

113 FERC ¶ 61,200
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
v.
Columbia Gulf Transmission Company

Docket No. RP04-215-002

ORDER DENYING REHEARING, DENYING STAY, AND ISSUING
CLARIFICATION

(Issued November 22, 2005)

1. This proceeding was initiated March 12, 2004, by a complaint filed by Tennessee Gas Pipeline Company (Tennessee) against Columbia Gulf Transmission Company (Columbia Gulf). The controversy involves Columbia Gulf's denial of Tennessee's request for an interconnection at Egan, Louisiana, on the Blue Water Project, jointly operated by both parties. The case 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 construction/operation of the interconnection be allowed.¹ On July 25, 2005, we affirmed the Initial Decision.² Columbia Gulf has filed a timely application for rehearing, a request for stay of the July 25 Order, and a request for clarification. This order affirms the July 23 Order, denies the request for rehearing, denies the request for stay, and issues a clarification.

¹ *Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 110 FERC ¶ 63,041 (2005) (Initial Decision).

² *See* 112 FERC ¶ 61,118 (2005) (July 25 Order).

Background

2. The factual background to this proceeding is summarized fully in the Initial Decision³ and the July 25 Order.⁴ Briefly, Columbia Gulf and Tennessee jointly operate a horse-shoe shaped natural gas system, the Blue Water Project (BWP), which is located primarily in offshore Louisiana Gulf waters, pursuant to a contract signed in 1972, the BWP Operating Agreement (Operating Agreement).

3. 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. Columbia Gulf and Tennessee share capacity on both the WSL and ESL. 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 245.⁵ 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 Ship Shoal 198 to the Cocodrie facility at Cocodrie, Louisiana, which provides liquid separation, dehydration, and compression for the eastern terminus of the BWP.⁶ 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.

4. 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. Producers who wish to take their supply to Egan are able to reach downstream markets on each of these four pipelines. Egan A is the delivery point into Columbia Gulf. Egan B

³ See 110 FERC at P 8-9 (2005).

⁴ See 112 FERC at P 3-11 (2005).

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

⁶ *Id.* at 5.

is the delivery point into Tennessee.⁷ Columbia Gulf's denial of Tennessee's request to make Egan B a bi-directional station, by installing either a bi-directional meter or a new receipt meter, precipitated Tennessee's complaint in this proceeding.

5. The ESL does not connect directly with any Columbia Gulf facilities, and Columbia Gulf's ESL volumes are delivered to Tennessee at Cocodrie.⁸ 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.⁹ The Reciprocal Lease, filed with the Commission and approved in 1997,¹⁰ allows Tennessee and Columbia Gulf to displace deliveries between South Pass 77 and Egan by taking the physical volumes that were delivered into the WSL by producers, for the account of Tennessee's shippers, at Egan.¹¹ 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.¹²

6. 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

⁷ See Ex. No. CGT-1 at 12. Egan C is the delivery point into Transcontinental Gas Pipeline Corporation. Egan D is the delivery point into Texas Gas Transmission, L.P.

⁸ See Columbia Gulf's Answer To Complaint at 9.

⁹ *Tennessee Gas Pipeline Co. & Columbia Gulf Transmission Co.*, 78 FERC ¶ 61,182 (1997). See Tennessee's Complaint at 7.

¹⁰ *Id.*

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

¹² Tennessee's Complaint at 7.

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.¹³

7. 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. 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.¹⁴ 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.¹⁵ 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.

8. 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 through the Egan Interconnection from its constrained western 100 and 800 Lines to its eastern 500 Line. The gas to be delivered by Tennessee into, and then out of, Egan B, will come from onshore sources.

9. Prior to hearing, the parties filed a Joint Statement of Contested Issues on November 23, 2004, identifying three issues in dispute:¹⁶

- (1) does the Commission's pipeline interconnection policy, as set forth in *Panhandle*,¹⁷ 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. The Commission's July 25 Order affirmed the ALJ.¹⁸

¹³ *Id.*

¹⁴ Complaint at 2.

¹⁵ *Id.* at 8.

¹⁶ 110 FERC at 65,081.

¹⁷ *Panhandle Eastern Pipe Line Company (Panhandle)*, 91 FERC ¶ 61,037 (2000).

¹⁸ July 25 Order, 112 FERC at P 15-21.

- (2) if *Panhandle* applies, are its standards met in this case? The ALJ found that *Panhandle's* standards are met. The July 25 Order affirmed the ALJ.¹⁹
- (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. The July 25 Order affirmed the ALJ.²⁰

10. 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."²¹ 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 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.²²

¹⁹ July 25 Order, 112 FERC at P 23-77.

²⁰ July 25 Order, 112 FERC at P 78-88.

²¹ *Panhandle*, 91 FERC ¶ 61,037 at 61,141 (2000).

²² The policy has been raised in a limited 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).

Rehearing

11. On rehearing, Columbia Gulf asserts four issues. First, Columbia Gulf raises a new issue, arguing that new evidence of Tennessee's anti-competitive conduct, submitted in a separate proceeding, should now be considered in the instant proceeding. Second, Columbia Gulf argues that the Commission wrongly concluded that the *Mobile-Sierra* doctrine is not implicated in this case.²³ Third, Columbia Gulf argues that the Commission does not have statutory authority to order an interconnection in this case. Fourth, Columbia Gulf argues that the July 25 Order erred in concluding that three of the five prongs of the Commission's *Panhandle* policy have been met.

A. New Evidence of Anti-Competitive Conduct

12. Columbia Gulf includes 25 attachments to its Rehearing Request, many of which it also submitted in a separate complaint it filed against Tennessee in Docket No. RP04-413-000, the South Pass case,²⁴ to support its argument that Tennessee is trying to eliminate Columbia Gulf as a competitor in the offshore area served by the Blue Water and South Pass systems by imposing additional transportation charges on Columbia Gulf's South Pass shippers. Columbia Gulf states that the Commission should review the South Pass evidence on rehearing in the instant Blue Water case.

13. On September 2, 2005, Tennessee filed a Motion to Strike all 25 attachments to Columbia Gulf's Rehearing Request, and all related arguments. Tennessee states that Columbia Gulf failed to seek the re-opening of the record in this proceeding under Rule 716, despite being in possession of at least some of the attachments.²⁵ Tennessee states that Columbia Gulf's claim that the Commission invited it to submit the attachments and related arguments is particularly outrageous and unsupported.²⁶ Tennessee also states that Columbia Gulf fails to meet the standard governing admission and consideration of

²³ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 345 (1956) (*Mobile*) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 355 (1956) (*Sierra*).

²⁴ *See Columbia Gulf Transmission Company v. Tennessee Gas Pipeline Company, Order Establishing Hearing Proceedings*, 109 FERC ¶ 61,055 (2004).

²⁵ Tennessee states that existence of extraordinary circumstances must be shown to justify re-opening administrative records. *Citing, e.g., East Texas Elec. Coop, Inc.*, 94 FERC ¶ 61,281 at 61,801 (2001).

²⁶ Motion to Strike of Tennessee at 5, *citing July 25 Order at P 60*.

new evidence at the rehearing stage of a proceeding, *citing Trans Alaska Pipeline System, et al.*²⁷ Tennessee also argues that Columbia Gulf's argument, that the Commission has no statutory authority to order the interconnection in this case, should be barred as a collateral attack on Commission policy. On September 19, 2005, Columbia Gulf filed an answer, stating that the statutory authority argument had been made by Columbia Gulf earlier and that no reason exists to bar such an argument.

Discussion

14. We need not address the parties' dispute about whether Columbia Gulf should have filed a motion to re-open the record in this proceeding. The Commission set the matters contained in Columbia Gulf's complaint for hearing in Docket No. RP04-413. The sole issue the parties identified for resolution by the Presiding ALJ was whether certain rate charges imposed by Tennessee on Columbia Gulf's customers were supported by Tennessee's contractual rights under its reciprocal lease Agreement with Columbia Gulf. That proceeding is not complete, and Columbia Gulf attempts no explanation why any issues relevant to Columbia Gulf's charges cannot be accorded complete and effective consideration in the proceeding we established to consider its complaint.²⁸ Columbia Gulf's complaint did not seek consolidation of the issues raised therein with the instant case. The Commission has expended substantial resources in the conduct of two separate evidentiary hearings, each devoted to the separate complaints of these two long-time partners in important service of energy resources to needy gas markets.

15. Further, Columbia Gulf attempts to justify its request by stating that the July 25 Order "expressly invites Columbia Gulf to bring to the Commission's attention additional evidence demonstrating an adverse impact on its customers."²⁹ The July 25 Order noted that Columbia Gulf may, pursuant to the *Panhandle* policy, file an appropriate claim,

²⁷ 67 FERC ¶ 61,175 at 61,531 (1994). There, the Commission denied a rehearing request and construed Commission Rule 713 (c)(3) as allowing "new matters" to be raised on rehearing only if based on matters "not available for consideration by the Commission at the time of the final decision or order."

²⁸ On October 21, 2005, the Presiding Administrative Law Judge issued the Initial Decision in that proceeding, finding that Columbia Gulf had shown that Tennessee had breached its contractual responsibilities, issuing a cease and desist order, and requiring refunds. *See* 113 FERC ¶ 63,008 (2005).

²⁹ Rehearing Request at 1, n. 2, *citing* July 25 Order at P 60.

should it “identify evidence in the future” that “shows an impact on its customers flowing from the Egan interconnect.”³⁰ The Egan interconnect has not been constructed and no impacts flowing from its operation are yet identifiable. There is thus no merit to Columbia Gulf’s reliance upon the July 25 Order to justify its request for Commission consideration here of matters raised in Docket No. RP04-413. For all these reasons, the Commission will deny Columbia Gulf’s request for consideration here of the evidence submitted in the South Pass proceeding.

B. Mobile-Sierra³¹

16. Section 15 of the Operating Agreement provides in pertinent part that “points of future receipt of gas by each party into the BWP facilities shall be at existing connections and at such future point on the BWP as may be selected by each party.” Columbia Gulf argues that applying the *Panhandle* policy to the Operating Agreement modifies Section 15 by precluding Columbia Gulf from arguing in a breach of contract lawsuit that economic harm to Columbia Gulf justifies denial of Tennessee’s request for an interconnection.³² Columbia Gulf claims that such modification of section 15, without particularized findings that the need for contract modification meets the demanding *Mobile-Sierra* “public interest” standard, is unlawful.

Discussion

17. Prior to *Panhandle*, Commission policy required pipelines to provide interconnections only for similarly situated shippers. The Commission found that policy hindered maximum use of the interstate pipeline grid, and that continued use of the “similarly-situated” standard to allow pipelines to deny interconnections “when the shipper is willing to pay the costs and the interconnection causes no operational problems is contrary to the goals of Order No. 636.”³³

³⁰ July 25 Order, 112 FERC at P 60.

³¹ See n. 23, *supra*.

³² Rehearing Request at 27-28.

³³ *Citing Pipeline Service Obligations and Revisions Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Wellhead Decontrol*, Order 636, *FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶ 30,939, at 30,393 (1992), *citing* H.R. Rep. No. 29, 101st Cong., 1st Sess., at p. 6 (1989). *See also United Distribution Companies v. FERC*, 88 F.3d 1105, 1123 (D.C. Cir.

18. The Commission noted that its new policy “promotes open access and competition by preventing pipelines from denying new interconnections except under limited conditions.”³⁴ Further, the Commission stated that it “declines to second-guess the economic analysis of the party seeking the interconnection, and likewise, the Commission will not permit pipelines to do so.”³⁵ When the five new *Panhandle* conditions are met, “the pipeline cannot deny an interconnection, regardless of whether it previously has allowed an interconnection for a similarly-situated shipper.”³⁶ The Commission’s interconnection policy thus reflects certain industry-wide findings and rules that establish an analytical framework to which Columbia Gulf makes an unsupported objection.³⁷

19. Nothing in *Panhandle* has prevented Columbia Gulf from asserting in this proceeding the harm it claims will result from the Egan Interconnection. Columbia Gulf’s statement that it is precluded from making economic harm arguments in a hypothetical breach of contract case disregards completely the record developed in trial before the ALJ and the analysis of that record made by the ALJ and the July 25 Order under the various prongs of *Panhandle*. Pursuant to the first three prongs of the *Panhandle* analysis (requesting party to pay the cost of the interconnection, the impact on pipeline operations, and impact on existing customers), specific aspects of the economic harm Columbia Gulf asserts were measured in accordance with the evidence submitted.

1996); *Maryland People's Counsel v. FERC*, 761 F.2d 780, 781 (D.C. Cir. 1985); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944); *Associated Gas Distributors v. FERC*, 824 F.2d 981, 995 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988).

³⁴ 91 FERC at 61,141 (2000). The *Panhandle* policy was thus established in direct accord with and in direct reliance on the purposes of Order No. 636.

³⁵ 91 FERC at 61,143 (2000).

³⁶ *Id.*

³⁷ The Commission’s exercise of NGA section 5 authority does not require “specific findings,” so long as the agency’s factual determinations are reasonable. *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144, 1158 (D.C. Cir. 1985). In *Associated Gas Distributors v. FERC*, the Court of Appeals for the District of Columbia Circuit held that the Commission was not required to make specific findings that individual rates charged by individual pipelines were unlawful, or to offer empirical proof for all the propositions upon which its order depended, before promulgating a generic rule to eliminate undue discrimination through a generic open access requirement. 824 F.2d at 1001, 1008-09.

That its evidence has been found speculative and insufficient to support its denial of Tennessee's request does not indicate a failure of Commission policy or a violation of *Mobile-Sierra*. Rather, *Panhandle* analysis has provided the means to consider relevant facts concerning a requested interconnection, under a valid Commission policy stating how the Commission's landmark open access policy must operate in terms of system-to-system interconnections.³⁸

20. Below, we affirm our finding in the July 25 Order that the ALJ's textual analysis, under the fifth prong of *Panhandle*, of the Operating Agreement establishes that Tennessee's request for the Egan Interconnection is consistent with the terms of Section 15 of that contract, and causes no violation of Columbia Gulf's contractual obligations.³⁹ The fifth *Panhandle* standard requires us to ensure that our action in this case, directing construction/operation of the Egan Interconnection, causes no violation of Columbia Gulf's contractual rights and responsibilities under the Operating Agreement. Extensive, litigated analysis of the contract's terms, discussed below, shows no such violation.

21. As to *Mobile-Sierra*, however, Columbia Gulf shows no relevance, since absent a Commission modification of the Operating Agreement, *Mobile-Sierra* is not implicated.⁴⁰ The fifth prong of the *Panhandle* analysis, which conditions a Commission order requiring an interconnection upon a showing that no contractual violation will result thereby, reflects appropriate deference to *Mobile-Sierra*. In *Atlantic City Elec. Co. v. FERC*, the Court of Appeals for the District of Columbia Circuit noted that the purpose of the *Mobile-Sierra* doctrine is to preserve the benefits of the parties' bargain as reflected

³⁸ The Commission stated that it was adopting its "new policy for purposes of this and future pipeline interconnection cases . . ." 91 FERC at 61,140 (2000). We note that Columbia Gulf neither sought rehearing of the rule announced in *Panhandle* nor challenges here the basic merits of the *Panhandle* policy.

³⁹ July 25 Order, 112 FERC at P 21, citing *Town of Norwood, Massachusetts v. FERC*, 217 F.2d 24,26 (1st Cir. 2000).

⁴⁰ Columbia Gulf cites (Request for Rehearing at 29-30) cases for the proposition that "the public interest necessary to override a private contract, however, is significantly more particularized and requires analysis of the manner in which the contract harms the public interest." *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002), *appeal following remand*, 329 F.3d 856 (D.C. Cir. 2003); *Texaco Inc. v. FERC*, 148 F.3d 1091 (D.C. Cir. 1998).

in the contract.⁴¹ The Initial Decision, the July 25 Order, and this order accomplish precisely that goal without any contractual modification implicating *Mobile-Sierra* analysis. The bargain captured by Columbia Gulf and Tennessee in section 15 of the Operating Agreement regarding placement of new receipt points has not been revised. Further, Columbia Gulf has been able to raise its economic harm objections and have them considered in light of the evidence it submitted under the appropriate standards of *Panhandle*.

C. Statutory Authority

22. Columbia Gulf states that the Commission does not have statutory authority to order an interconnection in this case. Columbia Gulf cites NGA section 7(a) as limiting the Commission's authority to order construction/installation of new facilities to situations involving new facilities necessary to connect local distribution companies to the interstate pipeline grid. Columbia Gulf states that such authority does not extend to connections between two interstate pipelines.⁴²

23. Columbia Gulf cites also the 1964 Federal Power Commission (FPC) Annual Report⁴³ which referenced the "limited authority" under section 7(a) available to the Commission "to direct a natural gas company to interconnect with and sell gas to a local distributing company." The Annual Report noted that, as to the "interconnection of the pipelines themselves," the statute "is silent." Columbia Gulf states that section 7(a) has never been amended to provide the power requested by the FPC, that administrative agencies can only exercise statutory powers, and thus the Commission's *Panhandle* policy is unlawful.

⁴¹ 295 F.3d at 14 (2002), citing *Town of Norwood v. FERC*, 587 F.2d 1306, 1312 (D.C. Cir. 1978). See also *Richmond Power & Light Co. v. FPC*, 481 F.2d 490, 493 (D.C. Cir.), cert. denied, 414 U.S. 1068 (1973) ("Rate filings consistent with contractual obligations are valid; rate filings inconsistent with contractual obligations are invalid.").

⁴² Citing *Kern River Gas Transmission Co.*, 100 FERC ¶ 61,056 at P 14 (2002); *El Paso Natural Gas Co.*, 96 FERC ¶ 61,343 at 62,285 (2001); *Arcadian Corp. v. Southern Natural Gas Co.*, 61 FERC ¶ 61,183 at 61,670-71 (1992); Part 156 of the Commission's Regulations. Columbia Gulf's citations are unexplained.

⁴³ Columbia Gulf attaches page 9 from that report as Attachment 20 to its Rehearing Request. The Report went on to note that pipeline interconnections "could greatly assist in the distribution of available supplies where they are most needed; and the Commission's authority should be broadened to accomplish this purpose." *Id.*

24. Columbia Gulf states also that the Commission's reliance on section 5 of the NGA⁴⁴ as support for the *Panhandle* policy is misplaced.⁴⁵ The Commission, states Columbia Gulf, cannot avoid the restrictions imposed on it by section 7 in this case by claiming no enlargement of facilities is being required or "by using words like 'access' rather than 'interconnection.'"⁴⁶ Nor does section 16 of the NGA confer authority to order pipeline to pipeline connections, states Columbia Gulf.⁴⁷ Finally, Columbia Gulf asserts that, assuming the *Panhandle* policy is valid under NGA Section 5, the policy is not applicable in this case because neither the ALJ nor the Commission has made a finding of undue discrimination, and because the *Panhandle* conditions cannot be used to "override binding contractual commitments."⁴⁸

Discussion

25. The Commission has considered and discussed in detail the statutory issues to which Columbia Gulf makes broad allusion in its rehearing application.⁴⁹ As in *ANR v. Transco*, we find that Columbia Gulf's jurisdictional challenge to the Commission's responsibility and authority to assure necessary interconnects runs counter to the mainstream of Commission policies and programs approved by reviewing courts over the last two decades. We note, for instance, the landmark judicial rejection of certain

⁴⁴ Citing *Panhandle*, 91 FERC at 61,144; *ANR Pipeline Co. v. Transcontinental Gas Pipe Line Corp.*, 91 FERC ¶ 61,066 at 61,244; *rehearing denied*, 93 FERC ¶ 61,277 (2000)(*ANR v. Transco*).

⁴⁵ Citing *Panhandle Eastern Pipe Line Co. v. FPC*, 204 F. 2d 675, 679, *reh'g denied*, 204 F. 2d 682 (3rd Cir. 1953); *FPC v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 514 (1949).

⁴⁶ Rehearing Request at 36, n. 58; Columbia Gulf's Initial Brief, filed before the ALJ, states that given the limitations of NGA section 7(a) on Commission authority, "the Commission's ability to order an interconnection is limited to circumstances covered by section 5 of the NGA – *i.e.*, undue discrimination." Initial brief at 19, n. 16.

⁴⁷ Citing *Mobil Oil Corp. v. FPC*, 483 F.2d 1238, 1257 (D.C. Cir. 1973).

⁴⁸ Rehearing Request at 38-39.

⁴⁹ See, *e.g.*, *ANR v. Transco*, 91 FERC ¶ 61,066, *reh'g denied*, 93 FERC ¶ 61,277 (2000) (NGA provides the Commission authority to order interconnections between jurisdictional interstate pipeline companies).

pipelines' argument, analogous to Columbia Gulf's argument here, that the Commission had no authority to require pipelines "to accept shipments from all would-be shippers" and to carry such shipments without discrimination.⁵⁰ The NGA, stated the Court in oft-cited language, "fairly bristles with concern for undue discrimination,"⁵¹ concluding that the Commission has a broad power under section 5 to stamp out undue discrimination, and power under section 7 to approve certificates of service subject to reasonable terms and conditions.⁵² Finally, NGA section 16 gives the Commission "broad discretion to frame appropriate remedies suitable for this particular industry."⁵³

26. A logical and necessary extension of that holding is that the NGA also permits the Commission to compel pipelines to construct interconnections necessary to effect or facilitate that transportation, particularly when the construction is to be at the applicants' expense, as required by *Panhandle*. The Commission found in *Panhandle*, as discussed above, that it is unduly discriminatory for a pipeline to deny a requested interconnection on the basis of considerations beyond the policy's five standards. Nothing in section 5 purports to limit this authority to prevent the Commission from ordering an

⁵⁰*Associated Gas Distributors v. FERC*, 824 F.2d 981, 997 (D.C. Cir. 1987) (AGD); *see also Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000).

⁵¹AGD, 824 F.2d at 998.

⁵²AGD, 824 F.2d at 1001; *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, *FERC Statutes and Regulations, Regulations Preambles 1982-1985* ¶ 30,663 (1985); *see also United Distribution Companies*, 88 F.3d. 1105 at 1123-1124 (D.C.Cir.1996) (" [in] effect, the Commission for the first time imposed the duties of common carriers upon interstate pipelines."); *see also Missouri Gas Energy v. Panhandle Eastern Pipe Line Co.*, 75 FERC ¶ 61,166 at 61,549 (1996).

⁵³*Columbia Gas Transmission Corp. v. FERC*, 750 F.2d 105, 110 (D.C. Cir. 1984). *See also Mesa Petroleum Co. v. FPC*, 441 F.2d 182, 187 (5th Cir. 1971) (NGA § 16 authorizes the Commission "to use means of regulation not spelled out in detail, provided the agency's action conforms with the purposes and policies of Congress and does not contravene any terms of the Act.") (emphasis in original, internal quotes omitted).

interconnection as an appropriate remedy for undue discrimination.⁵⁴ Nor does section 7(a) operate in this case to limit this broad authority.⁵⁵

27. Section 7(a) of the NGA authorizes the Commission to direct a natural gas company to extend its facilities to serve a municipality or local distribution company where the extension will not unduly burden the natural gas company. As relevant here, however, section 7(a) also provides:

the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes or to compel such natural gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

28. Columbia Gulf claims that this provision by its terms precludes the Commission from ordering an interconnection as a remedy under section 5.⁵⁶ *Panhandle Eastern* is not reasonably so construed, involving as it did Commission orders requiring the pipeline to expend substantial amounts of its own capital (a) to increase the capacity of an entire pipeline lateral by approximately 50 percent and (b) to deliver to specific customers substantial amounts of natural gas (157,683 Mcf/day) above the approved design capacity of its system.⁵⁷

29. Faced with those facts, the Court of Appeals for the Third Circuit acknowledged a case of first impression, and did not accept the Commission's assertion of "power to direct a natural gas company to enlarge its transportation facilities or to sell and deliver

⁵⁴*Niagara Mohawk Co. v. FPC*, 379 F.2d 153, 159 (D.C.Cir.1967) (the Commission's authority is considered "at its zenith" when used to fashion a remedy to effectuate legislative objectives).

⁵⁵*See also* the analysis of the Commission's relevant authority provided in *Arcadian Corp. v. Southern Natural Gas Co.*, 55 FERC ¶ 61,207 (1991); *Arcadian Corp. v. Southern Natural Gas Co.*, 61 FERC ¶ 61,183 (1992). That analysis was unaffected by the opinion of the Court in *Atlanta Gas Light Co. v. FERC*, 140 F.3d 1392 (11th Cir. 1998) (vacating the Commission's 1991 and 1992 orders on other grounds).

⁵⁶*Citing Panhandle Eastern Pipe Line Co. v. FPC*, 204 F.2d 675, reh'g denied, 204 F.2d 683 (3rd Cir. 1953) (*Panhandle Eastern*).

⁵⁷204 F.2d at 676-677 (1953).

gas beyond the capacity of such facilities."⁵⁸ The instant case involves no such enlargement of pipeline facilities, no assertion of authority to require a pipeline to provide service beyond capacity, and no expenditure of Columbia Gulf's capital, since Tennessee will pay all involved costs.⁵⁹

30. The more relevant analysis was performed by the Sixth Circuit Court of Appeals in *Michigan Consolidated Gas Co. v. Panhandle Eastern Pipe Line Co.*,⁶⁰ which found that the Commission's power under section 5(a) "in respect to undue preferences or advantages, is without limitation."⁶¹ Were the law otherwise, there would be no effective means of eliminating unreasonable differences in service and facilities. At bottom, Columbia Gulf claims the right to define the limits of potential competition it must face. Such authority lies at the heart of the Commission's power to regulate, and the provisions of the NGA are appropriately construed to allow the Commission to attain the goals set out by Congress.

D. Substantial Evidence Showing the *Panhandle* Policy Has Been Met

31. Columbia Gulf states on rehearing that (1) the Commission erred by imposing the burden of proof on Columbia Gulf to prove that Tennessee's request for an interconnection meets the *Panhandle* conditions⁶² and that (2) the Commission erred in finding that Tennessee met its burden of proof in showing that its request meets the second, third, and fifth *Panhandle* standards.⁶³

⁵⁸*Id.* at 680.

⁵⁹"In the light of section 7(a) we are compelled to conclude that Congress meant to leave the question whether to employ additional capital in the enlargement of its pipeline facilities to the unfettered judgement of the stockholders and directors of each natural gas company involved." *See* 204 F.2d at 680 (1953).

⁶⁰173 F.2d 784 at 789 (6th Cir. 1949).

⁶¹*Id.*

⁶² Earlier in the proceeding, Columbia Gulf argued to the ALJ that "the Commission has not directly addressed which party has the burden of proof in the context of the *Panhandle* policy." *See* Columbia Gulf's Initial Brief, filed January 14, 2005, at 27, n. 26.

⁶³ Rehearing Request at 40.

Burden of Proof

32. *Panhandle* policy reflects the Commission determination that interconnections normally assist in developing a competitive national gas market, a conclusion supported by the limited number of cases involving litigation over a pipeline's refusal to allow an interconnection.⁶⁴ The Commission stated in *Panhandle* that the interconnection policy "enables a party desiring access to a pipeline to obtain an interconnection if it satisfies five conditions."⁶⁵ At the same time, the Commission stated that the policy seeks only to ensure that "when a pipeline responds to requests for interconnections," it does so in a manner that causes no undue discrimination and is consistent with the Commission's policies favoring competition across the pipeline grid.⁶⁶ In measuring a pipeline's response to an interconnection request, it is necessary that the pipeline's rationale for refusal of such a request be reviewed closely. Such review is only possible when the pipeline submits its reasoning and facts supporting such reasoning.

33. Further, the last four of the five standards established in *Panhandle* require a series of negative showings (no substantial adverse effects on pipeline operations, no diminished service to the pipeline's existing customers, no resultant violation of environmental or safety laws or regulations, and no resultant contractual violation). Probative evidence relevant to such standards may be solely in the possession of the pipeline attempting to deny a requested interconnection, including for example operational projections, customer service records, applicable regulations, and contracts. Common sense indicates that such a defendant pipeline in a complaint case like this one may also be the party with the most incentive to assure that such evidence, to the degree it exists, is received into the record.

⁶⁴ The Commission has applied the *Panhandle* policy, as noted above, in *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).

⁶⁵ *Panhandle*, 91 FERC at 61,141 (2000).

⁶⁶ *Id.*, at 61,144.

34. The trial of this case supports this view. Columbia Gulf states that evidence was submitted “collectively” regarding specifically the second and third standards.⁶⁷ As in the other cases involving the application of *Panhandle*, evidence was submitted as necessary by both parties to establish as well as possible whether *Panhandle’s* “five conditions” were met. The ALJ stated clearly that Tennessee was responsible for presenting sufficient evidence to meet the *Panhandle* standards. At bottom, Columbia Gulf’s complaint is about the value and weight accorded the evidence it submitted, not the issue of whether a burden of proof was imposed.

35. The Initial Decision analyzed the evidence in close detail. The July 25 Order also measured that evidence and approved the reasoning used in the Initial Decision. The issue here is whether the evidence submitted regarding Tennessee’s requested interconnection satisfies all five *Panhandle* standards. We find that it does and that no good reason supports the denial of Tennessee’s request. Hence we affirm the July 25 Order.

Second Standard – Pipeline Operations

36. With respect to the second *Panhandle* standard, impact on pipeline operations, Columbia Gulf states the evidence shows that the requested Egan Interconnection will reduce volumes flowing on the WSL, which will “in turn (1) likely cause the BWGP to close,” (2) cause the shut-in of production attached to the WSL, absent expensive facility modifications, (3) require all Blue Water gas to flow east to the Ycloskey plant for processing, and (4) increase liquids build-up in the WSL.⁶⁸ Columbia Gulf states that the Commission ignores evidence showing that gas cannot flow up the WSL if the BWGP closes.⁶⁹ Columbia Gulf claims that there is no evidence that the BWGP plant owners are willing to reconfigure that plant in order to allow operations to continue should volumes fall below a threshold level. Columbia Gulf states that the Commission’s characterization, as “simply unclear,” of Columbia Gulf’s attempt to show that the

⁶⁷ Rehearing Request at 40. *See also AES Ocean Express LLC v. Florida Gas Transmission Company*, 107 FERC ¶ 61,276 (2004); *Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043 (2001).

⁶⁸ Rehearing Request at 41-42.

⁶⁹ Rehearing Request at 46-47.

BGWP will “likely close,” was incorrect and that the Commission should have concluded that *Panhandle* standard 2 had not been established by the evidence.⁷⁰

Discussion

37. In extensive analysis,⁷¹ the ALJ summarized the evidence regarding these claims, noting that all of Columbia Gulf’s alleged harms stem from the speculative closing of the BWGP.⁷² However, the level of gas transported on the WSL has continued in recent years to decrease for various reasons,⁷³ and the ALJ cited Columbia Gulf’s acknowledgement that for the past five years diminished volumes have been flowing on the WSL due to circumstances unrelated to the proposed Egan Interconnection.⁷⁴ BWP system use for displacement/exchange purposes, consistent with the parties’ responsibilities under the Operating Agreement to balance the system, was shown, and Columbia Gulf has recognized that the Egan Interconnection would simply be another variable to the equation of imbalance management.⁷⁵

38. No evidence showed what decision would ultimately be made by the BWGP owners, regarding plant closure, continuation, or reconfiguration, should WSL volumes continue to decrease.⁷⁶ Indeed, evidence regarding current WSL shipping levels was not consistent. As Commission Trial Staff points out in its Brief Opposing Exceptions, Columbia Gulf’s claim that current flow on the WSL is 280-320 MMcf/d is different from Tennessee’s and Commission Trial Staff’s evidence showing a range from 300 to

⁷⁰ Rehearing Request at 42.

⁷¹ See 110 FERC at 65,083-65,088 (2005).

⁷² *Id.*, at 65,087 (2005).

⁷³ *Id.* at 65,086 (2005).

⁷⁴ 110 FERC at P 39.

⁷⁵ *Id.* at P 40.

⁷⁶ BWGP owners have not agreed upon a specific volume level at which plant closing would occur. Exh. S-2, Schedule 6, *cited* at Commission Trial Staff Brief On Exceptions at 9:10.

350 MMcf/d.⁷⁷ Columbia Gulf's initial answer to the complaint stated the current usage to be 350 MMcf/d.⁷⁸

39. Further, evidence showed that Columbia Gulf's operations may continue without substantial impact by operation of the Egan Interconnection. The ALJ concluded that current liquid handling operations at the Pecan Island facility and on the WSL show Columbia Gulf's ability to manage such concerns, even under potentially lower flow conditions.⁷⁹ Indeed, Tennessee argues that the record shows already that unprocessed gas flows up the WSL to Egan and is blended.⁸⁰ The ALJ noted that Columbia Gulf's volumes can continue, if the BWGP remains open, to flow on the WSL and Tennessee's shippers can continue to nominate to the Egan delivery meters.⁸¹ Tennessee testified that it will use the Egan Interconnection to ensure that the system stays balanced and that Columbia Gulf's customers are kept whole. Tennessee states that it can do so by using the transportation path from Kinder to Egan on its Muskrat Line.⁸² Further, Columbia Gulf expects additional supplies to flow on the WSL, including additional liquefied natural gas supplies.⁸³

40. The July 25 Order cited this review of the evidence, which we believe shows convincingly the speculative and contingent nature of Columbia Gulf's claim that significant operational problems will be caused by the Egan Interconnection.⁸⁴ The Commission's conclusion was that Columbia Gulf's evidence was unclear as measured against Columbia Gulf's purpose, *i.e.*, to show that harm to its operations and its customers service would result from the Egan Interconnection. In fact, substantial

⁷⁷ Brief Opposing Exceptions, filed April 20, 2005, at 11.

⁷⁸ Columbia Gulf Answer at 45.

⁷⁹ 110 FERC at P 38.

⁸⁰ Tennessee Brief Opposing Exceptions at 56-57.

⁸¹ 110 FERC at P 32; *see also* Tennessee Brief Opposing Exceptions at 59, 61.

⁸² Tr. 313:1-5 and 332:4 through 334:13.

⁸³ *Id.*; *citing* Exh. CGT-40 at 2-4; Tr. 837-38; *see also* CGT-9 at 7:7.

⁸⁴ *See Panhandle*, 91 FERC at 61,144 (2000) ("The proposed interconnection must not result in significant operational problems" for Panhandle.).

evidence shows that such potential closing could reasonably result from circumstances unrelated to the Egan Interconnection, factors that have dogged the joint operation of the BWP for some time. The Commission affirms the July 25 Order's treatment of this issue.

Third Standard – Customer Service

41. As to the third standard, impact on customer services, Columbia Gulf states on rehearing that the Egan Interconnection will diminish its customers' services (1) in the level of such service, which will not be firm, (2) by causing reduced processing options, (3) by reducing access to markets downstream of Egan, and (4) by increasing transportation costs.

Discussion

42. The ALJ stated that the Initial Decision's discussion of the evidence submitted regarding the second standard (effect on pipeline operations) applies as well to the claim of customer service diminishment.⁸⁵ No evidence established that the BWGP would close, or that any such closing would be caused by the Egan Interconnection. No customer of Columbia Gulf participated "in the hearing to indicate that the resulting transportation would be a diminishment in service."⁸⁶ As noted above, Tennessee testified that it will use the Egan Interconnection to ensure that the system stays balanced and that Columbia Gulf's customers are kept whole. Tennessee states that it can do so by using the transportation path from Kinder to Egan on its Muskrat Line.⁸⁷ Further, evidence shows that gas volumes entering the BWP west of the null point would continue to flow up the WSL for processing in the BWGP, and that no diminishment of such service to Columbia Gulf's existing customers would occur.

43. Columbia Gulf states that shippers did not appear in opposition to Tennessee's proposed Egan Interconnect because they did not wish to take sides in the dispute.⁸⁸ Columbia Gulf also claims again that the Commission persists in the erroneous view that even if the BWP closes, the WSL will remain available for deliveries to Egan. We do not comment on the shippers' motives for not participating. We simply note, as the ALJ

⁸⁵ 110 FERC at P 46.

⁸⁶ 110 FERC at 65,089 (2005).

⁸⁷ Tr. 313:1-5 and 332:4 through 334:13.

⁸⁸ Rehearing Request at 53, n. 81.

noted, that no such evidence of customer concern is available here. Further, Columbia Gulf does not state our position on the availability of the WSL correctly. The ALJ and the July 25 Order simply construed the evidence as indicating no inherent problem caused by operation of the Egan Interconnect precluding the use of the WSL.

44. We believe the Initial Decision, as affirmed by the July 25 Order, makes clear that the evidence submitted shows that Columbia Gulf's continued operations, and those of its customers, will occur without significant problems attributable to the Egan Interconnect. Columbia Gulf apparently construes as unreasoned decision-making any conclusion finding its evidence insufficient to support its arguments. The fact that the July 25 Order does not repeat the Initial Decision's analysis in its entirety does not indicate failure to engage in reasoned decision-making. The Commission's discussion in the July 25 Order and in this order has appropriately focused on major evidentiary themes and conclusions. We note also that Columbia Gulf makes its factual arguments on rehearing with heavy reliance on materials outside the record, citing materials introduced in the South Pass case. We decline to consider such evidence, for the reasons discussed above.

Fifth Standard – No Contractual Violation

45. Columbia Gulf claims that the Commission has failed to accord proper respect to effectuating the overall purpose of the Operating Agreement. Further, Columbia Gulf argues that section 15 of the Operating Agreement has been misconstrued.

Discussion

46. The July 25 Order reviewed the Operating Agreement to assure, in conformance with the fifth standard of *Panhandle*, that the proposed interconnection causes no violation of Columbia Gulf's contractual obligations.⁸⁹ The order discussed the language of section 15, which states that "points of future receipt of gas by each party into the BWP facilities shall be at existing connections and at such future point on the BWP as may be selected by each party," and the prior interpretation of the Operating Agreement by the partners to allow the 1978 establishment of an onshore receipt point, comparable in relevant aspect to the Egan interconnection.⁹⁰ The Commission also noted that the BWP was originally certificated to be responsive to business interests of the parties broader than the simple movement of gas from offshore to onshore, as Columbia Gulf

⁸⁹ July 25 Order, 112 FERC at P 61-77 (2005).

⁹⁰ July 25 Order, 112 FERC at P 72 (2005). Other BWP onshore receipt points also exist. *See* S-14.

would have the project viewed today.⁹¹ Columbia Gulf claims that the July 25 Order does not interpret the Operating Agreement in accord with its purported overall purpose, which Columbia Gulf identifies as the transportation of gas from offshore to onshore.⁹²

47. As to section 15, Columbia Gulf's interpretation is that Egan has been identified specifically as a delivery point and thus cannot also function as a receipt point. Columbia Gulf's reading of the Operating Agreement is not consistent with the generally accepted canons of contract interpretation, which require that (1) a contract should be interpreted as an integrated whole, (2) provisions of the contract should not normally be interpreted as being in conflict, and (3) a more particular and specific clause should prevail as necessary over a more general clause.⁹³ Further, the Initial Decision and the July 25 Order followed the directive of applicable Louisiana law which requires that when "the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent."⁹⁴

48. The ALJ found, and we affirm again, that the establishment of the Egan Interconnection is consistent with section 3 of the Operating Agreement's statement of purpose to "maximize the efficiencies and flexibility obtainable from such coordination of operations" of the BWP.⁹⁵ Further, the ALJ found, and we affirm again, that the "specific" language of section 15 of the Operating Agreement cited above applies to the

⁹¹ July 25 Order, 112 FERC at P 75 (2005). Columbia Gulf's response is that the orders in which the BWP was certificated "offer no evidence as to the meaning of that agreement." Rehearing request at 62. We disagree. Jurisdictional service obligations, identified by the Commission in its certificate orders as required by the public convenience and necessity and freely assumed by the parties in accordance with that certification in the Operating Agreement, inform the Operating Agreement and may indicate the Operating Agreement's meaning.

⁹² Columbia Gulf cites sections 3 and 4 of the Operating Agreement.

⁹³ See, e.g., *Southwest Power Pool, Inc.*, 109 FERC ¶61,010 P 25 (2004); *Panhandle Eastern Pipe Line Co.*, 74 FERC ¶ 61,109 61,146 (1996), cases cited by Columbia Gulf.

⁹⁴ See section 29 of the Operating Agreement. Ex. TGP-21; Initial Decision at P 51, citing applicable Louisiana case-law.

⁹⁵ Initial Decision, 110 FERC at P 51-52.

facts of the case.⁹⁶ That language, “the points of future receipt of gas by each party into the BWP facilities shall be at the existing connections and at such future points on the BWP as may be selected by each party,” supports rejection of Columbia Gulf’s interpretations. Columbia Gulf asserts that Egan cannot be a receipt point since it has been a delivery point, and that section 15 does not allow Tennessee to request Egan as a receipt point. The language of the contract is clear that future points of receipt of gas, to be established after the execution of the contract, are anticipated and that such points are to be allowed without stated restriction, *i.e.*, “as may be selected” by either party.

49. Further, Columbia Gulf’s claim that section 15 operates under “limits” imposed by the contract remains unexplained in the face of the contract’s language.⁹⁷ For example, Columbia Gulf argues that, since BWP receipt of onshore gas already transported in a major interstate pipeline has never been accomplished in the past, a bar exists to Tennessee’s proposal. There is nothing in the contract to support that interpretation, since section 3 includes no language precluding use of the BWP to serve functions other than the movement of gas from offshore to onshore. To impute such meaning is unreasonable, especially given evidence of decreasing opportunities to use the BWP profitably to transport offshore gas.⁹⁸

50. Columbia Gulf also stresses that the joint operators of the Blue Water Project decided “not to make the contract subject to changes in Commission policy,” including the interconnection policy.⁹⁹ We see no support for that conclusion. Tennessee, the other signatory to the agreement, cited section 2 of the Operating Agreement in its Brief Opposing Exceptions¹⁰⁰ in arguing that Columbia Gulf’s claim is inconsistent with the terms of the Operating Agreement. Section 2 of the Operating Agreement states that:

This agreement shall be subject to all valid laws and orders, directives, rules and regulations of any governmental body or official having jurisdiction, and, when applicable, the rights and obligations of the parties hereto are conditioned upon the parties obtaining all requisite certificates

⁹⁶ *Id.*, 110 FERC at PP 53-54.

⁹⁷ *See* Brief Opposing Exceptions at 80-82.

⁹⁸ *See* Columbia Gulf Brief On Exceptions at 69.

⁹⁹ Rehearing Request at 30.

¹⁰⁰ Brief Opposing Exceptions at 17, n. 12.

and authorizations acceptable to the parties directly affected thereby from any governmental agency having jurisdiction in the premises.

51. Review of this provision shows the language to be clear: the contract is made subject to valid orders, directives, rules and regulations of the Commission. Further, the parties' rights and obligations under the contract are conditioned upon the parties' obtaining appropriate Commission certificates and authorizations. Tennessee is correct that section 2 provides no support for Columbia Gulf's claim that the parties intended that the Operating Agreement not be subject to valid Commission orders and rules. Rather, section 2 undercuts Columbia Gulf's argument and indicates the parties' intent to follow Commission policy.

Request for Clarification

52. Columbia Gulf notes that Ordering Paragraph A of the July 25 Order directs Columbia Gulf to allow "the construction and operation of the receipt meter" requested by Tennessee. Columbia Gulf states that, pursuant to the Operating Agreement, it is the operator of the Egan Complex. Columbia Gulf requests the Commission to clarify that Columbia Gulf will continue as the Operator of the Egan Complex and that Tennessee will not be the operator of the new meter at Egan B.

53. Tennessee states in its Answer that the Commission should deny Columbia Gulf's request for clarification because it is overly broad and inconsistent with the July 25 Order. Tennessee states that, in accordance with its description of the requested interconnection, the Egan Interconnection will be installed as a new receipt point on Tennessee's property outside of the Egan B complex operated by Columbia Gulf. Tennessee states that such construction will decrease the likelihood that Columbia Gulf will try to delay installation/operation in a manner that discriminates against Tennessee. Tennessee also states that Columbia Gulf failed to file its request for clarification pursuant to Rule 212, and the Commission should reject the request.

54. The July 25 Order did not modify the Operating Agreement. Columbia Gulf has stated that it is the operator of the Egan Complex, pursuant to the Operating Agreement. The Commission confirms that the July 25 Order, which construes the Operating Agreement as allowing the remedy sought by Tennessee, made no modifications to the Operating Agreement.

Request for Stay

55. Columbia Gulf requests the Commission to grant a stay "of any obligations the July 25 Order imposes on Columbia Gulf to permit installation of a bi-directional meter

at Egan pending the Commission's consideration of Columbia Gulf's request for rehearing."¹⁰¹

56. Tennessee states that Columbia Gulf's motion for stay should be denied because Columbia Gulf has failed to establish irreparable injury, the key element in the Commission's inquiry whether to grant a stay.¹⁰² Tennessee states that Columbia Gulf's allegations of irreparable injury are based solely on the possibility that the BWGP might close, which the July 25 Order found speculative.

57. By this order, the Commission completes its consideration of Columbia Gulf's request for hearing. Consequently, the Commission dismisses the request for stay as moot.

The Commission orders:

(A) The request for hearing filed by Columbia Gulf in this proceeding is denied. Clarification of the July 25 Order is provided above in the text of this order.

(B) The request for stay filed by Columbia Gulf in this proceeding is dismissed as moot.

(C) Tennessee's motion to strike is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁰¹ Citing 5 U.S.C. § 705 (2000); *CMS Midland, Inc., Midland Cogeneration Venture Ltd. P'ship*, 56 FERC ¶ 61,177 at 61,631 (1991), *aff'd sub nom., Michigan Municipal Cooperative Group v. FERC*, 990 F.2d 1377 (D.C. Cir.), *cert denied*, 510 U.S. 990 (1993).

¹⁰² Citing *Southern California Edison Co.*, 109 FERC ¶ 61,187 (2004).