

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission Corporation

Docket Nos. RP00-327-005
RP00-604-005

ORDER ON COMPLIANCE FILING WITH ORDER NO. 637

(Issued October 27, 2003)

1. On August 14, 2003, Columbia Gas Transmission (Columbia) filed revised tariff sheets¹ to comply with the Commission's July 30, 2003 order (July 30 Order)² in this proceeding which addressed matters relating to segmentation, secondary point priority, penalties and penalty revenue, pursuant to Order Nos. 637 and 587-K through 587-N. The Commission is accepting the proposed tariff sheets, subject to conditions, to become effective on September 1, 2003. Further, the Commission is granting waiver of the 30-day filing requirement to accept the tariff sheets implementing segmentation effective as proposed, April 1, 2004. This order is in the public interest because it implements compliance with the Commission's policies that encourage competitive conditions on the pipeline grid, create greater flexibility for shippers, and enhance pipeline transportation service.

Background

2. On July 19, 2002, the Commission issued its initial order, (July 19, 2002 Order)³ on Columbia's filing to comply with Order Nos. 637 and 587-K through 587-N, requiring Columbia to make a number of changes before putting the filing into effect. Subsequently, the Commission issued its July 30 Order and approved Columbia's revised tariff sheets, in part, effective September 1, 2003, subject to Columbia making further revisions. The instant filing was made in compliance with that directive.

¹ See Appendix for listing of tariff sheets.

² Columbia, 104 FERC ¶ 61,168 (2003).

³ Columbia, 100 FERC ¶ 61,084 (2002).

Public Notice, Interventions and Protests

3. Columbia's filing was noticed in the Federal Register, 68 Fed. Reg. 51,572, with comments due on or before August 26, 2003. Interventions and protests were due as provided in Section 154.210 of the Commission regulations, 18 C.F.R. § 154.210 (2003). The Cities of Charlottesville and Richmond, Virginia (Cities) and ProLiance Energy LLC (ProLiance) filed protests to the filing and New York State Electric & Gas Corporation (NYSEG) requested a clarification of certain tariff provisions. Columbia filed an answer to the protests and comments.⁴ The protests, comment and answer are addressed below.

Columbia's Compliance Filing

Forward Haul/Back Haul Provision

Compliance Filing

4. The July 30 Order required Columbia to revise its tariff to permit segmented transactions consisting of forward hauls up to contract demand and back hauls up to contract demand at the same point at the same time.⁵ In the instant filing, Columbia contends the Commission should not have applied its general forward haul/back haul policy to Columbia because of the nature of its system and thus Columbia has not submitted tariff sheets on this issue. Specifically, Columbia noted that it operates a reticulated pipeline system, implementing segmentation using a virtual segmentation pool, and therefore the forward haul/back haul policy does not have any applicability on Columbia's system.

Protest and Answer

5. ProLiance protests Columbia's compliance filing, contending that Columbia has failed to comply with the directives in the July 30 Order and that Columbia's explanation as to why it cannot utilize the Commission's forward haul/back haul policy is inadequate and should be rejected. ProLiance cites numerous cases to support its position and argues

⁴While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, the Commission will accept the answers to allow a better understanding of the issues. See 18 C.F.R. § 385.213(a)(2) (2003).

⁵ July 30 Order at P 15.

that the Commission should apply this precedent to Columbia to force Columbia to implement the forward haul/back haul provision.⁶

6. In its answer, Columbia contends that ProLiance's arguments against Columbia's segmentation pooling approach have been raised repeatedly and have been rejected at every stage of this proceeding. Columbia avers that the forward haul/back haul policy has no applicability in the context of a reticulated pipeline implementing segmentation using a one pooling point approach. Therefore, Columbia requests that the Commission reject ProLiance's protest. Columbia also states that every one of the cases cited by ProLiance, involve non-reticulated pipelines that are not utilizing segmentation pools to implement segmentation. Lastly, Columbia asserts that the Commission found in its July 30 Order that pathing is not feasible on Columbia's reticulated pipeline system.⁷ Columbia believes that the arguments raised by ProLiance ignore this fact and the operational realities of Columbia's reticulated pipeline system and should be rejected by the Commission for this reason.

Commission Ruling

7. The Commission's intent in its July 30 Order was to require Columbia to provide for segmented transactions consisting of forward haul and back haul to the same point or to explain why such service could not be provided. In both the instant filing and Columbia's answer, Columbia argues that because it is a reticulated pipeline, with no specified contract paths and has implemented segmentation using a virtual segmentation pool, the forward haul/back haul policy is inapplicable to its system. Gulf South Pipeline Company⁸ has been granted waiver of compliance with the Order on Remand,⁹ which implemented the forward haul/back haul policy, based on the fact it is a reticulated pipeline providing virtual-point segmentation. Consistent with Gulf South, we find that our policy concerning back hauls and forward hauls to the same physical point is not applicable to Columbia. We will therefore, deny ProLiance's protest.

⁶ See, Kern River Gas Transmission Company, 103 FERC ¶ 61,341 (2003); Algonquin Gas Transmission Company, 104 FERC ¶ 61,118 (2003); and Tennessee Gas Pipeline Company, 104 FERC ¶ 61,063 (2003).

⁷ July 30 Order at P 63.

⁸ See, Gulf South Pipeline Company, LP, letter order issued July 31, 2003 in Docket No. RP03-184-000.

⁹ See 99 FERC ¶ 61,278 (2002).

Hourly Flow Restrictions and OFO's

Clarification Request

8. NYSEG contends that the July 30 Order lacks clarity concerning Columbia's discretion to issue an Operational Flow Order (OFO) which may affect hourly flow rates. NYSEG questions whether Section 17.2(f) comports with existing Commission policies regarding a pipeline's discretion to issue OFOs. NYSEG argues that such policies require OFOs only be undertaken to maintain, rather than degrade, the quality of firm transportation service for existing shippers. NYSEG contends that Columbia's revised GT&C Section 17.2(f) read in isolation appears to allow Columbia to impose hourly flow limitations beyond those provided for in Columbia's tariff or service agreements and may cause a degradation in firm service.¹⁰ NYSEG is particularly concerned about the possibility that Section 17.2(f), when read in isolation, could be interpreted so as to allow Columbia to impose additional hourly flow restrictions on existing firm service where such service is already subject to hourly flow rates and limitation as set forth in GT&C Sections 6.2 (intraday nominations), 9.2 (uniform rates and quantities), and 12 (maximum daily delivery obligation at delivery points and maximum daily quantity at receipt points). Accordingly, NYSEG requests that the Commission clarify that Section 17.2(f) must be read in conjunction with and subject to both Section 17.1(f)(5) and established Commission policy on OFOs.

9. Columbia contends in its answer that NYSEG's motion for clarification is in reality an untimely collateral attack on the Commission's July 30 Order and on the Commission's prior orders in this proceeding and thus the motion should be summarily rejected. Columbia argues that the Commission in the July 30 Order addressed the very same argument that is now raised by NYSEG, with the Commission rejecting Virginia Power Energy Marketing, Inc.'s request for clarification of Section 17.2, finding that Columbia must have reasonable discretion to impose hourly flow restrictions beyond those provided for in Columbia's tariff and service agreements when necessary to maintain system integrity.¹¹ Columbia argues that NYSEG is raising a collateral attack

¹⁰ Section 17.1(f), including 17.1(f)(5) of Columbia's GT&C, provides that Columbia may impose hourly flow rates and limitations in accordance with the provisions of its tariff but is not precluded from issuing an OFO. Section 17.2(f) of Columbia's GT&C provides that Columbia may, on a nondiscriminatory basis, issue Operational Flow Orders in order to provide no-notice service under the NTS, FSS and SST Rate Schedules. See Original Sheet No. 380A and First Revised Sheet No. 382 to Columbia's FERC Gas Tariff, Second Revised Volume No. 1.

¹¹ July 30 Order at P 29.

on the Commission order and that it is well-established law that the Commission will not accept such collateral attacks.¹²

Commission Ruling

10. The Commission finds that Columbia's tariff at Section 17.1(a) of the GT&C defines the conditions on Columbia's system under which it has the right to issue an OFO involving limits on hourly flows. These conditions must exist on Columbia's system before an OFO can be implemented, providing guidance to Columbia's shippers on avoiding an OFO. The Commission interprets the OFO tariff provisions that NYSEG objections to, Section 17.1(f)(5) and Section 17.2(f), as procedural statements, which clarify that Columbia cannot impose hourly flow limits beyond those permitted by other provisions of the tariff or service agreements without satisfying the requirements for issuing an OFO. As such, the provisions in 17.1(f)(5) and 17.2(f) do not establish independent authority to impose flow conditions through an OFO that exceed those granted in 17.1(a). Therefore, the concerns raised by NYSEG, that those provisions permit Columbia to impose hourly flow limitations beyond those provided for in its tariff, possibly degrading firm service, are not warranted by the OFO provisions in Columbia's tariff and NYSEG's request for clarification is denied.

11. However, as currently written, Columbia's tariff at Section 17.2(f) could be revised to more clearly explain this interrelationship. To provide such clarity to its tariff, the Commission finds that Columbia should revise (see *underlined italics* for text change) Section 17.2(f) as follows: To the extent that Transporter seeks to implement hourly flow restrictions beyond those provided for in *other provisions of* its Tariff and/or service agreements, Transporter shall issue an operational flow order *pursuant to the conditions of this section*.

Penalty Revenue Participation for Delivery Point Operators

Compliance Filing

12. In the July 19, 2002 Order, the Commission directed Columbia to revise its tariff to provide that delivery point operators will share in the crediting of penalty revenues if they are subject to penalties but have not incurred any. Columbia sought rehearing of this ruling and further requested that the Commission require that meter operators certify that they did not cause a penalty to be incurred in order to be considered a Non-Penalized Shipper. Columbia also requested that the meter operator indemnify Columbia for any

¹² See *City of College Station*, 101 FERC ¶ 61,052 at P 16 (2002) and *Tennessee Gas Pipeline Co.*, 87 FERC ¶ 61,086 (1999).

damages or losses arising from the certification. Further, in the July 30 Order, the Commission deferred action on Columbia's request for rehearing. The Commission requested that Columbia, as well as Cities, provide further information with respect to how delivery point operators are assessed penalties and what their responsibility is for distributing penalties.

In response to the July 30 Order, Columbia revised Section 19.6(b)(ii) of its GT&C to read as follows:

The term "Non-Penalized Shippers" shall mean Shippers, other than Shippers that were assessed penalties during any month of a contract year (November 1 to October 31) pursuant to the penalty provision of this Tariff, under Transporter's FTS, NTS, SST, ITS, GTS, and OPT Rate Schedules. To the extent that a meter operator at a pipeline interconnect incurs a penalty during a month, and that meter operator advises Transporter in writing that it did not cause the penalty to be incurred, Transporter will treat the meter operator for that month as a Non-Penalized Shipper.

13. Columbia also provided an explanation of the role of delivery point operators (DPOs) on its system and how they are assessed penalties. Columbia delineates four types of delivery point operators. The first category of DPO is the interconnection points between Columbia's system and downstream interconnecting pipelines. These types of DPOs are not assessed penalties on Columbia because Operational Balancing Agreements (OBAs) are in place at these points. The second category of DPO consists of those DPOs on Columbia's system that do not have natural gas storage and/or transportation agreements with Columbia under transportation or storage rate schedules. Columbia asserts that a Predetermined Allocation Agreement (PDA) is established at these points. Third, there are meter points where the DPO has a service agreement under a Columbia rate schedule but does not have a storage agreement. Columbia states that it establishes a PDA at these meter points and that the DPO and each shipper behind the DPO agree in advance on the allocation to be used. Columbia then assesses penalties to each shipper behind this type of DPO in accordance with their usage of capacity after allocation pursuant to the PDA. Finally, there are meter points where the DPO has a firm transportation service agreement and a storage agreement. Columbia asserts that the Cities fall into this category as do all other LDC shippers on Columbia's system. Columbia states that third party shippers with firm transportation agreements can also have firm delivery point rights at these meter points. Columbia states that, at these points, in accordance with the terms of Section 2 (c) of the FSS Rate Schedule, Columbia resolves any imbalance created under a third party shipper's firm transportation by treating the imbalance as an injection or withdrawal from the point operator's storage inventory. Columbia may impose a storage penalty at these points if the injection or withdrawal from storage exceeds the point operator's storage injection/withdrawal rights

under its FSS service agreement during a Critical Day. Columbia states that the cost of providing this balancing service at the city-gate is often billed to those parties utilizing the swing capability under a service provided by the LDC to its customers.

Protest and Answer

14. Cities protests the compliance filing regarding penalty revenue credits for DPOs. Cities argue that it may not have contractual privity with every shipper whose behavior may trigger a penalty at a delivery point behind which Cities is acting as delivery point operator. Cities is concerned about being held accountable by Columbia for the behavior of a third party marketer over which Cities has no control and which may result in Cities being denied penalty revenue credits. Cities argue that there is no precedent for Columbia's tariff alteration. Moreover, Cities believe that Columbia's inclusion of the tariff alteration at this point in the proceeding is improper. Cities request that the Commission not allow Columbia to change Section 19.6(b)(ii) of its tariff as Columbia has proposed.

15. In its answer, Columbia questions the accuracy of Cities' contention that Cities cannot prevent penalties from occurring at their city-gates. Columbia asserts that a marketer will be serving an end-user behind Cities' city-gate and it is the end-user, not the marketer, which physically transfers the gas away from the city-gate in accordance with the end-users' contracts with a local distribution company. Columbia also maintains that it has no way of knowing the specific requirements and individual creating physical swings at meter points. Further, Columbia asserts that permitting Cities to blame shippers behind its city-gate for triggering a penalty and thereby permitting Cities to share in penalty revenue would violate the provisions of Order No. 637 and the Commission's stated objective that penalties be assessed only when needed to deter conduct detrimental to a particular pipeline's system. In its answer, Columbia requests that the Commission not permit LDCs to avoid exclusion from penalty crediting by shifting to LDC customers responsibility for penalties incurred by the LDC on Columbia's system.

Commission Ruling

16. In its rehearing of the July 19, 2002 Order, Columbia requested that the Commission reverse its decision to permit city-gate meter operators to participate in penalty revenue crediting in a month in which the meter operator is assessed a penalty for the actions of shippers behind the meter operator's city-gate. The Commission deferred action on this request for rehearing pending further information on the role of delivery point operators. Columbia has provided such information above.

17. Based upon this information, the Commission will grant Columbia's request for rehearing and finds that if a meter operator is assessed a penalty it is not eligible for penalty revenue credits for that month even if the penalty was caused by other shippers. The Commission finds that this decision is consistent with Columbia's description of the responsibility of LDCs and its tariff. This issue only arises with respect to points operated by LDCs that hold storage contracts under Rate Schedule FSS since at all other points there is either an OBA or a PDA. This rate schedule provides that Shipper's FSS inventory shall be increased or decreased by any actual imbalances (actual receipts compared to actual deliveries) created under any other Service Agreement(s) Shipper has with Transporter and the imbalance shall be removed from such other Service Agreement(s). Such increase or decrease shall be deemed to be a storage injection or withdrawal under Shipper's FSS Service Agreement. Further under the FSS Rate Schedule, imbalances of third parties are resolved by treating the imbalances as an injection or withdrawal from the shipper's storage inventory.¹³

18. Order No. 637 required pipelines to credit penalty revenues to ensure the pipeline did not have an incentive to invoke penalties to raise revenue.¹⁴ The Commission suggested that pipelines consider crediting penalty revenues to non-offending shippers as a way to create a positive incentive for shippers to comply with tariff limits.¹⁵ Under the FSS Rate Schedule, the shipper (LDC) is responsible for ensuring the injection and withdrawal limits are met. Therefore, if the injection or withdrawal from storage exceeds the shipper's rights under the FSS agreement during a critical day, the shipper could face a storage penalty. Since the penalty is assessed against the shippers' FSS service agreement, it makes sense that it would not be eligible to receive any penalty revenue credits. This will give the LDC a positive incentive to better control the behavior of those behind its point. Moreover, since Columbia has no way of knowing which party behind the LDC is actually at fault, it cannot apportion penalty revenues based on the fault of parties over whom it has no control. The Commission therefore finds that the sentence in Section 19.6(b)(ii) concerning a meter operator advising Columbia that it did not cause a penalty is not necessary and should be removed. Any imbalance problems that result in penalties being assessed on a delivery point operator should be resolved between the LDC who is the point operator and the shippers behind its city-gate.

¹³ See, First Revised Sheet No. 165 to Columbia's FERC Gas Tariff, Second Revised Volume No. 1.

¹⁴ FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,315 (2000).

¹⁵ Id.

19. Further, Cities has means at its disposal to exercise control of the marketer's and end-user's behavior at its city-gates by refusing to confirm nominations that could cause Cities to incur penalties. For example, if shippers behind Cities' city-gates take gas in spite of the fact that such gas was not confirmed and should not have flowed, Cities can adopt a penalty structure behind its city-gates to deter such behavior. Also, as Columbia states in its answer, a flow control could be installed to monitor the shippers' behavior behind the city-gates. Such measures in conjunction with Cities establishing a penalty structure to deter adverse shipper behavior that would cause a penalty should allay the Cities' concerns.

Secondary Service Under Rate Schedule OPT

Compliance Filing

20. The July 30 Order required Columbia to revise its tariff to require that secondary delivery point priority under Rate Schedule OPT is equivalent to that under Rate Schedules FTS, NTS, SST, and GTS during any time when OPT service is firm or not interrupted by Columbia pursuant an OPT service agreement.¹⁶ Columbia submitted the required clarification by revising GT&C Section 7, making Rate Schedule OPT service equivalent to Rate Schedules FTS, NTS, SST, and GTS for purposes of allocating secondary capacity at receipt points, internal constraint points, and delivery points during any time when OPT service is firm or not interrupted by Columbia.

Protest and Answer

21. Cities protested Columbia's compliance with the OPT provision, contending that Columbia failed to implement the qualification that the secondary priority is the same for Rate Schedule OPT service only when OPT service is firm or not interrupted by Columbia pursuant to an OPT service agreement. Columbia in its answer, concurs with Cities and proposes to revise Section 7 of its GT&C to provide the necessary qualification that secondary service under Rate Schedule OPT is the same as other firm rate schedules only when OPT service is firm or not interrupted by Columbia pursuant to an OPT service agreement.¹⁷ Columbia further proposes to revise the appropriate sections of its tariff to provide that Rate Schedule OPT service will be allocated secondary capacity at the same priority level as the firm transportation rate schedules when Rate Schedule OPT service is not being interrupted and at a priority level one step

¹⁶ July 30 Order at P 71.

¹⁷ Columbia provided its proposed changes to Section 7 of its GT&C on pro forma tariff sheets.

below that of the firm transportation rate schedules when Rate Schedule OPT service is being interrupted.

Commission Ruling

22. Columbia's proposed revision to its compliance filing addresses the Cities' concerns and complies with the requirements of the July 30 Order. Columbia is therefore required to file revised tariff sheets reflecting the revisions on the marked tariff sheets included in its answer.

Inadvertent Omitted Paragraph to be Reinserted

23. Columbia states in its answer that it has identified an inadvertent omission from a paragraph in GT&C Section 7 which it now seeks to reinsert and make corresponding cross-reference changes in that Section for conformity purposes. Columbia's answer provided tariff sheets that reflect the currently effective version of GT&C Section 7 in its entirety with the necessary changes reflected in the marked version of the tariff. When Columbia submits its tariff filing to comply with this order, it should also file revised tariff sheets to correct the inadvertently omitted paragraph from GT&C Section 7, reinserting that provision to its tariff and make the corresponding changes to Rate Schedule OPT.

The Commission orders:

(A) The tariff sheets identified in the Appendix are accepted effective September 1, 2003, subject to Columbia filing within 20 days of the order, revised tariff sheets reflecting the modifications discussed above.

(B) Columbia's request for waiver of the 30 day filing requirement is granted to accept the proposed tariff sheets on Segmentation, as identified in the Appendix, effective April 1, 2004.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Columbia Gas Transmission Corporation
FERG Gas Tariff, Second Revised Volume No. 1

Tariff Sheets Accepted September 1, 2003, Subject to Conditions

Sixth Revised Sheet No. 108
Third Revised Sheet No. 124
Sixth Revised Sheet No. 147A
Seventh Revised Sheet No. 171
Third Revised Sheet No. 196
Second Revised Sheet No. 229
First Revised Sheet No. 242
Sixth Revised Sheet No. 261
Sixth Revised Sheet No. 268
Fourth Revised Sheet No. 306
Fourth Revised Sheet No. 307A
Fifth Revised Sheet No. 309
Sixth Revised Sheet No. 310
Second Revised Sheet No. 311
First Revised Sheet No. 313
Fourth Revised Sheet No. 350
Fourth Revised Sheet No. 391
Tenth Revised Sheet No. 395
Third Revised Sheet No. 463
Fourth Revised Sheet No. 485
First Revised Sheet No. 502B
First Revised Sheet No. 503A
Fifth Revised Sheet No. 610
Third Revised Sheet No. 611

Tariff Sheets Accepted Effective April 1, 2004

Fourth Revised Sheet No. 124
Seventh Revised Sheet No. 147A
Seventh Revised Sheet No. 261
Seventh Revised Sheet No. 268
Fifth Revised Sheet No. 350
Sixth Revised Sheet No. 385
Fourth Revised Sheet No. 463
Second Revised Sheet No. 502B
Second Revised Sheet No. 503A
Sixth Revised Sheet No. 610
Fourth Revised Sheet No. 611