

133 FERC ¶ 61,217  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Columbia Gas Transmission Corporation

Docket No. RP07-340-007

ORDER ON REHEARING

(Issued December 16, 2010)

1. On July 31, 2008, the Commission issued an order<sup>1</sup> denying rehearing of its June 11, 2007 order<sup>2</sup> conditionally accepting and suspending revised tariff sheets filed by Columbia Gas Transmission Corporation (Columbia Gas). Columbia Gas' revised tariff sheets were filed to implement daily delivery point scheduling penalties to coincide with the anticipated launch date of its new Electronic Bulletin Board (EBB) and gas management system, Navigates. Honeywell International, Inc. (Honeywell) filed a request for rehearing of the July 2008 Order. The Commission denies the request for rehearing by Honeywell, as discussed below.

**Background**

2. On March 6, 2007, Columbia Gas filed to revise section 19 of its General Terms and Conditions (GT&C) to implement new daily delivery point scheduling penalties. The scheduling penalties were proposed to apply to the difference between a shipper's scheduled deliveries at a delivery point and the gas quantities the shipper actually takes at the point each day. During non-critical periods, the penalty would be imposed on each Dth taken that varies by 5.0 percent or more either above or below the scheduled quantity, and would be equal to Columbia Gas' then effective ITS rate for Interruptible Transportation Service. If Columbia Gas declares a Critical Day,<sup>3</sup> the penalty would be

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<sup>1</sup> *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,122 (2008) (July 2008 Order).

<sup>2</sup> *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,267 (2007) (June 2007 Order).

<sup>3</sup> Then existing section 19.7, renumbered as section 19.8, provides in part that a "Critical Day" will be declared if Columbia Gas determines, based on criteria such as weather forecasts, line pack, storage conditions, pipeline pressures, horsepower

(continued...)

imposed on each Dth taken that varies by 2.0 percent or more above or below the scheduled quantity, and would be equal to three times the midpoint of the range of prices reported for “Columbia Gas, Appalachia” as published in *Platts Gas Daily* price survey. Columbia Gas would credit any revenues from these penalties to its non-offending shippers pursuant to its existing penalty revenue crediting mechanism. Columbia Gas proposed to make its scheduling penalty proposal effective on the launch date of Navigates, which it initially expected to be July 1, 2007. The filing was protested.

3. In the June 2007 Order, the Commission accepted and suspended the revised tariff sheets, to be effective on the earlier of January 1, 2008 or further order of the Commission, subject to conditions. The Commission found that the proposed scheduling penalties were generally consistent with Commission policy. However, the Commission directed Columbia Gas to file revised tariff sheets and provide information and explanations, including why its proposed Critical Day scheduling tolerance level of 2.0 percent should not be increased to 3.0 percent or some higher level, as described in detail below. Honeywell and Piedmont Natural Gas Company, Inc. filed requests for rehearing of the June 2007 Order.

4. Columbia Gas ultimately launched Navigates on August 1, 2008. While Columbia Gas put the tariff sheets implementing the scheduling penalties into effect on that date, Columbia Gas waived the penalties for all shippers in order to give them additional time to adjust to the Navigates system. On February 11, 2010, the Commission granted Columbia Gas’ request to continue the waiver until further notice, subject to the condition that it provide notice to the Commission and its shippers at least thirty days prior to implementing the scheduling penalties.<sup>4</sup> Columbia Gas has still not implemented the penalties provisions.

### **July 2008 Order**

5. The Commission found, *inter alia*, in the July 2008 Order, that Columbia Gas’ scheduling penalty proposal was generally consistent with the policies concerning penalties adopted in Order No. 637<sup>5</sup> that a pipeline’s penalties should be calibrated to the

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availability, system supply and demand, and other operational circumstances that operating conditions are such that it faces a “threat to its system integrity and/or [its] ability to meet its firm service obligations.”

<sup>4</sup> *Columbia Gas Transmission, LLC*, 130 FERC ¶ 61,097 (2010).

<sup>5</sup> *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 (Order No. 637-A), (continued...)

potential threats to system integrity. The Commission stated that Columbia Gas' proposed scheduling penalties for non-critical periods are consistent with the Commission's policy permitting pipelines to impose nominal scheduling penalties during such periods in order to give shippers an incentive to schedule accurately and to compensate the pipeline for its lost opportunity costs related to not providing interruptible service to shippers who might otherwise have been able to obtain such service. The Commission further found that Honeywell's assertion that section 284.12(b)(2)(iii)<sup>6</sup> requires Columbia Gas to offer services enabling all shippers to avoid scheduling penalties was mistaken. The Commission stated that Columbia Gas offers several year-round premium no-notice services which enable shippers to avoid scheduling penalties and, as required by Order No. 636-C,<sup>7</sup> Columbia Gas offers these services to all shippers on a not unduly discriminatory basis, to the extent capacity is available. While the Commission found that Columbia Gas may implement scheduling penalties without providing every shipper a no-notice service to avoid the scheduling penalties, Columbia Gas' tariff would provide shippers a number of other methods of reducing their incurrence of such penalties.<sup>8</sup>

6. In its filing to comply with the June 2007 Order, Columbia Gas proposed to increase the Critical Day scheduling penalty tolerance level from 2.0 percent to 3.0 percent. The July 2008 Order accepted Columbia Gas' compliance filing.<sup>9</sup> The

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*reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

<sup>6</sup> 18 C.F.R. §284.12(b)(2)(iii) (2010). Section 284.12(b)(2)(iii) provides:

*Imbalance management.* A pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances. A pipeline also must provide its shippers the opportunity to obtain similar imbalance management services from other providers and shall provide those shippers using other providers' access to transportation and other pipeline services without undue discrimination or preference.

<sup>7</sup> Order No. 636-C, 78 FERC ¶ 61,186 (1997).

<sup>8</sup> July 2008 Order, 124 FERC ¶ 61,122 at P 19-23.

<sup>9</sup> As directed by the Commission in the July 2008 Order (at P 58), Columbia Gas' compliance filing also included a provision that the tolerance levels be at least 1,000 Dth.

Commission rejected Honeywell's request that the Commission order the non-Critical Day tolerance level of 5.0 percent also be utilized as the tolerance level for Critical Days. The Commission found that Honeywell did not demonstrate that a 5.0 percent tolerance level for Critical Day scheduling penalties was just and reasonable or, more importantly, that the 3.0 percent level Columbia Gas agreed to in its compliance filing is unjust and unreasonable. The Commission reaffirmed its determination that a stricter tolerance level is permissible for critical periods in order to prevent threats to service reliability and found that Honeywell had not demonstrated otherwise.

### **Honeywell's Request for Rehearing**

7. Honeywell requests rehearing of our determination that the 3.0 percent tolerance level for the Critical Day tolerance level in the compliance filing is just and reasonable. Honeywell argues that the Commission's interpretation that imbalance management services required by Order No. 637 pursuant to section 284.12(b)(2)(iii) are intended to avoid imbalance penalties, not scheduling penalties, is mistaken. Honeywell asserts that, at a minimum, Columbia Gas' tolerance level should be no lower than that approved in *Panhandle Eastern Pipe Line Co.*, 97 FERC ¶ 61,046, at 61,267-271 (2001) (*Panhandle*). Honeywell further asserts that the Commission has approved tolerance levels for scheduling penalties in excess of 3.0 percent in other cases.

8. Honeywell contends that there is no prohibition in the Commission's regulations against pipelines having the same tolerance level during Critical Days and non-Critical Days. Honeywell further contends that, since the Commission approved a greater penalty for Critical Days in its June 2007 Order, there are higher consequences to any shipper incurring a scheduling penalty on a Critical Day, and Columbia Gas' system would be protected from threats to service reliability at the 5.0 percent level on Critical Days with the higher penalty.

9. Honeywell argues that the Commission's approved 3.0 percent scheduling tolerance is unreasonable, arbitrary and capricious given Columbia Gas' failure to provide new imbalance and no-notice services. Honeywell asserts that based upon its circumstances, its past usage, and its lack of no-notice service and scheduling imbalance services, it will be impossible at times to stay in scheduling balance particularly on Critical Days and it will, therefore, be subject to repeated scheduling penalties. Honeywell argues that the Commission's approval of a 3.0 percent scheduling tolerance level, with no recognition of these circumstances, is inequitable, unduly discriminatory, and contrary to section 4 of the Natural Gas Act (NGA).

### **Discussion**

10. Honeywell's request for rehearing of our determination that the 3.0 percent tolerance level for the Critical Day scheduling penalty is just and reasonable is denied.

11. Honeywell asserts that the Commission's statement that section 284.12(b)(2)(iii) of its regulations does not require Columbia Gas to offer services enabling shippers to avoid scheduling penalties was mistaken.<sup>10</sup> Honeywell points out that section 284.12(b)(2)(iii) requires that "a pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances," and Honeywell states that Order No. 637-A specifically clarified that the term "imbalance" was intended to apply to both physical and scheduling imbalances. Honeywell contends, as it has previously in this proceeding, that its role as an industrial user of gas operating 24 hours a day and 7 days a week results in potential production disruptions which do not allow it to adjust nominations for at least 16 hours during the gas day, its past usage, and lack of no-notice service and new or modified services make it very difficult for it to avoid scheduling variances on Critical Days.

12. On rehearing, the Commission agrees with Honeywell that section 284.12(b)(2)(iii) requires Columbia Gas to provide imbalance management services to facilitate the ability of its shippers to manage imbalances between actual and scheduled deliveries at a point to the extent operationally feasible. In Order No. 637-A, the Commission granted a request to confirm that throughout Order No. 637 "the term 'imbalance' was intended to apply to both physical and scheduling imbalances."<sup>11</sup> In *Northern Natural Gas Co.*, 101 FERC ¶ 61,203, at P 58 (2002), an order on compliance with Order No. 637, the Commission explained that there are two kinds of imbalances: (1) differences between actual volumes received into the system and delivered out of the system or "imbalances" and (2) variances between actual volumes and scheduled volumes at a point or "variances." Therefore, the references to "imbalances" in section 284.12(b)(2)(iii) include scheduling imbalances or variances. Columbia Gas' establishment of scheduling penalties accordingly carries with it an obligation to offer services that facilitate the ability of Columbia Gas' shippers to manage scheduling variances. However, consistent with the proviso in section 284.12(b)(2)(iii) that the pipeline need only offer such services "to the extent operationally practicable," Columbia Gas' obligation is limited to scheduling imbalance management services that are operationally practicable.

13. Contrary to Honeywell's suggestions, the Commission finds that Columbia Gas has provided the required imbalance management services, to the extent operationally

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<sup>10</sup> In Columbia Gas' Order No. 637 compliance proceedings, Columbia Gas did not propose to implement scheduling penalties and the Commission had no reason to address the issue of Columbia Gas' compliance with section 284.12(b)(2)(iii) related to scheduling penalties such as those under consideration here.

<sup>11</sup> Order No. 637-A, FERC Stats. & Regs. at 31,603.

feasible, related to scheduling variances. The Commission requires pipelines to offer a premium no-notice service for shippers with unpredictable demands to obtain service without incurring scheduling penalties to the extent they have available capacity to provide the service,<sup>12</sup> and Columbia Gas does so. While Columbia Gas' no-notice service is fully subscribed, its offer of such service satisfies the requirement that it provide imbalance management services "to the extent operationally practicable."

14. In addition, Columbia Gas offers other imbalance management services to its shippers to minimize or avoid scheduling penalties. In an order issued in May 2009 in Docket No. RP08-295-000, the Commission found that a shipper's purchase of Storage in Transit Service (SIT) authorizes a shipper to reduce or increase its deliveries of gas under its transportation service agreement as needed to equalize the shipper's receipts and deliveries under its transportation service agreement, with undertakes of gas deemed to be scheduled storage injections and overtakes deemed to be scheduled storage withdrawals subject to the SIT volumetric rate.<sup>13</sup> In the May 2009 Order, the Commission found that Columbia Gas must treat quantities injected into storage pursuant to the deemed scheduled provisions of section 4(a) of the SIT Rate Schedule as actual deliveries under its transportation service agreement for purposes of calculating a shipper's scheduling penalties with respect to its transportation service. In a contemporaneous order on rehearing of the May 2009 Order,<sup>14</sup> the Commission expands the holding of the May 2009 Order to include quantities withdrawn from storage pursuant to the deemed scheduled provisions when a shipper's takes exceed its receipts. As explained in detail in the contemporaneous rehearing order, the SIT service thus enables a shipper to avoid any scheduling penalty, in situations where the shipper tenders to the pipeline at the receipt point the amount it scheduled at that receipt point but takes either more or less than the scheduled amount at the delivery point.<sup>15</sup> Honeywell itself recognizes this determination is a positive change allowing Honeywell in some circumstances to minimize scheduling penalties.<sup>16</sup> This includes the situation of primary concern to it – when a disruption occurs at Honeywell's plant which prevents it from taking the full amount it scheduled, but it is too late to modify its supply arrangements or reduce its scheduled receipts.

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<sup>12</sup> 18 C.F.R. § 284.7(a)(4) (2010); Order No. 636-C, 78 FERC at 61,769-72.

<sup>13</sup> *Columbia Gas Transmission Corp.*, 127 FERC ¶ 61,149, at P 24 (2009) (May 2009 Order). The SIT service is described at P 2-4 of the May 2009 Order.

<sup>14</sup> *Columbia Gas Transmission Corp.*, 133 FERC ¶ 61,218 (2010).

<sup>15</sup> Because SIT service is interruptible, it may not be available during critical periods.

<sup>16</sup> Honeywell's Request for Rehearing at 9, n.23.

15. Further, as the Commission pointed out in the July 2008 Order (at P 19-23), Columbia Gas provides other methods to reduce or avoid scheduling penalties. Those methods include: Rate Schedule NTS-S service,<sup>17</sup> an hourly no-notice summer-only transportation service to provide enhanced hourly flexibility and avoid scheduling penalties; the waiver provisions of section 19.6(d) under which Columbia Gas has indicated that it will provide waivers or reductions of scheduling penalties on a case-by-case basis if the variances are caused by events the shipper can not control; the force majeure provisions of section 19.6(b) which expressly exempt shippers from scheduling penalties determined to be caused by a bona fide force majeure event; and adjustments to scheduling through the nominations process. The availability of all these services to the shippers on Columbia Gas' system satisfies the requirements of 284.12(b)(2)(iii) with respect to its scheduling penalties.

16. With respect to the availability of no-notice service, Honeywell argues that the Commission has made no attempt to evaluate whether its regulations are being followed regarding the practicality of Columbia Gas offering no-notice service.<sup>18</sup> However, Commission policy limits the obligation of pipelines to provide no-notice service to available capacity.<sup>19</sup> Further, Order No. 636-C held that, if a pipeline offers no-notice service, it must offer that service on a non-discriminatory basis to all customers that request it, and Honeywell has not requested relief pursuant to that requirement.<sup>20</sup>

17. Honeywell's argument that the 3.0 percent scheduling tolerance level for critical periods is not adequately supported is also rejected. Honeywell asserts that the two penalties whose similar tolerance levels were referenced by the Commission, Takes In Excess of Total Firm Entitlement and Failure To Interrupt Service, are for specific circumstances unrelated to scheduling variances, and the Commission failed to explain why the same tolerance level is necessary for the scheduling penalties. However, the Commission recognized in the July 2008 Order, while the circumstances for such critical period penalties were different in some respects, most importantly, the 3.0 percent tolerance level is consistent with the other critical period penalties which provide for the same penalty level to deter shipper misconduct during critical periods. Further, this level is appropriate in the reasonable judgment of the pipeline to deter potential misconduct and preserve operational integrity on its system during critical periods.

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<sup>17</sup> Honeywell asserts at page 9, n. 22, of its request for rehearing that NTS-S service is no help to it. However, NTS-S service is a no-notice service to which scheduling penalties do not apply.

<sup>18</sup> Honeywell's Request for Rehearing at 6, n.13.

<sup>19</sup> July 2008 Order, 124 FERC ¶ 61,122 at P16.

<sup>20</sup> *Id.*, at n.29.

18. Honeywell asserts<sup>21</sup> that the Commission has approved higher critical period scheduling tolerances in other cases,<sup>22</sup> including *Panhandle*. However, under the NGA statutory scheme, the pipeline has the initiative, through section 4 filings, to propose rates, terms, and conditions for the service it provides. If the pipeline's proposal is reasonable, the Commission will accept it, regardless of whether other rates, terms, and conditions may be reasonable.<sup>23</sup> Accordingly, there is no single just and reasonable tolerance level for Critical Day scheduling penalties. Rather, the appropriate tolerance level is a matter for the exercise of judgment in light of the purpose and level of the Critical Day scheduling penalty.

19. Honeywell mistakenly relies on the *Panhandle* decision, arguing that the tolerance level should be no lower than that adopted in *Panhandle*. Honeywell asserts that, in *Panhandle*, the Commission approved a 5.0 percent tolerance level for its scheduling penalty when an Operational Flow Order (OFO) is issued, a more severe situation than that required for Columbia Gas' scheduling penalty, and the pipeline was proposing a new imbalance service to assist its shippers unlike Columbia Gas. However, in *Panhandle*, the Commission accepted a tolerance level of 5.0 percent for periods when an OFO is issued in conjunction with a different scheduling penalty as consistent with Order No. 637 in the context of an Order No. 637 settlement.<sup>24</sup> The tolerance level approved for OFO conditions on the system in *Panhandle* does not establish a minimum with respect to the critical period penalty tolerance level on Columbia Gas' system. In this case, the Commission has accepted a 3.0 percent Critical Day tolerance level consistent with other existing critical period penalties on Columbia Gas' system and in the reasonable judgment of the pipeline necessary to preserve operational integrity during critical periods on its system based on the particular circumstances of this case. Further, in regard to the lack of imbalance management service in this case, as discussed above, the Commission has determined that Columbia Gas' existing imbalance management services for scheduling variances are sufficient.

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<sup>21</sup> Honeywell's Request for Rehearing at 8.

<sup>22</sup> The cases cited by Honeywell include *MIGC Inc.*, 96 FERC ¶ 61,042, at 61,107 (2001) (*MIGC*). However, in *MIGC*, the tolerance level upon which Honeywell relies was for scheduling penalties applicable to all days, in contrast with the tolerance level for critical periods under consideration here.

<sup>23</sup> *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993); *Consolidated Edison Co. v. FERC*, 165 F.3d 992 (D.C. Cir. 1999).

<sup>24</sup> *Panhandle*, 97 FERC at 61,271-72.

20. Honeywell asserts that the Commission mistakenly asserted in the July 2008 Order<sup>25</sup> that a stricter tolerance level should be imposed for Critical Days than the tolerance level approved for non-Critical Days since there is no such express prohibition against the same tolerance level for both in the Commission's regulations and there is a greater penalty level for Critical Days. However, in Order No. 637, the Commission stated that the requirement that penalties be imposed only to the extent necessary could "result in either no penalties for non-critical days or higher tolerances and lower penalties for non-critical as opposed to critical days."<sup>26</sup> The Commission has determined in this proceeding that a stricter tolerance level consistent with the approved higher penalty is more appropriate for Critical Days to preserve the operational integrity of the Columbia Gas system than the lower tolerance and penalty level for non-Critical Days. It is unnecessary for the Commission's regulations to prohibit the same level for both critical and non-critical periods for the Commission to make that determination.<sup>27</sup> In fact, in *Panhandle*, the scheduling tolerance level was set at 10.0 percent on non-OFO days and a lower level of 5.0 percent was established for OFO days.<sup>28</sup>

21. In any case, Columbia Gas has supported its 3.0 percent tolerance level for these critical period penalties as properly calibrated to the potential threat to the system's integrity consistent with Order No. 637. As discussed above, if the pipeline's proposal is reasonable, the Commission will accept it, regardless of whether other rates, terms, and conditions may be reasonable. As the Commission pointed out in the July 2008 Order,<sup>29</sup> the Critical Day scheduling tolerance level should be appropriate to deter potential misconduct that may harm the system and should not be based on a shipper's ability to accurately schedule or obtain Honeywell's requested services.

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<sup>25</sup> July 2008 Order, 124 FERC ¶ 61,122 at P 73.

<sup>26</sup> Order No. 637, FERC Stats. & Regs. at 31,317. In Order No. 637-A, the Commission clarified, "[t]he question whether penalties may be imposed during non-critical periods needs to be determined in the pipelines' compliance filing proceedings and cannot be decided in the abstract." Order No. 637-A, FERC Stats. & Regs. at 31,608.

<sup>27</sup> Honeywell asserts (at 8, n. 20) that, in *MIGC*, the Commission approved a scheduling penalty applicable to all days. However, in contrast, the Critical Day scheduling penalty and tolerance level under consideration in this order may be applied in only critical periods and, therefore, is specially designed to respond only to Critical Day circumstances.

<sup>28</sup> *Panhandle*, 97 FERC at 61,270.

<sup>29</sup> July 2008 Order, 124 FERC ¶ 61,122 at P 32.

22. Finally, Honeywell argues that without the opportunity to obtain no-notice or other new or innovative services, the Commission should have set the Critical Day scheduling tolerance level at 5.0 percent, similar to the *Panhandle* case, or higher than 3.0 percent as it has in other cases. However, as discussed above, no-notice services are limited to available capacity and Columbia Gas has provided sufficient service. Further, the pipeline may set the scheduling tolerance level for Critical Days at a level which in its reasonable judgment is appropriate. In this case, the Commission has determined that the 3.0 tolerance level is appropriate for the Critical Days to preserve the operational integrity of Columbia Gas' system.

23. Based on the foregoing, the Commission reaffirms its finding that Columbia Gas, by reducing the scheduling tolerance level to 3.0 percent, consistent with its other Critical Day penalties, has satisfied the direction in the June 2007 Order. Honeywell has not demonstrated that a 5.0 percent scheduling penalty tolerance is just and reasonable or that a 3.0 percent scheduling penalty tolerance should not be adopted as just and reasonable. Accordingly, Honeywell's assertion that a 5.0 percent tolerance level is appropriate is rejected as unsupported.

The Commission orders:

The request for rehearing of Honeywell is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.