costs of other facility modifications are not the subject of this proceeding and are speculative.<sup>50</sup>

**Exceptions**

26. On exceptions, Columbia Gulf states that Tennessee has not met the first *Panhandle* standard because additional facility modifications, beyond the installation of a new receipt meter at Egan as discussed in the Initial Decision, are necessary to be responsive to Tennessee's plan to open the valve at Vermillion-245 and allow BWP gas flow to shift eastward to the Eastern Shoreline. Tennessee states in response that it has

---

<sup>46</sup> Tennessee's Initial Brief at 20.

<sup>47</sup> Columbia Gulf's Initial Brief at 28.

<sup>48</sup> Trial Staff's Initial Brief at 9, *citing* Tennessee's Complaint at ¶ 16.

<sup>49</sup> Trial Staff Initial Brief at 9-10, Reply Brief at 8.

<sup>50</sup> 110 FERC at 65,083.

not requested that the valve at Vermillion-245 be opened in this proceeding,<sup>51</sup> nor does it propose to reverse the flow on the BWP. Currently the valve is not functioning and is the subject of litigation in Harris County, Texas. Columbia Gulf states that Tennessee has initiated this litigation to void an agreement establishing Columbia Gulf as operator of the Vermillion 245 facilities, including the SDV-7 valve.<sup>52</sup> Tennessee has not sought any remedy from the Commission with respect to the SDV-7 valve.<sup>53</sup>

27. Trial Staff states that potential costs beyond the cost of the receipt meter at Egan are speculative and should not be considered, but that if the Commission disagrees, Tennessee should pay such potential costs. Tennessee states that the ALJ correctly found that the first standard of *Panhandle* had been met.<sup>54</sup>

### **Discussion**

28. In accordance with *Panhandle*, Tennessee is required to pay for the cost of the interconnections as well as other facility modifications necessitated by the interconnection. We affirm the ALJ's finding that Tennessee has offered to pay the direct costs of construction of the requested receipt point at Egan. We also agree that the evidence of record regarding other potential costs is speculative, particularly given that Tennessee has not requested the Commission to direct the opening of the valve at Vermillion 245. Should further costs become identified as resulting from the Egan receipt point, Tennessee should be required to pay for such modifications as part of the costs of the interconnection. Thus, at this stage of the proceeding, Tennessee has met the first Panhandle standard.

### **Panhandle Standard Two: Whether the Proposed Interconnection Adversely Affects Columbia Gulf's Operations?**

#### **Positions of Parties**

29. Columbia Gulf contended that the Egan interconnection will adversely effect its operations on the WSL, because Tennessee's delivery of volumes to the proposed Egan interconnection will reduce volumes flowing north on the WSL, causing the BWGP to close, shutting in gas and exacerbating the liquids build-up problem on the WSL, all

---

<sup>51</sup> *Id.* at 39.

<sup>52</sup> *See* Exhibit CGT-2. The parties have filed no further information concerning the status of such litigation or any jurisdictional issues that may have been raised therein.

<sup>53</sup> *See* Exhibit CGT-1 at 6.

<sup>54</sup> Tennessee Brief Opposing Exceptions at 38, *citing Panhandle*, 91 FERC at 61,141, P 23.

without increasing total volumes flowing on the BWP.<sup>55</sup> Columbia Gulf asserted also that if the SDV-7 valve is opened at Vermillion 245 to reverse the flow of gas, as it claims Tennessee proposes, more liquids and even less gas will flow into the WSL.

30. Tennessee stated that the Egan interconnection will not adversely impact Columbia Gulf's pipeline operations, but will improve pipeline operations by providing operational flexibility allowing a better means of resolving imbalances between Columbia Gulf and Tennessee on the BWP.<sup>56</sup> Trial Staff noted the limited and unclear evidence regarding the likelihood of the BWGP closing solely because of the proposed Egan interconnection.<sup>57</sup> Trial Staff concluded that if the BWGP does not shut down, there will be no adverse affects on Columbia Gulf's operations.<sup>58</sup>

31. Trial Staff proposed that, in the unlikely event that the Egan interconnection causes the BWGP to close, two modifications to Tennessee's proposal should be made to ensure no adverse impact on Columbia Gulf's operations.<sup>59</sup> First, Trial Staff proposed that Tennessee size the proposed meter station at Egan at 400 MMcf/d, rather than the proposed 275 MMcf/d, to enable the station to handle Columbia Gulf's shippers' throughput. Second, Trial Staff proposed that Tennessee provide Columbia Gulf recallable firm transportation service for the transportation of Columbia Gulf's shippers' throughput to Egan at no cost, up to 400 MMcf/d.

32. Tennessee agreed that it can size the proposed meter at 400 MMcf/d. However, Tennessee opposed Trial Staff's second proposal as unnecessary.

---

<sup>55</sup> See Columbia Gulf's Initial Brief at 30 and Columbia Gulf's Reply Brief at 26-28. The BWGP is the only means by which production flowing north on the WSL is processed to pipeline quality.

<sup>56</sup> See Exhibit TGP-1, Prepared Direct Testimony of Joe P. Dickerson (Dickerson Direct Testimony) at 7, lines 4-5; Exhibit TGP-9, Goodman Testimony, at 3.

<sup>57</sup> Commission Trial Staff Initial Brief at 10.

<sup>58</sup> *Id.* at 12.

<sup>59</sup> *Id.* at 14-15. Trial Staff's proposed modifications are also tailored to address issues relating to the speculative instance of the BWGP closing and causing a diminishment in service to the existing customers under the third standard of *Panhandle*.

### **Initial Decision**

33. The ALJ found that the proposed Egan interconnection had not been shown to affect adversely Columbia Gulf's operation of the WSL,<sup>60</sup> citing evidence that, in recent years, volumes on the WSL have continued to decrease,<sup>61</sup> and that the BWP is currently operated primarily as a means of displacing or exchanging volumes between Columbia Gulf and Tennessee. The ALJ concluded that allowing the Egan interconnection provides an additional means of minimizing imbalances on the BWP, with additional volumes delivered at Egan from additional sources, while Columbia Gulf's volumes will continue to flow on the WSL and Tennessee's shippers can continue to nominate to the Egan delivery meters.

34. As to whether the BWGP will close, the ALJ noted that the majority owner of the plant, ExxonMobil,<sup>62</sup> stated only that the proposed Egan interconnection "could" adversely affect the BWGP, but the plant owners did not otherwise participate in this proceeding.<sup>63</sup> Nor did any record evidence show whether the plant would in fact be closed should the volumes fall below 280 MMcf/d. Indeed, ExxonMobil stated that it had prepared "some general studies" about operating the plant at less than 280 MMcf/d<sup>64</sup> and that the plant operator would make a recommendation to plant owners using reasonable judgment and any plant owner could make its own recommendation.<sup>65</sup> The ALJ concluded that the evidence did not support a conclusion that the BWGP would close

35. The ALJ also noted that Columbia Gulf did not support its assertions<sup>66</sup> that reduced flows on the WSL would in fact cause producers to shut-in gas, or prevent producer volumes from reaching markets.<sup>67</sup> Tennessee's witness Goodman testified that

---

<sup>60</sup> 110 FERC at 65,085-088.

<sup>61</sup> See Exhibit TGP-9 at 25-26; see also Columbia Gulf's Initial Brief at 31.

<sup>62</sup> See Exhibit CGT-47 and Exhibit S-1 at 14-15.

<sup>63</sup> See Exhibit S-8 at 1.

<sup>64</sup> Exhibit S-1 at 15.

<sup>65</sup> Exhibit TGP-35.

<sup>66</sup> 110 FERC at 65,086, citing Exhibit TGP-61, a data response to a request by Trial Staff listing Columbia Gulf's WSL shippers and their usage volumes that Columbia Gulf claims will be affected.

<sup>67</sup> Columbia Gulf's Initial Brief at 32, discussing the possibility of reduced gas volumes on the WSL as a reason the BWGP might shut down.

“as compared to current operations, the volumes on the Western Shore Line flowing through Pecan Island would decrease by approximately the amount received at the Egan Interconnect less any Tennessee shipper nominations to the Egan delivery meters.”<sup>68</sup>

36. The ALJ found that the second standard of *Panhandle* has been met, and that Trial Staff’s first modification, sizing the Egan meter at 400 MMcf/d, should be adopted. However, the ALJ found the evidence insufficient to justify Trial Staff’s proposed second modification, requiring Tennessee to provide firm deliveries up to 400 MMcf/d, in the unlikely event of the BWGP closing justified.<sup>69</sup> BWGP owners have not come forward to present any such testimony and requiring such an accommodation would be an enhancement to Columbia Gulf’s operations and service not currently provided in the Operating Agreement.<sup>70</sup>

### **Exceptions**

37. On exceptions, Columbia Gulf argues further that its operations will be adversely affected by: (1) the reasonably certain reduction in the volumes carried on the WSL, likely resulting in the closing of the BWGP; (2) Tennessee’s failure to guarantee deliveries at Egan sufficient to meet Columbia Gulf’s customers’ needs; (3) insufficient capacity on the ESL to meet demand, and (4) a build-up of liquids on the WSL, exceeding the clean-up capacity of the Pecan Island dehydration and liquid separation plant.

38. Columbia Gulf states that the Initial Decision wrongly imposed on Columbia Gulf the burden of proving that the BWGP will close and that operational harm will occur, instead of requiring Tennessee to prove that operational harm will not result if the Egan interconnect is authorized. Columbia Gulf argues that the only record evidence regarding the level of gas volumes necessary for continued processing operations at the BWGP as presently configured came from ExxonMobil, one of the owners and operators of the plant, which submitted a data response indicating that the plant cannot operate in its current mode if volumes fall below 280 MMcf/d.<sup>71</sup>

39. Trial Staff agrees that Columbia Gulf’s claims of adverse effects upon its operations assume that the processing plant will in fact close, but argues that the record is simply unclear as to: (1) the actual reduction in WSL volumes that would be caused by

---

<sup>68</sup> Exhibit TGP-33, Prepared Rebuttal Testimony of Michael L. Goodman, at 3, lines 19-21.

<sup>69</sup> 110 FERC at 65,088.

<sup>70</sup> *Id.*; see also Tennessee’s Initial Brief at 41-46.

<sup>71</sup> Ex. No. S-8, Schedule 2; Ex. Nos. CGT-21, at 5, and CGT-22.

the Egan interconnect, and (2) when or if such reduced volumes would cause the processing plant to close.<sup>72</sup> Trial Staff concludes that its second modification, requiring Tennessee to provide firm transportation to Egan for 400 MMcf/d, remains necessary to ensure that the second standard of *Panhandle* is not violated.

### **Commission Ruling**

40. Columbia Gulf's arguments regarding burden of proof are unsupported. *Panhandle* stated that the policy announced therein "enables a party desiring access to a pipeline to obtain an interconnection if it satisfies five conditions." The ALJ noted specifically that Tennessee "has demonstrated that its requested interconnection satisfies all five *Panhandle* conditions and that Columbia Gulf's denial of Tennessee's request was not for a permissible purpose." Thus, the ALJ did not impose a burden of proof upon Columbia Gulf in violation of the *Panhandle* policy. Columbia Gulf's answer to this complaint justified its denial on the grounds that the Egan interconnect would cause a decrease in volumes moving on the WSL, leading to (i) a liquids build up, (ii) closing of the BWGP, and (iii) the shut-in of supplies.<sup>73</sup> Review of the evidence supports the ALJ's finding that these claims are unsupported and his conclusion that the requested Egan interconnect will be available to assist system balancing.

41. Columbia Gulf's claim that complications will arise from the build up and handling of liquids on the WSL as a result of Tennessee's Egan interconnect proposal has not been corroborated.<sup>74</sup> The record shows Columbia Gulf's ability to manage these occurrences under current circumstances as well as under potentially lower flow conditions on the WSL.<sup>75</sup>

42. We believe the ALJ properly found the evidence presented of potential harm to Columbia Gulf's operations too speculative to show the reasonable likelihood of closure of the Blue Water Plant.<sup>76</sup> The most telling evidence supports the ALJ's conclusion that the impact of the Egan interconnect upon Columbia Gulf's future operations is simply

---

<sup>72</sup> Trial Staff Brief Opposing Exceptions at 10 ff.

<sup>73</sup> Tennessee Brief Opposing Exceptions at 44.

<sup>74</sup> Tennessee's Initial Brief at 35-38, Transcript at 654-58, Exhibits TGP-16, and TGP-72.

<sup>75</sup> See, e.g., Exhibits TGP-16, TGP-5 at 2, Transcript at 632, 634-35, 642-48, Exhibit S-1 at 16.

<sup>76</sup> Compare, e.g., *Northwest Pipeline Corp.*, 106 FERC ¶ 61,174 at P 59 (2004).

unclear. The BWGP's major owner, ExxonMobil, has not provided a definitive statement regarding what circumstances would require the closure of the BWGP in the event the proposed interconnection is constructed.<sup>77</sup>

43. Further, Columbia Gulf has no current guarantee of volumes flowing on the WSL under current operating conditions, and as noted by Tennessee, requiring guaranteed volumes on the WSL would be an enhancement of service to Columbia Gulf's operations on the WSL.<sup>78</sup> Tennessee argues persuasively that shippers can continue to nominate deliveries at Egan and gas will continue to flow north towards Egan on the WSL as it currently does, or Columbia Gulf will receive its volumes at Egan through the new interconnection via other sources.<sup>79</sup>

44. As to Columbia Gulf's concern regarding whether the SDV-7 valve at Vermillion 245 will be opened, initial review of the issue is pending in a Texas state court.<sup>80</sup> Tennessee has not requested relief from the Commission regarding the SDV-7 valve. Tennessee has further testified that the SDV-7 valve can be opened or closed as needed to meet the obligations on the system.<sup>81</sup> We agree that no inference of adverse effect is warranted currently.

45. Columbia Gulf also relies on certain concerns that exist regardless of whether we approve the proposed Egan interconnection. Columbia Gulf concedes that in the past five years volumes have diminished on the WSL.<sup>82</sup> Indeed, Columbia Gulf provided evidence that use of the Egan interconnection "would simply be another variable" concerning imbalance management.<sup>83</sup> Columbia Gulf argues that the requested receipt meter at Egan will serve no other purpose than to put in and take out gas volumes through the existing meters at Egan as well as through the proposed Egan interconnection, in order to balance

---

<sup>77</sup> Exhibit S-1 at 14, lines 3-6. Tennessee notes that ExxonMobil was neither deposed nor subpoenaed to present evidence at hearing. Brief Opposing Exceptions of Tennessee at 65.

<sup>78</sup> Tennessee's Initial Brief at 40-47.

<sup>79</sup> Tennessee's Initial Brief at 25.

<sup>80</sup> See Exhibit CGT-2.

<sup>81</sup> Transcript at 296, lines 6-7.

<sup>82</sup> Columbia Gulf's Initial Brief at 31.

<sup>83</sup> Transcript at 746, lines 3-7 (testimony of Columbia Gulf witness Crews).

the system under the terms of the Operating Agreement.<sup>84</sup> As noted by the ALJ, Columbia Gulf's own assertions thus support Tennessee's claim that the requested interconnection will assist BWP balancing.<sup>85</sup>

46. Indeed, the ALJ found that installation of the receipt meter at Egan will not adversely alter operations on the BWP because both parties must continue to operate the BWP to achieve its maximum utilization, as provided in the BWP Operating Agreement.<sup>86</sup> We find that reasonable evidence supported the ALJ's finding that the proposed interconnection will provide, at a minimum, an additional tool for both Tennessee and Columbia Gulf to use in solving continuing imbalance issues.

47. For all these reasons, we find that the Presiding Judge appropriately found that Tennessee has satisfied the second *Panhandle* condition by demonstrating that Columbia Gulf's operations will not be adversely effected by Tennessee's proposed interconnection. We address the two proposed modifications submitted by Trial Staff under the following discussion of the third *Panhandle* standard.

**Panhandle Standard Three: Whether the Proposed Interconnection and Any Resulting Transportation Will Diminish Service to the Pipeline's Existing Customers?**

**Positions of Parties**

48. Columbia Gulf asserted that Tennessee's delivery of onshore gas supplies at the proposed Egan receipt meter will reduce volumes flowing north on the WSL on a one-for-one basis,<sup>87</sup> and that as volumes flowing north on the WSL decrease, the likelihood of the BWGP closing increases. If it closes, Columbia Gulf stated that it will lead to shut-in volumes on the WSL. For its existing customers, Columbia Gulf contends that Tennessee's proposal will cause diminishment in service: (1) in the level of transportation service, because service will no longer be firm; (2) by causing reduced options for processing gas; (3) by reducing or eliminating access to markets downstream of Egan; and (5) by increasing transportation costs.<sup>88</sup>

---

<sup>84</sup> Initial brief of Columbia Gulf at 54.

<sup>85</sup> 110 FERC at 65,085.

<sup>86</sup> 110 FERC at 65,087. *See also* Exhibit TGP-21, BWP Operating Agreement at 11. Section 12 of the Operating Agreement requires both parties to "cooperate fully at all times to achieve the maximum utilization of the BWP."

<sup>87</sup> Columbia Gulf's Initial Brief at 37.

<sup>88</sup> Columbia Gulf's Initial Brief at 37-30 and Columbia Gulf's Reply Brief at 30.

49. Tennessee pointed out that no Columbia Gulf customers asserted service diminishment as a result of the requested interconnection and argues that no evidence indicates that any diminishment in service would occur.<sup>89</sup> Tennessee stated that Columbia Gulf's arguments are pure speculation regarding the closure of the BWGP.

50. Trial Staff contended that the proposed interconnection and the resulting transportation will not cause a diminishment in service to the pipeline's existing customers unless the BWGP closes due to the interconnection. In the event the Blue Water Plant closes due to the Egan interconnection, Trial Staff proposes the modifications discussed above.

### **Initial Decision**

51. The ALJ found no merit in Columbia Gulf's contentions that the proposed interconnection and the resulting transportation will be a diminishment in service to the pipeline's existing customers.<sup>90</sup> The evidence, analysis, and conclusions discussed above under *Panhandle's* second standard apply equally to this issue.

### **Exceptions**

52. On exceptions, Columbia Gulf re-states the various forms of diminished service it claims will result from the Egan interconnection.<sup>91</sup> Tennessee argues that relevant evidence is speculative. Trial Staff continues to recommend the two modifications to prevent Columbia Gulf's customers from facing diminished service.

### **Commission Ruling**

53. We affirm the findings of the ALJ, based directly on the lack of evidentiary support for the claims made by Columbia Gulf.<sup>92</sup> No plant owners participated in the hearing, evidence presented to show that the BWGP would in fact close as a result of the Egan interconnection is speculative and unreliable, and no Columbia Gulf customers claimed that a diminishment in their service would result, either in transportation up the WSL or in the processing of gas.

54. Further, Tennessee noted that existing customers of both pipelines can continue to utilize the WSL for deliveries to Egan.<sup>93</sup> Tennessee's witness Goodman testified that

---

<sup>89</sup> Tennessee's Initial Brief at 39.

<sup>90</sup> 110 FERC at 65,088-089.

<sup>91</sup> Brief On Exceptions of Columbia Gulf at 58.

<sup>92</sup> 110 FERC at 65,088-89.

<sup>93</sup> Tennessee's Initial Brief at 39-42.

“[t]he receipt of volumes into the BWP via the new receipt meter does not impede the physical ability to receive volumes for delivery at Egan from the Offshore Header or the WSL.<sup>94</sup> Witness Goodman also testified that “[v]olumes on the Western Shore Line will be reduced to the extent that excess volumes flow into Cocodrie.”<sup>95</sup> If excess volumes flow into Cocodrie, those volumes will be delivered by Tennessee to the WSL using the new Egan receipt meter.

55. Additionally, if the BWGP remains open, Columbia Gulf’s shippers’ ability to move gas up the WSL and receive gas at Egan should not be affected by the new interconnection. As noted by Trial Staff, with Tennessee’s requested interconnection, shippers’ volumes entering the BWP west of the null point would continue to flow up the WSL and be processed by the BWGP, and therefore there would be no diminishment in service to Columbia Gulf’s existing customers.<sup>96</sup>

56. For the reasons discussed, the ALJ properly found that Tennessee has satisfied the third *Panhandle* condition and shown that the Egan interconnection and the resulting transportation does not cause diminishment in service to Columbia Gulf’s existing customers.<sup>97</sup>

### **Staff Modifications**

57. We believe that the Trial Staff’s two proposed modifications are properly considered with reference to this third standard of *Panhandle*. Trial Staff proposed adoption of two modifications to Tennessee’s proposal if the interconnection is approved: (1) require Tennessee to increase the size of the new meter to 400 MMcf/d, and (2) provide Columbia Gulf with recallable firm transportation service to Egan at no cost.<sup>98</sup> Neither proposal, states Columbia Gulf, is responsive to the problems created by approval of the proposed interconnect, because 400 MMcf/d is insufficient to replace current Columbia Gulf capacity on the WSL and firm service from Cocodrie to Egan would be necessary, a service Tennessee refuses to promise.

58. Trial Staff states that Columbia Gulf’s arguments here rest completely on the assumption that the BWGP will close due to the proposed Egan receipt point, which is

---

<sup>94</sup> Exhibit TGP-33, at 7, lines 1-3.

<sup>95</sup> *Id.* at 6-7.

<sup>96</sup> Commission Trial Staff Initial Brief at 17.

<sup>97</sup> 110 FERC at 65,088-089.

<sup>98</sup> Initial Decision at P 31.

not established by the record.<sup>99</sup> If the BWGP closes for any reason other than Tennessee's proposed interconnection, then the third *Panhandle* condition is not implicated.<sup>100</sup> However, Trial Staff argues that since a closing due to the proposed interconnection is possible, the second proposed modification remains necessary to assure that the third standard of *Panhandle* is not violated.

59. Tennessee states that Columbia Gulf's claims of service diminishment to their shippers are without record support, and that the ALJ properly found that volumes moving on the WSL currently are not guaranteed and that requiring the Trial Staff's second modification would be an enhancement of Columbia Gulf's service.<sup>101</sup> Further, Tennessee states that the Trial Staff's proposed modifications can affect current decisions, including providing incentive to the producer/owners of the BWP Plant to close the plant and attribute the closure to the Egan Interconnect. The two proposed modifications, states Tennessee, are inconsistent with the five standards of *Panhandle*.

### **Commission Ruling**

60. We agree with Trial Staff that a closing of the BWGP, due to the operations of Tennessee and Columbia Gulf with the Egan receipt point operational, has not been shown to be reasonably anticipated. Tennessee has accepted the first modification proposed by Trial Staff, enlargement of the receipt point, and we make that a part of our order. As to the second modification, we affirm the ALJ's rejection. Should Columbia Gulf be able to identify evidence in the future that shows an impact on its customers flowing from the Egan interconnect as described in *Panhandle*, Columbia Gulf is free to file an appropriate claim. Currently, the evidence is so speculative that anticipatory relief appears unnecessary.<sup>102</sup>

---

<sup>99</sup> Trial Staff's Brief Opposing Exceptions at 15.

<sup>100</sup> *Id.*

<sup>101</sup> Tennessee's Brief Opposing Exceptions at 64.

<sup>102</sup> Columbia Gulf's statement that its exchange agreement with Tennessee provides for the delivery of its shippers' gas at Egan also raises questions about the need for separate transportation capacity. *See* Ex. No. CGT-42 at 12; Brief on Exceptions of Columbia Gulf at 64.

**Panhandle Standard Five: Whether the Proposed Interconnection Causes the Pipeline to be in Violation of Any Contractual Obligations With Respect to the Interconnection Facilities?**

**Positions of Parties**

61. Columbia Gulf argues that section 15 of the Operating Agreement does not permit Tennessee unilaterally to turn Egan into a receipt meter.<sup>103</sup> Columbia Gulf states that section 15 defines Egan as a delivery point at the BWP's northern terminus and such definition prevails over section 15's general language permitting the unilateral addition of receipt points. Additionally, the Operating Agreement provides that the BWP facilities were designed to transport gas produced offshore to onshore markets and thus prohibits Tennessee from unilaterally installing a receipt meter at Egan.

62. Tennessee asserted that, regardless of an existing contractual agreement governing the operation of the BWP, the Commission's interconnection policy applies to Tennessee's request for an interconnection.<sup>104</sup> Tennessee stated that requiring Tennessee to demonstrate that no contractual agreement exists between the two parties would be in fact asserting a sixth condition to the Commission's interconnection policy.<sup>105</sup> Trial Staff concurred with Tennessee that *Panhandle* applies, noting that the Commission's interconnection policy "promotes open access and competition by preventing pipelines from denying requests for new interconnections except under limited conditions."<sup>106</sup>

**Initial Decision**

63. The ALJ found no merit in Columbia Gulf's interpretation of the Operating Agreement.<sup>107</sup> Applying the general rules of contract interpretation established in the Louisiana Civil Code,<sup>108</sup> the ALJ found the provisions of the Operating Agreement clear

---

<sup>103</sup> Columbia Gulf's Reply Brief at 36-37.

<sup>104</sup> Tennessee's Initial Brief at 8-10.

<sup>105</sup> *Id.* at 11.

<sup>106</sup> Commission Trial Staff's Initial Brief at 4-7.

<sup>107</sup> 110 FERC at 65,089-091. *See* Exhibit TGP-21 at 22, paragraph 29. The parties agreed in section 29 of the BWP Operating Agreement that the interpretation and performance of this contract shall be in accordance with and controlled by the laws of the State of Louisiana.

<sup>108</sup> *See Claitor v. Delahoussaye*, 858 So. 2d 469 at 478 (La. App. 1st Cir. 2003), *cert. denied*, 855 So. 2d 764 (La. 2003). The general rules of contract interpretation of the Louisiana Civil Code establish that when words of a written agreement are clear and

and explicit. Specifically, section 3 of the Operating Agreement states that the parties will coordinate the operation of the BWP “so as to maximize the efficiencies and flexibility obtainable from such coordination of operations.”<sup>109</sup> The ALJ also noted that section 3 of the Operating Agreement nowhere states that Tennessee may not install a receipt meter at Egan, Louisiana; nor did Columbia Gulf demonstrate that Tennessee’s interconnection serves any other purpose than to “maximize the efficiencies and flexibility obtainable from such coordination of operations.”<sup>110</sup>

64. Further, the ALJ construed section 15 of the BWP as allowing the use of Egan for receipt point purposes.<sup>111</sup> He noted that section 15 provides that “the points of future receipt of gas by each party into the BWP facilities shall be at existing connections and at such future points on the BWP as *may be selected by each party* (emphasis added).”<sup>112</sup> Nowhere in section 15 of the Operating Agreement does it state that a point of future

---

explicit and lead to no absurd result, no further interpretation as to the common intent of the parties can be made.” Further, “when a clause in the contract is clear and unambiguous, the letter of that clause should not be disregarded under the pretext of pursuing its spirit.” *Id.*

<sup>109</sup> Section 3 of the BWP Operating Agreement (Ex. No. TGP-21) states:

Tennessee and Columbia Gulf will coordinate the operation of their respective facilities and the jointly-owned facilities all of which constitute the BWP, so as to maximize the efficiencies and flexibility obtainable from such coordination of operations for the purpose of transporting for the parties natural gas and associated hydrocarbon liquids and liquefiable from offshore areas to onshore points of delivery.

<sup>110</sup> 110 FERC at 65,090.

<sup>111</sup> Section 15 of the BWP Operating Agreement states in relevant part:

The points of future receipt of gas by each party into the BWP facilities shall be at existing connections and at such future points on the BWP as may be selected by each party. If a new point of receipt is requested, then the party providing operation and maintenance for the segment of the BWP where such point of receipt is to be established shall construct or cause to be constructed such point of receipt at the requesting party’s sole expense and, unless otherwise agreed to, such construction shall include an additional side valve at such point to allow for future tie-ins by either party at the same point.

<sup>112</sup> 110 FERC at 65,090.

receipt cannot be located at the point which Tennessee has selected. Tennessee has selected Egan, Louisiana, found the ALJ, and Tennessee's choice is clearly consistent with the contract.<sup>113</sup>

65. The ALJ also found that Columbia Gulf misconstrues section 15's provisions regarding delivery points. Specifically, section 15 states that:

The points of delivery of gas from the BWP to the parties, respectively, shall be at the northern terminus of the Western Shore Line and the northern terminus of the Eastern Shore Line, and/or at such other point or points as the parties may hereafter mutually agree to.

66. Thus, section 15 requires the parties' mutual agreement to the addition of a delivery point, but Tennessee is requesting a receipt point, not a delivery point.<sup>114</sup>

67. In summary, the Presiding Judge found that Tennessee has demonstrated that its requested interconnection satisfies all five *Panhandle* conditions, that Columbia Gulf's denial of Tennessee's request was not for a permissible purpose, and therefore Columbia Gulf should allow Tennessee's requested interconnection. Additionally, allowing the interconnection fulfills both the purposes of the BWP Operating Agreement, as well as the Commission's objective. Specifically, the requested Egan interconnection provides the parties tools to maximize the operational flexibility of the Blue Water system as well as the national pipeline grid. To the extent that the Commission believes maximizing operational flexibility of the national pipeline grid is in the public interest, then Columbia Gulf should be required to construct the interconnection at Tennessee's expense.

### **Exceptions**

68. Columbia Gulf states three general exceptions: (1) The Initial Decision erred in finding that the *Panhandle* interconnection policy applies to Tennessee's request for a bidirectional meter; (2) assuming *arguendo* that *Panhandle* applies to this case, the Initial Decision erred by imposing the burden of proof on Columbia Gulf; and (3) assuming *arguendo* that the *Panhandle* policy applies to this case, the Initial Decision erred by finding that Tennessee met the *Panhandle* conditions.

69. Columbia Gulf states that section 15 of the Operating Agreement reflects the parties' decision in 1972, when the Operating Agreement was signed, to address in detail the operation, control and use of the BWP relative to additions of receipt and delivery points. Further, Columbia Gulf states that the Operating Agreement does not contain a provision permitting the parties or the Commission to modify the contract based on the

---

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

just and reasonable standard (a “*Memphis*” clause<sup>115</sup>) and therefore may be modified only upon a showing that the modification is in the public interest.<sup>116</sup> Columbia Gulf argues that the Initial Decision fails to recognize the Operating Agreement’s overall purpose, *i.e.*, to transport gas from offshore to onshore. Section 15 of the Operating Agreement eliminates Egan as a possible receipt point by defining Egan, the northern terminus of the WSL, as a delivery point. Columbia Gulf also argues that no showing has been made that meaningful access to the grid under *Panhandle* has been denied.

70. Trial Staff and Tennessee conclude that the Initial Decision correctly construed the Operating Agreement.<sup>117</sup> Tennessee adds that the Egan interconnect is expressly permitted by section 15 of the Operating Agreement, by the 1978 Amendment to the Operating Agreement, and is consistent with existing onshore receipt points. Tennessee also submits that the record shows that the proposed Egan interconnect is consistent with the open access goals of the *Panhandle* policy, since Tennessee will be able to use its capacity on the BWP to bring additional gas supplies to downstream markets, and to maximize use of the pipeline grid.<sup>118</sup> Tennessee points out that the Initial Decision’s reliance on the need for improved balancing on the BWP as justification for the proposed Egan interconnection is consistent with Columbia Gulf’s asserted justification for its request to Tennessee for adequate credit assurances.<sup>119</sup>

### **Commission Ruling**

71. Tennessee has more freedom and discretion under the Operating Agreement to obtain the Egan receipt point than under the *Panhandle* policy’s terms. Section 15 of the Operating Agreement, which Columbia Gulf describes as occupying the field of when and how receipt and delivery points may be added to the BWP, provides no stated limits to the choices allowed either party to select new receipt points.<sup>120</sup> As the ALJ found,

---

<sup>115</sup> *Citing United Gas Pipe Line Co. v. Memphis Light, Gas & Water Div.*, 358 U.S. 103, 112 (1958).

<sup>116</sup> Columbia Gulf states that such a showing has been termed “practically insurmountable” by the D.C. Circuit Court of Appeals. *Papago Tribal Util. Auth. v. FERC*, 723 F.2d 82, 87-88 (D.C. Cir. 1983).

<sup>117</sup> Brief of Trial Staff Opposing Exceptions at 16 ff; Brief of Tennessee Opposing Exceptions at 79 ff.

<sup>118</sup> *See Id.*, at 22.

<sup>119</sup> Tennessee’s Brief Opposing Exceptions at 27.

<sup>120</sup> As noted above, section 15 provides in pertinent part as follows: “The points of future receipt of gas by each party into the BWP facilities shall be at existing

Tennessee has selected Egan as its desired interconnect point. Section 15 provides no reason why Tennessee's choice should be rejected by Columbia Gulf, and we agree with the ALJ's treatment of Columbia Gulf's arguments.

72. Further, review of the 1978 Amendment to the Operating Agreement, and the manner in which both Columbia Gulf and Tennessee construed and acted upon the amended document to allow the establishment of a receipt point in the past, provides further direct support for the conclusion that Tennessee's request for the Egan receipt point must be granted. On August 12, 1978, Columbia Gulf and Tennessee amended the Operating Agreement to allow injection "into the BWP by Tennessee or Columbia Gulf at any point between Pecan Island and Egan."<sup>121</sup> Both Pecan Island and Egan are onshore, as are points between those points. The reading of section 15 supporting Tennessee's current request for the receipt point at Egan is the same reading used by both parties in 1978 to allow an onshore receipt point on the BWP near Pecan Island. Such reading also supports the ALJ's rejection of Columbia Gulf's claim that section 3 of the Operating Agreement precludes any and all usages of the BWP except for the transportation of gas from off-shore to on-shore.<sup>122</sup>

73. The Commission fulfills its role here under the fifth *Panhandle* standard with the simple recognition that the Operating Agreement's language is reasonably construed, consistent with prior reading and usage by the two parties, to allow the requested interconnect. No modification of the Operating Agreement is necessary, intended, or accomplished by the Commission. Rather, this order simply allows the Operating Agreement to function as intended by the parties. That Columbia Gulf currently opposes Tennessee's requested receipt point does not change the limited scope and nature of what the Commission decides in the *Panhandle* review. Reasonable, simple, and direct construction of the terms of the Operating Agreement also makes clear that what Tennessee seeks is precisely the type of partner-to-partner request the drafters of the Operating Agreement had in mind both when the contract was executed and as it has been used by the partners to conduct business over the years.

74. Columbia Gulf claims that the Commission has applied *Panhandle* only with reference to tariff-related issues and should be reticent about extending the policy's application to situations involving contracts. However, Columbia Gulf disregards the

---

connections and at such future points on the BWP *as may be selected by each party* (emphasis supplied).

<sup>121</sup> See Exhibit CGT-1, Direct and Answering Testimony of Columbia Gulf witness James Hart; Exhibit TGP-20, Direct Testimony of Tennessee witness Victor Smith at 7-8.

<sup>122</sup> 110 FERC at 65,090.

fact that the Operating Agreement involved here was executed to assure that jurisdictional services, found by the Commission in the original certificates to be required by the public convenience and necessity, would be performed pursuant to the service obligations assumed by Columbia Gulf and Tennessee.

75. The Commission's original authorization of the construction and operation of these facilities provides further indication that the BWP was meant to be responsive to business interests of the parties broader than simple movement of gas from offshore to onshore. In 1969, the Commission authorized Columbia Gulf to construct and operate certain onshore facilities of the BWP,<sup>123</sup> including the Egan point at which the requested receipt point would be located. The use of the facilities was necessary on an expedited basis to allow the onshore transportation of gas produced from Pecan Island. Only thereafter, in 1971, was certificate authorization granted to permit Tennessee and Columbia Gulf to construct and operate the offshore facilities of the BWP to transport offshore gas onshore.<sup>124</sup>

76. Tennessee has presented credible evidence that establishment of the receipt point at Egan will allow increased volumes of gas to move toward markets and also assist meeting the balancing requirements of the BWP. But here again the Commission's role is limited. A pipeline's authorized services must be made available consistent with Commission policies, including the Commission's stated reliance in *Panhandle* upon "competition across the national pipeline grid."<sup>125</sup> The Commission stated in *Panhandle* that:

[T]he Commission's modification of its interconnection policy represents an effort to ensure that competitive forces operate fairly and that open access pipelines do not impose artificial restrictions on those who seek access to their pipeline systems. When the requesting party assumes the financial burden of the interconnection, the Commission finds no reason to second-guess its analysis. Under such circumstances, when pipelines are able to accommodate the interconnections, subject to the interconnection policy, the pipelines may not deny such requests.<sup>126</sup>

77. Tennessee has exercised its freedom under the Operating Agreement to obtain an interconnection at Egan. Submitting that decision to analysis under *Panhandle*, we find no good reason to preclude Tennessee's request, and the ALJ has correctly found that

---

<sup>123</sup> See 46 FPC at 605, *citing* 41 FPC 231.

<sup>124</sup> 46 FPC at 605.

<sup>125</sup> 91 FERC at 61,144.

<sup>126</sup> *Id.* at 61,142.

Columbia Gulf's denial is inconsistent with *Panhandle*. Tennessee's request must be granted. Based on all of the above, the Commission finds that the Initial Decision has properly applied the *Panhandle* policy.

### **III. Whether Columbia Gulf's Conduct Constitutes Unduly Discriminatory Conduct and Whether Such Conduct is Relevant to the Egan Interconnection?**

#### **Positions of the Parties**

78. Tennessee contends that Columbia Gulf's decisions not to confirm the nominations of shippers using Tennessee's BWP Capacity, to deny Tennessee's request for a CO2 waiver, and to request adequate assurances for payment are examples of Columbia Gulf's unduly discriminatory and anticompetitive behavior, relevant to both denial of the requested interconnection as well as the independent claims of anticompetitive conduct on the part of Columbia Gulf.<sup>127</sup> Tennessee argues that Columbia Gulf's practice of unilaterally giving nominations of its shippers and any imbalance "make-up gas" a priority over the nominations of Tennessee's shippers is unduly discriminatory, anticompetitive, and in direct contravention of the NGA.

79. Columbia Gulf states that its actions were not improper or even relevant to Tennessee's request for an interconnection at Egan. Columbia Gulf notes that Tennessee failed to request specific relief in its complaint and therefore, this aspect of Tennessee's complaint should be dismissed.<sup>128</sup>

80. Trial Staff asserts that Tennessee failed to demonstrate that Columbia Gulf engaged in any unduly discriminatory or anticompetitive conduct. Trial Staff contends also that these issues are also not relevant to a decision regarding Tennessee's request for an interconnection.

#### **Initial Decision**

81. The ALJ found that Tennessee failed to demonstrate that Columbia Gulf's conduct constitutes unduly discriminatory and anticompetitive behavior. Regarding Columbia Gulf's denial of a CO2 waiver, Tennessee did not demonstrate any discriminatory intent or behavior. In fact, the evidence presented by Tennessee demonstrated that Columbia Gulf carefully considered the request and determined that "[a] waiver of the CO2 spec for the Blue Water system would have to be on a non-discriminatory basis."<sup>129</sup> Columbia

---

<sup>127</sup> Tennessee's Initial Brief at 60.

<sup>128</sup> Columbia Gulf's Initial Brief at 49.

<sup>129</sup> 110 FERC at 65,092-093. *See also* Exhibit TGP-66 at 2.

Gulf's personnel noted that in granting Tennessee's request for a CO2 waiver, it would be obligated to do the same in the future, which Columbia Gulf determined would be difficult to justify to its customers.<sup>130</sup> Additionally, Columbia Gulf personnel considered other factors such as the duration of the waiver and the fact that Columbia Gulf had not granted any similar requests.

82. As to Columbia Gulf's two demands for credit assurances, Columbia Gulf's witness Cort explained that the requests for credit assurances were made in error.<sup>131</sup> Tennessee did not demonstrate that Columbia Gulf's request for credit assurances reached the level of unduly discriminatory and anticompetitive behavior.

83. Finally, the ALJ found that Columbia Gulf's failure to confirm certain nominations of shippers using Tennessee's BWP capacity was not shown to be unduly discriminatory or anticompetitive. As noted by both Tennessee and Columbia Gulf, the parties have a continuing obligation to balance the BWP. The BWP Operating Agreement states that "[a]ny imbalance which may occur on a day shall be balanced out as soon thereafter as is practicable."<sup>132</sup> The BWP Operating Agreement also provides:

Should a party's (party A) total receipts on any day exceed its allocated share of BWP capacity, the other party (party B) will, in good faith, attempt to accommodate the same; provided however, that party B shall have the right, without incurring any liability to party A, to take such action as is necessary (1) to allow party B to utilize its share of such capacity and/or (2) to not jeopardize the safety of the pipeline.<sup>133</sup>

84. The ALJ noted that Columbia Gulf and Tennessee have continuing obligations to balance the system under the BWP Operating Agreement, and found that Columbia Gulf's actions have not been shown to amount to unduly discriminatory or anticompetitive conduct.<sup>134</sup>

---

<sup>130</sup> *Id.*

<sup>131</sup> Transcript at 806-817. *See also* Exhibit TGP-77 and Exhibit TGP-79.

<sup>132</sup> Exhibit CGT-21 at 11, BWP Operating Agreement at 11.

<sup>133</sup> *Id.*

<sup>134</sup> 110 FERC at 65,092.

### **Exceptions**

85. Tennessee argues that the Commission should use its broad power to remedy unlawful discrimination and preferences<sup>135</sup> and reverse the ALJ's findings. Tennessee states that it is entitled to additional relief, such as prospective prohibitions against such anticompetitive conduct by Columbia Gulf in the future.

86. Columbia Gulf and Trial Staff support the Initial Decision, and state further that the issues of which Tennessee complains are not relevant to a decision regarding Tennessee's request for an interconnection.

### **Commission Ruling**

87. We conclude that the ALJ was correct in rejecting Tennessee's specific claims of anticompetitive behavior, considered independently of the denial of the Egan interconnect. Resolution of the issues implicated under the *Panhandle* policy has been accomplished at hearing and affirmed here by the Commission with no need to consider claims of specific acts of unfair competition. The *Panhandle* order stated that the "policy announced here enables a party desiring access to a pipeline to obtain an interconnection if it satisfies five conditions."<sup>136</sup> Those conditions, as described above, have been satisfied by the evidence.

88. Further, the ALJ found that Tennessee showed no intent on the part of Columbia Gulf to engage in unfair competition. Measuring the weight properly accorded testimony of witnesses speaking to such questions is part of the role of a trial judge. Here, the ALJ conducted careful analysis of the testimony and exhibits regarding these issues, and his conclusions are well supported in the record. It is clear that Tennessee and Columbia Gulf compete for business, while at the same time the two companies have for decades jointly operated the BWP. Given the facts adduced, the ALJ made the correct decision. Tennessee offers no convincing reasons why the actions complained of constitute unfair competition.

### **Summary**

89. The Commission affirms the following findings of the ALJ:

(1) The Commission's interconnection policy as set forth in *Panhandle* applies to Tennessee's request for a receipt meter at Egan, Louisiana;

---

<sup>135</sup> Tennessee Brief On Exceptions at 5, citing *ANR Pipeline Co. v. Transcontinental Gas Pipe Line Corp.*, 84 FERC ¶61,106, order on reh'g (1998), 91 FERC ¶ 61,066, reh'g denied, 93 FERC ¶ 61,277 (2000).

<sup>136</sup> *Panhandle*, 91 FERC at 61,141.

(2) Tennessee has demonstrated that its requested interconnection satisfies the five *Panhandle* conditions;

(3) The Commission Trial Staff's first proposed modification to Tennessee's requested interconnection of sizing the proposed meter at 400 MMcf/d should be adopted;

(4) The Commission Trial Staff's second proposed modification to Tennessee's requested interconnection requiring Tennessee to provide recallable service up to 400 MMcf/d to Columbia Gulf at Egan should not be adopted;

(5) Tennessee failed to demonstrate that Columbia Gulf's decisions not to confirm the nominations of shippers using Tennessee's Blue Water capacity was unduly discriminatory or anticompetitive, but did demonstrate the relevance of Columbia Gulf's decision regarding nominations to its requested interconnection;

(6) Tennessee failed to demonstrate that Columbia Gulf's decisions not to grant Tennessee's request for a CO2 waiver or requests for credit assurances were unduly discriminatory and/or anticompetitive, or relevant to the determination regarding Tennessee's requested interconnection; and

(7) Tennessee's requested relief from the Commission, ordering Columbia Gulf to allow the requested interconnection, should be granted.

The Commission orders:

(A) Tennessee's complaint filed in this proceeding is granted as discussed and conditioned above in the text of the order. Columbia Gulf is directed to allow the construction and operation of the receipt point requested at Egan, Louisiana, by Tennessee, as soon as operationally possible.

(B) The motion to intervene filed by Enterprise Gas Processing, LLC, is granted.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

