

122 FERC ¶ 61,146
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Columbia Gulf Transmission Company

Docket No. RP07-500-003

ORDER ON CLARIFICATION AND REHEARING

(Issued February 21, 2008)

1. On November 19, 2007, the Indicated Shippers¹ filed a request for clarification, or in the alternative, rehearing of the Commission's October 18, 2007 Order in the captioned docket.² The October 18, 2007 Order accepted tariff sheets filed by Columbia Gulf Transmission Company (Columbia Gulf) to revise its *pro forma* Assignment Agreement to be effective May 1, 2008. As discussed below, the Commission will grant Indicated Shippers' request for clarification and deny its request for rehearing.

Background

2. On June 29, 2007, Columbia Gulf filed tariff sheets to revise its *pro forma* Assignment Agreement which is used by replacement shippers when they enter into capacity release contracts with Columbia Gulf with respect to capacity awarded pursuant to Section 14 of the General Terms and Conditions (GT&C) of Columbia Gulf's tariff.³ Columbia Gulf proposed several changes that it intended to streamline the language for such agreements, to remove certain unnecessary language and to ensure that the Form of Assignment Agreement is uniform across all of the NiSource Gas Transmission and

¹ The Indicated Shippers in the instant proceeding are: BP America Production Company, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Gas & Power Marketing, A Division of Exxon Mobil Corporation and Hess Corporation.

² *Columbia Gulf Transmission Co.*, 121 FERC ¶ 61,045 (2007).

³ Section 14 of the GT&C of Columbia Gulf's tariff is entitled "Release and Assignment of Service Rights" and is found on Sheet Nos. 350-357 of Columbia Gulf's FERC Gas Tariff, Second Revised Volume No. 1.

Storage pipelines.⁴ Further, Columbia Gulf stated that the effectiveness of its filing would coincide with its new “Navigates” Electronic Bulletin Board system.

3. Columbia Gulf’s proposed changes to its *pro forma* Assignment Agreement included the following: First, Columbia Gulf proposed to modify Section 1 of its *pro forma* Assignment Agreement to provide for the attachment of the capacity release notice to each agreement as Appendix A, and to incorporate all of the terms set forth in that release notice into the agreement by reference.

4. Second, Columbia Gulf proposed to amend Section 5 of the *pro forma* Assignment Agreement, which governs the recall rights of the releasing party, to incorporate the recall rights as set forth in the release notice into each individual Assignment Agreement. Consistent with this proposal, Columbia Gulf proposed to remove the blank spaces that previously specified (1) the frequency of permissible recalls, (2) the maximum duration of recalls, (3) an indication of whether the releases may or may not be recalled at nomination cycles, and (4) whether the replacement shipper has the option to accept a reput of the capacity following a recall for the remainder of the release term.

5. Third, Columbia Gulf proposed to delete Section 9 of its *pro forma* Assignment Agreement which contained a blank space for identifying other agreements between the parties which were not inconsistent with Columbia Gulf’s tariff or the release notice and other terms and conditions applicable to the release.⁵

6. In the October 18, 2007 Order, the Commission accepted Columbia Gulf’s proposed tariff sheets. The Commission rejected contentions by Indicated Shippers and others that the proposal would reduce the transparency of the capacity release transactions on Columbia Gulf’s system. The Commission found that the incorporation of the release notice terms into the Assignment Agreement by including the release notice as Appendix A to the Assignment Agreement would not relieve Columbia Gulf of its

⁴ These include: Columbia Gulf, Columbia Gas Transmission Corp.; Central Kentucky Transmission Co.; and, Hardy Storage Co., LLC, among others.

⁵ The language proposed to be deleted by Columbia Gulf was in Section 9 of its *pro forma* Form of Assignment Agreement and read as follows:

9. Special Agreements. (a) Other agreements between Transporter and Replacement Shipper not inconsistent with Transporter’s Tariff, or with the Release Notice underlying this Assignment Agreement, and (b) other terms and conditions specified in the Release which are applicable to this Assignment Agreements, are as follows:

obligation under the Commission's regulations to report special terms and conditions of releases.⁶ In addition, the Commission pointed out that Section 14.5 of Columbia Gulf's General Terms and Conditions (GT&C) requires that the Assignment Agreement contain all the terms and conditions of the release "provided that such terms and conditions are *identical to those set forth in the underlying Release Notice.*" (Emphasis added).

7. The Commission also stated that all terms in the release notice and thereby incorporated into the Assignment Agreement through inclusion in Appendix A must be consistent with Columbia Gulf's tariff. Therefore, the Commission concluded that Columbia Gulf's proposal would not permit Columbia Gulf to incorporate terms in the release notice that deviated from its tariff. In keeping with its regulations and policies, the Commission, in accepting Columbia Gulf's proposal, specifically stated that:

[I]f Columbia Gulf and the shipper enter into a transportation contract that materially deviates from the form of service agreement and/or Columbia Gulf's tariff, such contract must be filed with and approved by the Commission before it may become effective.

8. In its November 19, 2007 request for clarification or rehearing, the Indicated Shippers assert that, while Section 14.1(b) of Columbia Gulf's GT&C identifies 15 information items which the releasing shipper must include in its release notice, that section does not restrict the releasing shippers from including additional items. Therefore, Indicated Shippers argue, the releasing shippers and/or the replacement shipper and Columbia Gulf could include in the release notice a term or condition not provided for in Columbia Gulf's tariff. Moreover, Indicated Shippers assert that the parties might argue that no such term included in the release notice could be a material deviation, because the *pro forma* Assignment Agreement allows the release notice to be attached to the Agreement as an Appendix. In other words, the parties allegedly could treat the Appendix as a blank in the Assignment Agreement into which the parties could insert any provision, no matter how inconsistent with the tariff.

⁶ 18 C.F.R. § 284.13(b)(1)(viii) (2007) states that pipelines must post all:

[s]pecial terms and conditions applicable to a capacity release transaction, including all aspects in which the contract deviates from the pipeline's tariff, and special details pertaining to a pipeline transportation contract, including whether the contract is a negotiated rate contract, conditions applicable to a discounted transportation contract, and all aspects in which the contract deviates from the pipeline's tariff.

9. Therefore, the Indicated Shippers request that the Commission “either clarify the October 18, [2007] order or grant rehearing to explicitly require Columbia Gulf to file all Assignment Agreements that deviate in any material aspect from the *pro forma* Assignment in Columbia Gulf’s tariff pursuant to sections 154.1(d) and 154.112(b) of the Commission’s regulations.” The Indicated Shippers also request that the Commission grant rehearing of its decision to decline requests for a technical conference on this matter.

Discussion

10. Although the October 18, 2007 Order clearly stated that transportation contracts such as Assignment Agreements that materially deviate from the form of service agreement or the pipeline’s tariff must be filed with and approved by the Commission before becoming effective, the Commission will grant the clarification requested by the Indicated Shippers for the purpose of generally discussing this issue.

11. In *Columbia Gas Transmission Corporation*, 97 FERC ¶ 61,221 (2001) (*Columbia*), the Commission noted that section 154.1(d) of its regulations provides that any contract which “deviates in any material aspect from the form of service agreement in the tariff” must be filed with the Commission. The Commission stated that it would consider a material deviation from the form of service agreement to be “any provision of a service agreement which goes beyond the filling in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties. Therefore, § 154.1 [of the Commission’s regulations] requires the filing of any service agreement which contains a material deviation of this type.” To clarify its position the Commission stated:

To illustrate, a *pro forma* service agreement may contain blanks to be filled in, or ranges for terms of service (such as 950-1100 psi). A contract would be consistent with the tariff if, for example, it was completed by filling in the blanks or included terms that fall within the prescribed ranges. There is no need to burden the pipeline with filing contracts that conform to the *pro forma* agreement that has been filed and approved by the Commission as part of the tariff. Of course, where a contract conflicts with the tariff, the tariff controls until the contract is filed and accepted by the Commission. Thus, any contract which is not consistent with the *pro forma* service agreement must be filed with the Commission.⁷

⁷ *Columbia* at 62,003, citing, *Filing Requirements for Interstate Natural Gas Companies*, Order No. 582, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,025 (1995) (Order No. 582), *reh'g*, FERC Stats. & Regs., Regulations Preambles January 1991- June 1996 ¶ 31,034 (1996) (Order No. 582-A). Order No. 582-A at 31,558. (Internal footnote omitted).

12. Within the context of the above delineated conditions, the October 18, 2007 Order accepted Columbia Gulf's proposed tariff sheets. Before Columbia Gulf filed the instant tariff sheets, Section 14 of its GT&C required that the Assignment Agreement contain all the terms and conditions of the release and that these terms and conditions must be identical to those set forth in the underlying release notice. Columbia Gulf's instant proposal requires that this now be accomplished by attaching the release notice to the Assignment Agreement as Appendix A. This proposal does not violate the Commission's policies concerning the filing of material deviations.

13. Section 284.8(b) of the Commission's regulations requires Columbia Gulf to permit its firm shippers "to release their capacity, in whole or in part, on a permanent or short-term basis without restriction on the terms or conditions of the release."⁸ This means that releasing shippers may establish conditions concerning relative rights and responsibilities of the releasing and replacement shippers *vis-a-vis* the released capacity during the term of the release. For example, releasing shippers may establish conditions concerning the recall of capacity,⁹ or restricting the right of the replacement shipper to modify the primary points associated with the released capacity,¹⁰ or conditions concerning the allocation of rate case refunds between the releasing and replacement shipper.¹¹

⁸ 18 C.F.R. § 284.8(b) (2007).

⁹ *Georgia Public Service Co.*, 110 FERC ¶ 61,048 at P 51 (2005); *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 Fed. Reg. 13,267 (April 16, 1992), FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,939 at 30,446-48 (April 8, 1992); *order on reh'g*, Order No. 636-A, 57 Fed. Reg. 36,128 (August 12, 1992), FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,950 (August 3, 1992); *order on reh'g*, Order No. 636-B, 57 Fed. Reg. 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992); *reh'g denied*, 62 FERC ¶ 61,007 (1993); *aff'd in part and remanded in part, United Distribution Companies v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996); *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997). Order No. 636 at p. 30,418. *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles ¶ 31,099, at 31,569-70 (2000). (Order No. 637-A).

¹⁰ Order No. 637-A at 31,593-95.

¹¹ *Transwestern Pipeline Co.*, 61 FERC ¶ 61,332 at 62,253 (1992).

14. Columbia Gulf's proposal that the release notice be attached to the Assignment Agreement as an Appendix A is an appropriate method for it to comply with the requirement in section 284.8(b) of the Commission's regulations that allows releasing shippers to establish the terms and conditions of the release. Because Commission policy permits releasing shippers to establish such conditions, they are not material deviations that must be filed with and approved by the Commission. However, the Commission does require that pipelines post these conditions on its website. All such conditions are considered as special details relating to the release of capacity and as such must be posted pursuant to the Commission's regulations.¹² Therefore, all interested parties will be able to determine what conditions are included in any release transaction, thereby ensuring their transparency.

15. The fact that releasing shippers may establish the terms and conditions of the release itself, *i.e.*, the agreement between the releasing shipper and the replacement shipper, pursuant to which the releasing shippers' firm capacity is temporarily or permanently transferred to the replacement shipper, does not relieve the pipeline of the obligation to file service agreements containing material deviations from the pipeline's tariff. Such material deviations include any condition(s) that go beyond governing the relative rights of the releasing and replacement shippers with respect to the released capacity and, instead, require the pipeline to provide either shipper during the term of its service agreement, with a different quality of service than that offered under the relevant firm rate schedule and the general terms and conditions in the pipeline's tariff. For example, where the pipeline's tariff does not provide for the negotiation of an hourly flow requirement, a provision for hourly flow different than that provided for in the relevant rate schedule or the general terms and conditions of the pipeline's tariff would be considered a material deviation.

16. Lastly, the Indicated Shippers argue that the Commission erred in declining to conduct a technical conference concerning these issues. As noted by the October 18, 2007 Order, Indicated Shippers and others argued that the instant filing may not appear significant, but when taken together with the other tariff filings to implement the

¹² 18 C.F.R. § 284.13(b)(1)(viii), states that that pipelines must post all:

[s]pecial terms and conditions applicable to a capacity release transaction, including all aspects in which the contract deviates from the pipeline's tariff, and special details pertaining to a pipeline transportation contract, including whether the contract is a negotiated rate contract, conditions applicable to a discounted transportation contract, and all aspects in which the contract deviates from the pipeline's tariff.

Navigates system there could be a significant impact on how shippers will operate on the system in the future.¹³ These parties argued that the effect of the series of tariff revisions proposed by Columbia Gulf is to eliminate the flexibility and transparency required by the Commission's policies and therefore, Indicated Shippers requested a technical conference to evaluate the impact of all of Columbia Gulf's Navigates-related filings.

17. In the October 18, 2007 Order, the Commission found that the parties raised no substantive issues requiring an additional proceeding and, therefore, denied the requests for a technical conference. On rehearing, Indicated Shippers renews its requests for such an additional proceeding claiming that the intervals of Columbia Gulf's NGA section 4 filings prevent a comprehensive review. The Indicated Shippers assert that Columbia Gulf's filings taken as a whole run counter to the Commission's policies encouraging the pipelines to provide greater service flexibility and to provide services which permit shippers to avoid penalties.

18. The Indicated Shippers have presented no compelling reason for a technical conference to be held in the instant docket. The issues the Indicated Shippers desire to discuss at the technical conference relate to service and penalty proposals with respect to Columbia Gulf's primary services proposed in other dockets. The instant proposal concerning capacity release *pro forma* service agreements is unrelated to those issues. Accordingly, the Commission finds that Indicated Shippers have raised no issue on rehearing that would compel it to institute additional proceedings in the instant docket.¹⁴

¹³ As noted in the October 18, 2007 Order, these filings were made by Columbia Gas Transmission Corporation or its affiliates in Docket Nos. RP07-340, RP07-174, RP07-478, RP07-479, RP07-412, RP07-413, RP07-414, RP07-415, RP07-500, RP07-507 and RP07-508. The Commission has acted on several of these filings. Orders have been issued in the following dockets: Docket No. RP07-340-000, Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Further Review, 119 FERC ¶ 61,267 (2007); Docket No. RP07-174-000, Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Further Review, 119 FERC ¶ 61,268 (2007); Docket No. RP07-412-000, Letter Order dated June 5, 2007, 119 FERC ¶ 61,233 (2007); Docket No. RP07-413-000, Letter Order dated June 5, 2007, 119 FERC ¶ 61,235 (2007); Docket No. RP07-414-000, Letter Order dated June 8, 2007 (unreported); and Docket No. RP07-415-000, Letter Order dated June 8, 2007 (unreported).

¹⁴ It is well within the Commission's purview to set forth the procedures to efficiently resolve the matters before it. *Stowers Oil & Gas Co.*, 27 FERC ¶ 61,001 (1984) (and cases cited therein).

The Commission orders:

(A) Clarification of the October 18, 2007 Order is granted as discussed in the body of this order.

(B) The request for rehearing of the October 18, 2007 Order is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.