

105 FERC ¶ 61,304  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, and Joseph T. Kelliher.

Horizon Pipeline Company, L.L.C.

Docket Nos. RP02-153-004 and  
RP02-153-005

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued December 19, 2003)

1. This order addresses the request for rehearing and clarification filed by Horizon Pipeline Company, L.L.C. (Horizon) of the Commission's June 4, 2003 Order (the June 4 Order),<sup>1</sup> as well one of the tariff sheets filed by Horizon on July 7, 2003 to comply with the directives of the June 4 Order.

**The Rehearing Request**

2. The June 4 Order discussed the Commission's CIG/Granite State<sup>2</sup> discount policy "that a pipeline's failure to provide a shipper's contract discount or the prevailing discount at a secondary point where the shipper is similarly situated to other shippers is discriminatory." 103 FERC at 62,104 P 29. To comply with that Commission policy, Horizon had proposed in its December 23, 2002 filing, Section 7.14(g)(2) which provided:

... if the Agreement of the Shipper requesting the discount (or related discount agreement) specifies the discount rate to be paid and related

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<sup>1</sup>103 FERC & 61,281 (2003).

<sup>2</sup>Colorado Interstate Gas Company, 95 FERC & 61,321 (2001); Granite State Gas Transmission, Inc., 96 FERC & 61,273 (2001), reh'g denied, 98 FERC & 61, 019 (2002).

rate provisions at that secondary point, then the Agreement (or related discount agreement) shall control.

3. The June 4 Order held that this was contrary to Commission policy because under it the pipeline could grant a discount at a primary point, but provide in the contract that the maximum rate would apply at all secondary points. The Commission directed Horizon to remove this provision.

4. Horizon argues that the June 4 Order misreads the intent and effect of the proposed tariff language. Horizon asserts that the proposed language in Section 7.14(g)(2) permits Horizon and its shippers, by mutual agreement, to bargain on the discounts applicable at both primary and secondary points as an integral part of the contract negotiation process. Horizon claims that the proposal does not afford it any additional bargaining power in the negotiating process, since any deal, whether restricted to primary points or not, must be mutually agreed upon, and the shipper can always rely upon the Commission's portable discount policy if it is not satisfied with Horizon's proposal for discounts at secondary points. Horizon asserts that it is vital that the parties to a contract continue to have the ability to negotiate a complete commercial transaction, which may include pricing at secondary points.

5. Horizon also contends that the Commission has approved language in other interstate pipelines' compliance filings pursuant to Order Nos. 637, et seq., similar to Horizon's proposal, and cites to the filings by Transcontinental Gas Pipe Line Corporation's (Transco), approved in 98 FERC ¶ 61,366 (2002), and Trunkline Gas Company's (Trunkline).<sup>3</sup>

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<sup>3</sup> Transco's tariff at Section 40.2(b) states:

Request Required to Retain Discount at Secondary Point: In order to retain its discount at such an secondary point not expressly provided for in its discount agreement, Buyer must submit a timely request to retain its discount prior to a nomination to use the secondary point (whether through segmentation, capacity release or its own exercise of flexible receipt and delivery point rights). (emphasis supplied by Horizon)

Trunkline's tariff in Section 28.8 provides:

If Trunkline has agreed to a discount with a Shipper receiving Transportation service from Trunkline pursuant to Part 284 of the Commission's Regulations and the discount is limited to specific  
(continued...)

6. Horizon asserts that these provisions are similar in effect as Horizon's and allow a shipper and an interstate pipeline to specifically agree on a discount at the requested alternative point as part of the contracting process. Horizon argues that by rejecting Horizon's tariff provision that is substantively the same as provisions that the Commission has approved for other interstate pipelines, the Commission has acted in an arbitrary and capricious manner.

7. Moreover, Horizon contends that the ruling in the June 4 Order runs counter to the fundamental thrust of the Commission's discounting policies. Under Commission policy, where the portable discount procedure applies, the applicable rate at a secondary point is the higher of the shipper's contract agreed-upon discount rate at the secondary point or the discount rate being provided to a similarly situated third party at the secondary point. By disregarding a discount specified in the contract, Horizon argues that the ruling in the June 4 Order is fundamentally inconsistent with the Commission's basic discounting policies.

8. Horizon also argues that the ruling ignores, and interferes with current industry contracting practices under the Commission's discounting policy. Horizon asserts that the parties often specify the rate not only for the primary point, but for secondary points as well. In view of this practice, Horizon states that it seeks clarification that discount rates specifically negotiated under a contract will govern and that the Commission will not disregard the commercial understanding of the parties. Horizon asserts that a contrary ruling by the Commission would be highly disruptive to the contract negotiation process throughout the industry.

9. Horizon further contends that the ability of the shipper and the interstate pipeline to negotiate a discount at a secondary point as part of the contract increases the availability of discounts and the flexibility of the parties to negotiate a deal which meets their needs and which mirrors market conditions. The ruling in the June 4 Order would have the contrary effect. For all these reasons, Horizon requests the Commission to clarify its discount policy and approve Horizon's proposal in Section 7.14(g)(2).

## **Discussion**

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(...continued)

Point(s) of Receipt or Delivery or both, the Shipper may request that such discount apply to Transportation service at a different Point of Receipt or Delivery at which Trunkline and the Shipper have not specifically agreed to the rate. (emphasis supplied by Horizon)

10. The Commission denies rehearing, but grants clarification in part. Before Order No. 637, the Commission permitted pipelines to negotiate discounts that were limited to a shipper's primary point. However, as discussed in the June 4 Order, in Order No. 637 the Commission found that this policy required reexamination in light of its effect on competition. As a result, in the Order No. 637 compliance proceedings, the Commission developed the CIG/Granite State discount policy. Under that policy, if a shipper with a discount at its primary point uses a secondary point, where the pipeline has granted a discount to a similarly situated shipper, the first shipper is entitled to receive the higher of its contract rate or the discounted rate at the secondary point. The Commission adopted this policy on the ground that, if shippers with a discount at their primary point would always lose that discount if they used their flexible point rights to move to a secondary point, including the use of secondary points for purposes of segmentation, this would restrict competition. That is because, as the Commission explained in Williams Gas Pipelines Central, Inc., 100 FERC ¶ 61,034 at P 55 (2002), "requiring the shipper to pay a rate higher than its contract rate would discourage it from using secondary points in competition with the pipeline or other shippers."

11. The Commission's concern with tariff provisions of the type Horizon proposes that permit the parties to negotiate different rates to apply at secondary points than those that apply at the primary point, is that such provisions allow the pipeline to reconstruct the very non-competitive barriers that the CIG/Granite State policy seeks to remove. The June 4 Order illustrated this concern by stating that Horizon's proposal would allow it to grant a discount at the primary point, but provide in the contract that the maximum rate applies at all secondary points. In its rehearing request, Horizon points out that its proposed Section 7.14(g)(2) only authorizes it to negotiate discounts at secondary points that are different from the discounts at the primary point, so that the provision would not allow it to negotiate contracts under which the shipper would have to pay the maximum rate whenever it used a secondary point. However, our concern about the pipeline's ability to reconstruct the barriers to competition we are seeking to remove remains. Horizon's proposal allows it to negotiate a deep discount at the primary point, but minimal discounts at secondary points. As a result, the provision could discourage a shipper from segmenting or releasing capacity in competition with the pipeline's primary service, since a substantially higher rate would apply to those transactions.

12. On the other hand, the Commission also recognizes that parties have an interest in retaining the flexibility to negotiate prices that would apply at secondary points, as well as the price at the primary point. To accommodate this interest, consistent with the Commission's concern discussed above, we will clarify that the pipeline can negotiate discounted rates in its contract with a shipper that would apply at secondary points (the secondary point discount) under the proviso that follows. If the secondary point discount rate is equal to or lower than the primary point discount rate, then that negotiated discount

rate governs, regardless of what discounts the pipeline may have given to other shippers at the secondary point. Thus, if the discounted rate given to other shippers at the secondary point is higher than the negotiated secondary point discount rate, the shipper is entitled to the lower discount rate in its contract. If the discounted rate given to other shippers at the secondary point is lower, the shipper must still pay the higher secondary point rate discount in its contract, because under the CIG policy, the shipper is not entitled to a lower discount rate than it agreed to in its contract. This gives both the pipeline and the customer certainty that a negotiated secondary point discount rate that is lower than the shipper's primary point discounted rate will always apply.

13. However, to the extent that the pipeline and the customer included in their contract a secondary point discounted rate that is higher than the shipper's primary point discounted rate, the shipper will be entitled under the Commission's discount policy to the discount rate the pipeline gives to similarly situated shippers at the secondary point, but no lower than the primary point discount. For the reasons discussed above, this is necessary to assure that the pipeline does not use its authority to include negotiated secondary point discounted rates to reconstruct the barriers to competition that the CIG/Granite State policy seeks to remove.

14. Horizon cites to provisions in the Trunkline and Transco tariffs which it asserts allow the pipeline to negotiate discount rates at secondary points which would differ from what the shipper is entitled to under the CIG/Granite State policy. To the extent the quoted provisions in footnote 3 permit the pipeline to negotiate secondary point discounted rates higher than the primary point discounted rate and deny the shipper the opportunity to seek a lower discount rate pursuant to the CIG/Granite State policy as discussed above, those tariff provisions are contrary to Commission policy. To ensure that all pipelines adhere to the Commission's discount policy, the Commission is concurrently instituting separate proceedings with Transco and Trunkline concerning their above-quoted discount tariff provision. The proceedings will require the pipeline to explain how the provision in question operates, and why it is consistent with the Commission's CIG/Granite State discount policy.

### **Horizon's Compliance Filing On Discounting**

15. On July 7, 2003, Horizon filed revised tariff sheets to reflect the changes required by the June 4 Order. The Commission, by letter order issued November 26, 2003, accepted the tariff sheets filed by Horizon except for Substitute Original Sheet No. 135C concerning discounting, which the letter order stated the Commission would act upon in a separate order.

16. In its transmittal letter accompanying the July 7, 2003 filing, Horizon stated that since Horizon sought clarification or rehearing on the issue of discounting in relation to the

rate provisions of existing contracts, it had included language consistent with its clarification request in Original Substitute Sheet No. 135C which recognizes discounted rates specifically negotiated in the existing contract. As discussed above, the Commission is denying rehearing, but granting clarification in part, on this issue.

17. In the rehearing section above, we have explained why Horizon's proposed Section 7.14(g)(2) in Original Substitute Sheet No. 135C was contrary to Commission policy. In the compliance filing, Horizon included language consistent with its clarification request under which discounted rates specifically negotiated in the existing contract will control. Thus, the compliance filing included revised Section 7.14 (g)(2) as follows :

(2) Where it is determined based on a request hereunder that a Shipper's discount and related rate provisions may be applied at an alternate point, the discount rate and related rate provisions at the alternate point shall be the higher of the discount rate and related rate provisions under the Agreement of the Shipper requesting the discount (including any discount specifically negotiated in such Agreement at an alternate point) or the rate and related rate provisions being paid by the similarly situated Shipper(s) at the alternate point.

The new underlined language in this section is not consistent with the clarification in the rehearing section since it seems to replace the very language which the June 4 Order required Horizon to delete. The clarification in the rehearing section described when the agreed secondary discount could apply, and when it would not. The revised Section 7.14 (g)(2) new language is not so limited. Accordingly, we reject proposed revised Section 7.14(g)(2). However, Horizon may file revised tariff sheets consistent with the clarification in the rehearing section.

The Commission Orders:

(A) Horizon's request for rehearing is denied, and clarification is granted in part, as set forth in the body of the order.

(B) Substitute Original Sheet No. 135C is rejected.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.