

133 FERC ¶ 61,218
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. RP08-295-002

ORDER ON REHEARING

(Issued December 16, 2010)

1. On May 21, 2009, the Commission issued an order, requiring Columbia Gas Transmission Corporation (Columbia Gas)¹ to modify its method of calculating scheduling penalties incurred in connection with service under its SIT (Storage in Transit) Rate Schedule.² Columbia Gas and Washington Gas Light Company (Washington Gas) filed requests for rehearing of the May 2009 Order. Allegheny Energy Supply Company, LLC (Allegheny) filed a request for clarification or, in the alternative, rehearing of the May 2009 Order. For the reasons discussed below, the Commission denies the requests for rehearing by Columbia Gas and Washington Gas and grants, in part, and denies, in part, the request for clarification or rehearing by Allegheny. The Commission also requires Columbia Gas to file to revise its tariff consistent with the discussion below.

I. Background

2. The requests for rehearing in this case all focus on the issue of the extent to which service provided by Columbia Gas under Rate Schedule SIT should serve to minimize the shipper's incurrence of the scheduling penalties proposed by Columbia Gas in Docket No. RP07-340-000. Accordingly, below we describe: (1) the origins and nature of SIT

¹ The Commission has accepted Columbia Gas' request for a name change to Columbia Gas Transmission, LLC. *See Columbia Gas Transmission LLC*, Docket No. RP09-150-000 (Jan. 14, 2009) (unpublished letter order).

² *Columbia Gas Transmission Corp.*, 127 FERC ¶ 61,149 (2009) (May 2009 Order).

service; (2) Columbia Gas' scheduling penalty proposal in Docket No. RP07-340-000; (3) Columbia Gas' proposal in this proceeding to modify the provisions of Rate Schedule SIT governing how that service is scheduled; (4) the Commission's July 31, 2008 orders in this proceeding and in Docket No. RP07-340-000 addressing, among other things, how a shipper's SIT service affects its incurrence of scheduling penalties; and (5) the May 2009 Order in this proceeding that is the subject of the instant rehearing requests.

A. Rate Schedule SIT

3. Columbia Gas first implemented Rate Schedule SIT service in its Order No. 636 restructuring proceeding.³ Columbia Gas' SIT service was designed as an interruptible balancing service for shippers with wide swings in daily demand, such as electric power plants. SIT service is used in conjunction with transportation service agreements under Columbia Gas' FTS (Firm Transportation Service), OPT (Off-Peak Transportation Service), NTS (No-Notice Transportation Service), SST (Storage Service Transportation), or ITS (Interruptible Transportation Service) Rate Schedules which it designates as subject to SIT service. Pursuant to section 2(a) of Rate Schedule SIT, when a SIT shipper tenders more gas to Columbia Gas at its receipt point than it takes off the system at its delivery point, the pipeline will, on an interruptible basis, inject the difference (Overtendered Balance Quantity or OBQ) into storage. Similarly, when a SIT shipper takes more gas off the system at its delivery point than it tendered to the pipeline at its receipt point, the pipeline will, on an interruptible basis, withdraw the difference (Undertendered Balance Quantity or UBQ) from storage. The net of such injections or withdrawals on any day may not exceed the Maximum Balancing Quantity set forth in the shipper's SIT service agreement. Columbia Gas bills the SIT shipper a usage charge based on the daily change, if any, in the shipper's undertendered or overtendered balances. The maximum daily rate is \$0.0412 per Dth.

4. Pursuant to section 3(b) of Rate Schedule SIT, Columbia Gas also maintains a running net balance of each SIT shipper's undertendered and overtendered balances. Such net balance is referred to as the shipper's Imbalance Quantity. Section 3(b) provides that, twice during any 30-day period, SIT shippers are required to eliminate any existing Imbalance Quantity, convert any outstanding UBQ to an OBQ, or convert any

³ *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,060, at 61,510, *second order on compliance and order on reh'g*, 64 FERC ¶ 61,365, at 63,534 (1993); *third order on compliance and second order on reh'g*, 65 FERC ¶ 61,344 (1993).

outstanding OBG balance to an UBG (cross-zero-twice).⁴ An imbalance penalty of \$0.25 per Dth is applied for each day at the end of a 30-day period in which the shipper does not comply with the cross-zero-twice requirement.

5. Before this proceeding, section 4 of Rate Schedule SIT provided that scheduling of SIT service “shall be deemed to occur when Shipper schedules service under any Transportation Service Agreements that it has designated as subject to this SIT Rate Schedule, and the Scheduled Daily Delivery Quantities do not equal the Scheduled Daily Receipt Quantities . . . and such difference has not been specified by Shipper to be for the purpose of correcting imbalances.”

B. Columbia Gas’ Docket No. RP07-340 Scheduling Penalty Proposal

6. In its Order No. 636 restructuring proceeding, Columbia Gas initially proposed a scheduling penalty to be applied to the difference between scheduled volumes and the volumes the shippers took out of the system at the delivery point. The Commission required that Columbia Gas modify that proposal to apply the scheduling penalty to the difference between scheduled volumes and the actual volumes the shipper put on the system at the receipt point.⁵ Rather than comply with this requirement, Columbia Gas chose not to implement any scheduling penalty in its Order No. 636 restructuring proceeding.⁶

7. Therefore, Columbia Gas’ tariff contained no scheduling penalty until March 2007, when it proposed in Docket No. RP07-340-000 to revise section 19 of its General Terms and Conditions (GT&C) to implement a new scheduling penalty. The proposed penalty would apply to the difference between a shipper’s scheduled deliveries at a delivery point and gas quantities the shipper actually takes at the point each day.⁷ In

⁴ On May 28, 2010, the Commission accepted proposed tariff language by Columbia Gas revising Rate Schedule SIT to require that shippers cross zero twice during each calendar month, rather than during each rolling 30-day period. *Columbia Gas Transmission, LLC*, 131 FERC ¶ 61,193 (2010). That change is not relevant to the issues addressed in this order.

⁵ 64 FERC ¶ 61,060 at 61,540.

⁶ 65 FERC ¶ 61,344 at 62,744.

⁷ During non-critical periods, the penalty would be imposed on each Dth taken that varies by 5 percent or more either above or below the scheduled quantity, and would equal Columbia Gas’ then effective ITS rate for Interruptible Transportation Service (ITS). If Columbia Gas declares a Critical Day under section 19.7 of its GT&C, the penalty would be imposed on each Dth taken that varies by 2 percent or more above or

(continued...)

response to protests, Columbia Gas clarified that the scheduling penalty would not apply to its three firm no-notice services under Rate Schedules FSS/SST, NTS, and GTS. However, Columbia Gas stated that the scheduling penalties would apply to service under Rate Schedule SIT, because the Commission had determined in its Order No. 636 restructuring proceeding that “SIT is not a transportation or firm service; it has a very low priority, and therefore is distinguishable from” no-notice service.⁸

8. On June 11, 2007, the Commission accepted and suspended Columbia Gas’ scheduling penalty proposal, subject to refund and conditions.⁹ The Commission found that the proposed scheduling penalties were generally consistent with Commission policy. As relevant here, the Commission rejected a protest by Honeywell International Inc. (Honeywell) that SIT service should be exempt from the scheduling penalty. The Commission agreed with Columbia Gas that SIT service is not a no-notice service which may be used to avoid scheduling penalties, but rather is an interruptible balancing service for imbalance management. The Commission directed Columbia Gas to file revised tariff sheets and provide information and explanations on certain other issues. Honeywell and others requested rehearing of the June 2007 Scheduling Penalty Order, arguing among other things that Columbia Gas should not be permitted to implement scheduling penalties without providing a scheduling imbalance service which would enable shippers to avoid the penalty.

9. Although the June 2007 Scheduling Penalty Order permitted Columbia Gas to implement the scheduling penalty on January 1, 2008, Columbia Gas desired to implement the new scheduling penalty simultaneously with the anticipated launch date of its new Electronic Bulletin Board (EBB) and gas management system, Navigates. As the launch date of Navigates was delayed until August 1, 2008, Columbia Gas correspondingly delayed the effective date of its scheduling penalty.

below the scheduled quantity, and would equal three times the midpoint of the range of prices reported for “Columbia Gas, Appalachia” as published in *Platts Gas Daily* price survey. In a subsequent compliance filing, Columbia Gas increased the 2 percent Critical Day tolerance level to 3 percent.

⁸ Citing 64 FERC ¶ 61,365 at 63,504.

⁹ *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,267 (2007) (June 2007 Scheduling Penalty Order).

C. Columbia Gas' Proposal to Change Rate Schedule SIT Scheduling Provisions

10. On March 31, 2008, while the requests for rehearing of the June 2007 Scheduling Penalty Order were pending, Columbia Gas proposed in this docket to modify the provisions of Rate Schedule SIT concerning scheduling. Specifically, Columbia Gas stated that Rate Schedule SIT, as then in effect, did not authorize shippers to submit scheduling nominations for SIT service, because existing section 4 of that rate schedule provided only that scheduling of service "shall be deemed to occur" when a shipper has an imbalance between actual receipts and deliveries. Columbia Gas stated that it had nevertheless permitted shippers to submit scheduling nominations for SIT service, including scheduling service that increased imbalances and effectively resulted in shippers using the service as an inexpensive swing storage service, instead of for its intended purpose as an imbalance management service.

11. Therefore, Columbia Gas proposed to modify section 4 of Rate Schedule SIT to place restrictions on the ability of shippers to submit scheduling nominations for SIT service. Specifically, Columbia Gas proposed to add a new subsection (b) to section 4 of Rate Schedule SIT, providing that shippers may nominate service under that rate schedule but only if the nominations reduce the total Imbalance Quantity under the shipper's Rate Schedule SIT contract. Columbia Gas asserted that this proposal would ensure that shippers use the service only as an imbalance management service, while giving shippers enhanced flexibility to satisfy the "cross zero twice" requirement in Rate Schedule SIT and to reduce their SIT Imbalance Quantity.

12. In its answer to protests, Columbia Gas also proposed to modify section 4(a) of Rate Schedule SIT to clarify what quantities are "deemed scheduled" under section 4, without the shipper submitting any scheduling nomination. As revised, section 4(a) would read as follows:

Scheduling of service under this Rate Schedule shall be deemed to occur when Shipper schedules service under any Transportation Service Agreements that it has designated as subject to this SIT Rate Schedule, and the actual receipt quantities do not equal the actual delivery quantities, less Retainage assessed under the applicable Transportation Service Agreement(s).

13. Several shippers protested Columbia Gas' proposal. One protester objected to Columbia Gas' assertion that SIT service was only intended to be an imbalance management service, and not a short-term interruptible storage service. Honeywell raised concerns about the interaction of Columbia Gas' proposed revision to the SIT scheduling provisions with the Docket No. RP07-340-000 scheduling penalties previously accepted

by the Commission, contending that the proposed restriction on SIT shippers' ability to schedule SIT service could interfere with their ability to avoid the incurrence of scheduling penalties.

D. July 2008 Orders

14. On July 31, 2008, the Commission issued both (1) an order accepting Columbia Gas' proposed change to the scheduling provisions of Rate Schedule SIT¹⁰ and (2) an order on the rehearing requests and compliance filing in the Docket No. RP07-340-000 scheduling penalty proceeding.¹¹ The Commission generally approved Columbia Gas' proposal in this docket to restrict the ability of shippers to submit nominations for SIT service, and the Commission generally denied rehearing of its approval of Columbia Gas' proposed scheduling penalties in Docket No. RP07-340-000. However, in response to Honeywell's concerns, raised in both proceedings, about its ability to avoid the scheduling penalties, the Commission held that the "deemed scheduled" provisions of Rate Schedule SIT should help minimize SIT shippers' incurrence of penalties.

15. The Commission recognized it had stated in its June 2007 Scheduling Penalty Order (at P 42), that Columbia Gas' service under Rate Schedule of SIT is not a no-notice service which may be used to avoid scheduling penalties. However, the Commission stated that it had further reviewed the provisions of that rate schedule in response to Columbia Gas' filing in this proceeding to clarify how SIT service is scheduled. The Commission pointed out that Columbia Gas had clarified that section 4(a) of Rate Schedule SIT automatically deems that a shipper has scheduled any SIT storage injections or withdrawals necessary to equalize its actual receipts and deliveries under other designated transportation rate schedules. Given this fact, the Commission stated that it appeared that, when quantifying the difference between scheduled and actual deliveries in order to determine whether scheduling penalties should be imposed, the scheduled deliveries should include the storage injection quantities deemed to be scheduled pursuant to section 4(a) so that actual deliveries will equal actual receipts. The Commission found that this would enable a shipper either to avoid or reduce any scheduling penalty in at least some circumstances. Therefore, the Commission directed Columbia Gas, to file either (1) information and explanations with adequate support explaining why quantities deemed to be scheduled pursuant to section 4 of the SIT Rate

¹⁰ *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,123 (2008) (July 2008 SIT Order).

¹¹ *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,122 (2008) (July 2008 Scheduling Penalty Order).

Schedule should not be included in the determination of scheduling penalties, or (2) file revised tariff sheets appropriately including such quantities in the determination of scheduling penalties.

E. May 2009 Order

16. In its August 29, 2008 compliance filing (August 29 Compliance Filing) to the July 2008 SIT Order, Columbia Gas argued that amounts deemed scheduled pursuant to section 4 of Rate Schedule SIT should not be included in the determination of scheduling penalties. Columbia Gas asserted that the active scheduling of gas under the underlying transportation service agreements and the resolution of physical imbalances through the deemed scheduled provision of section 4 (a) of Rate Schedule SIT are two completely separate and unrelated transactions.

17. 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. The Commission explained that the purchase of SIT service authorizes a shipper which experiences a sudden change in its need for gas during a gas day to reduce or increase its deliveries of gas under its transportation service agreement as needed, with undertakes of gas deemed to be scheduled storage injections and overtakes deemed to be scheduled storage withdrawals subject to the SIT volumetric rate. This equalizes the shipper's receipts and deliveries under its transportation service agreement, thus eliminating any imbalance, and the shipper must pay the SIT volumetric rate for these injections and withdrawals. The Commission found that Columbia Gas sought to impose scheduling penalties on a shipper with SIT service, even when that shipper has complied with all the terms and conditions of the transportation and SIT services it purchased from Columbia Gas. The Commission held that the imposition of a penalty in such circumstances is unjust and unreasonable.

18. The Commission rejected Columbia Gas' assertion that the quantities deemed scheduled under Rate Schedule SIT should be treated as separate and unrelated to scheduling variances under a shipper's designated transportation service agreements. The Commission found that SIT service is not a stand-alone service, but an enhancement to the underlying transportation service purchased by the shipper. Therefore, treating the quantities deemed scheduled by Rate Schedule SIT as unrelated to a shipper's scheduled amounts under its underlying transportation service agreement is inconsistent with the fundamental purpose and character of the SIT service.

19. The Commission also rejected Columbia Gas' assertion that imposing scheduling penalties in these circumstances is necessary to encourage shippers to do their active scheduling of their transportation service accurately and thus avoid operational problems.

The Commission stated that service under Rate Schedule SIT is interruptible, giving Columbia Gas the right to determine whether SIT service is operationally feasible and, therefore, will be available on a particular gas day. Therefore, SIT service is provided, and quantities are injected into or withdrawn from storage pursuant to Rate Schedule SIT, only if Columbia Gas has determined that no operational harm will result from providing that service. The Commission also pointed out that Columbia Gas' tariff requires the shipper utilizing Columbia Gas' SIT service to compensate Columbia Gas for use of that service through the charge for SIT service, and therefore there was no need to impose the penalty in order to compensate Columbia Gas for its lost opportunity to schedule service for another shipper had the shipper with SIT service accurately scheduled the lesser amount of transportation service it actually took.

20. The Commission concluded that, for Rate Schedule SIT to be just and reasonable in light of Columbia Gas' imposition of scheduling penalties, 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, as explained above and in the July 2008 SIT Order. Therefore, the Commission directed Columbia Gas to file revised tariff sheets including quantities injected into storage pursuant to section 4(a) of the SIT Rate Schedule in the determination of transportation scheduling penalties.

21. The Commission did not impose a similar requirement with respect to amounts deemed withdrawn from storage under Rate Schedule SIT. The Commission stated that such deemed withdrawals constitute receipts under the shipper's transportation service agreement. Therefore, those amounts are not relevant to the calculation of a shipper's scheduling variances at transportation delivery points, and thus would not be included in the calculation of a shipper's transportation scheduling penalties.

22. On June 19, 2009, Columbia Gas filed revised tariff sheets¹² in compliance with the Commission's May 2009 Order. The revised tariff sheets provide that Columbia Gas will 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. The revised tariff sheets were accepted effective July 20, 2009, by an unpublished letter order dated July 21, 2009.

¹² First Revised Sheet Nos. 137 and 138 to FERC Gas Tariff, Third Revised Volume No. 1.

23. Finally, despite the fact the Commission accepted Columbia Gas' scheduling penalty provisions effective August 1, 2008, to coincide with the launch date of Navigates, Columbia Gas continues to waive those penalties for all shippers. 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 30 days prior to implementing the scheduling penalties.¹³

II. Discussion

24. For the reasons discussed below, the Commission denies Columbia Gas and Washington Gas' requests for rehearing of the May 2009 Order. The Commission grants, in part, and denies, in part, Allegheny's request for rehearing or clarification.

A. Rehearing Requests of Columbia Gas and Washington Gas

1. SIT Service and Scheduling Penalties

25. Columbia Gas objects to the Commission's holding that it is unjust and unreasonable for Columbia Gas to impose scheduling penalties on a shipper with SIT service, when that shipper has complied with all the terms and conditions of the transportation and SIT services it purchased from Columbia Gas. Columbia Gas argues that this holding was incorrect, because it failed to account for the difference between physical imbalances (the difference between actual receipts and actual deliveries) and scheduling variances (the difference between scheduled deliveries and actual deliveries) and the operational issues raised. Columbia Gas asserts that, from its inception, the Commission has recognized that Rate Schedule SIT was only designed to help shippers manage physical imbalances and was never intended to manage scheduling variances. Columbia Gas further asserts that the mere fact that a shipper has contracted for service under Rate Schedule SIT does not relieve the shipper of its obligation under its transportation service agreement to schedule accurately at the delivery point so that Columbia Gas can better manage its system. Columbia Gas contends that nothing in Rate Schedule SIT or in its purpose exempts a shipper from the obligation to submit accurate nominations at the delivery point.

Commission Ruling

26. Columbia Gas is mistaken. The Commission fully recognizes that Rate Schedule SIT is designed to help shippers manage imbalances between receipts and deliveries and that the scheduling penalty applies to variances between scheduled and actual deliveries

¹³ *Columbia Gas Transmission, LLC*, 130 FERC ¶ 61,097 (2010).

at the shipper's delivery point. For that reason, the May 2009 Order did not exempt shippers with SIT service from the incurrence of scheduling penalties. The Commission simply held that, when quantifying the difference between the amounts scheduled to be delivered and the amounts actually delivered in order to determine whether a scheduling penalty should be imposed, the scheduled and actual amounts should include the storage injection quantities which section 4(a) deems to have been scheduled in order to equalize actual receipts and deliveries.

27. While this eliminates the shipper's incurrence of scheduling penalties in certain circumstances, it does not insulate a shipper with SIT service from scheduling penalties in all circumstances. The June 2008 SIT Order illustrated this point with the following example, in which a shipper scheduled 50,000 Dth both at its receipt and delivery point. If the shipper actually tenders the scheduled 50,000 Dth at the receipt point but only takes delivery of 45,000 Dth, section 4(a) would deem 5,000 Dth to have been scheduled for injection into storage. This would allow the shipper to be treated as having taken delivery under its designated transportation service agreement of the same amount as it put onto Columbia Gas' system, i.e., 50,000 Dth, and then injected 5,000 Dth into storage, thus enabling it to avoid any imbalance penalty. The "deemed scheduled" provision would also result in scheduled and actual deliveries being the same, and therefore in this scenario no scheduling penalty would be incurred.

28. However, this would only occur in a situation, such as the above example, where the shipper tendered to the pipeline at the receipt point the same amount it had scheduled at that receipt point. If the shipper tendered to the pipeline an amount that differed from its scheduled receipts, then the "deemed scheduled" provisions of Rate Schedule SIT would not result in scheduled and actual deliveries being equal, and thus the shipper could still incur a scheduling penalty. Using the same example as above, if the shipper tendered only 48,000 Dth to the pipeline instead of the full 50,000 Dth amount of its scheduled receipts, and the shipper took delivery of 45,000 Dth, then section 4(a) would deem the 3,000 Dth difference between actual receipts and deliveries to have been scheduled for injection into storage. This would allow the shipper to be treated as having taken delivery under its designated transportation service agreement of the same amount as it had actually put onto Columbia Gas' system, in this circumstance 48,000 Dth, and then injected 3,000 Dth of that amount into storage, thus enabling it to avoid any imbalance penalty. However, that would still leave a 2,000 Dth variance between the shipper's scheduled deliveries of 50,000 Dth and actual deliveries of 48,000 Dth, and that scheduling variance would be subject to a penalty.

29. Therefore, under the holdings in the May 2009 Order, SIT service continues to be used for the purpose for which it was created in Columbia Gas' Order No. 636 restructuring proceeding -- to assist shippers "with wide swings in daily demand, such as electric power plants," to manage imbalances incurred when the shipper experiences a sudden change in its need for gas during a gas day and it is too late for the shipper to

change its arrangements with its gas supplier and make an intraday nomination to revise its scheduled deliveries.¹⁴ All that the Commission has held is that, when a shipper uses the SIT service for its intended purpose of imbalance management, the amounts which section 4(a) of the SIT rate schedule expressly deems to have been scheduled must also be taken into account in calculating any scheduling variance. Any scheduling variance remaining after taking into account the deemed scheduled amounts is subject to a scheduling penalty.

30. If the deemed scheduled amounts were not taken into account in calculating the scheduling variance, a shipper would automatically incur a scheduling penalty every time it uses the “deemed scheduled” provisions of the SIT service for their intended purpose of imbalance management. For example, if an electric power plant experienced a sudden increase or decrease in its need for gas during the gas day and it was too late to change its scheduled deliveries to reflect this change, the entire amount section 4(a) deemed injected into or withdrawn from storage would incur a scheduling penalty, despite the facts that (1) storage injections or withdrawals were the very service the shipper had contracted to receive from Columbia Gas, (2) section 4(a) expressly deems the relevant amount to have been scheduled compared to actual receipts and deliveries, and (3) the shipper has paid for the service received.

31. Imposing a scheduling penalty in such circumstances would be contrary to the Commission’s policies concerning penalties and imbalance management services adopted in Order No. 637.¹⁵ Those policies are set forth in section 284.12(b)(2)(v) of the Commission’s regulations, providing that transportation penalties may be included in the pipeline’s tariff “only to the extent necessary to prevent the impairment of reliable service,” and in section 284.12(b)(2)(iii), requiring pipelines with imbalance penalties to

¹⁴ 64 FERC ¶ 61,060 at 61,506. *See* Honeywell’s Protest in this proceeding at 4-5; Honeywell’s Comments filed on May 29, 2007 in Docket No. RP07-340-000; Honeywell’s Request for Rehearing in Docket No. RP07-340-003, at 8-9, citing the protest of UGI Utilities, Inc., and UGI Penn Natural Gas, Inc.; and Honeywell’s Request for Rehearing in Docket No. RP07-340-007, at 9.

¹⁵ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,311 (Order No. 637), *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *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*, 350 U.S. App. D.C. 366, 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*, 368 U.S. App. D.C. 176, 428 F.3d 255 (D.C. Cir. 2005).

offer imbalance management services. Use of a service offered in the pipeline's tariff for its intended purpose, as occurs with respect to amounts deemed scheduled under Rate Schedule SIT, cannot be considered to be an action impairing reliable service that should be penalized. If a shipper's use of a service offered in the tariff impairs the pipeline's ability to provide reliable service, then the pipeline should not be offering the service in the first place. Columbia Gas offers the SIT service on an interruptible basis, giving it the flexibility not to offer the service during critical periods when such service could impair its ability to provide reliable service to its firm customers. Therefore, as discussed in more detail below, during the periods when Columbia Gas does offer the service, a shipper's use of that service cannot be considered to impair Columbia Gas' ability to provide reliable service, and therefore such use of the service may not be penalized in any way.

32. Moreover, as Columbia Gas has repeatedly emphasized, its SIT service is an imbalance management service of the type section 284.12(b)(2)(iii) requires pipelines such as Columbia Gas to offer. In Order No. 637, the Commission stated that such services should "facilitate the ability of . . . shippers to manage transportation imbalances," and the Commission "particularly encourages pipelines to design imbalance management services that will give shippers a built-in incentive to use the service, or to otherwise stay in balance."¹⁶ Imposing a scheduling penalty every time a shipper uses an imbalance management service is directly contrary to these policies, because it discourages a shipper from using the very service which the Commission intended shippers should have "a built-in incentive to use."

33. Columbia Gas asserts in its rehearing request that the purpose of imposing a scheduling penalty on amounts deemed scheduled under Rate Schedule SIT is to encourage shippers to schedule accurately, including submitting an intraday nomination to reduce or increase their scheduled deliveries if they experience a sudden decrease or increase in their need for gas during a gas day. However, SIT service is intended to assist shippers whose ability to predict their usage during a gas day is undercut by their wide swings in daily demand, making accurate scheduling difficult. The SIT rate schedule itself gives shippers an incentive to schedule as accurately as possible by requiring shippers to pay Columbia Gas a cost-based rate for their use of the service. This includes paying up to \$0.0412 per Dth for all amounts injected into or withdrawn from storage under the "deemed scheduled" provisions of the SIT rate schedule. Accurate scheduling, including submitting intraday nominations to reflect changes in demand, enables a shipper to avoid using the SIT service and thus not pay the SIT rate.¹⁷ Columbia Gas'

¹⁶ Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,310.

¹⁷ Columbia Gas is mistaken when it asserts that the inability of a shipper to find a buyer for its gas has no bearing on the shipper's ability to submit a revised nomination
(continued...)

effort to further discourage use of the SIT imbalance management service by imposing a penalty over and above the approved cost-based rate for the service every time a shipper uses the service to minimize its imbalances is contrary to the Commission's policy of encouraging the use of imbalance management services.

34. Finally, imposing a penalty every time a shipper uses the "deemed scheduled" provisions of SIT service for their intended purpose constitutes an improper back-door increase in the rates shippers must pay for that service.¹⁸ The current \$0.0412 per Dth maximum daily rate for amounts injected or withdrawn from storage under the SIT rate schedule was established in the settlement of Columbia Gas' last general section 4 rate case.¹⁹ By imposing a scheduling penalty every time a shipper uses the service, Columbia Gas would effectively increase the rates paid by shippers for SIT service during non-critical periods by the \$ 0.19 amount of the non-critical period scheduling penalty, and by even more if Columbia Gas provided SIT service during any critical period. Such a rate increase for an existing Part 284 open access service outside of a general section 4 rate case violates the Commission's Part 284 regulations. Section 284.10(c) of the Commission's regulations requires that the pipeline's cost-of-service be allocated among the pipeline's open access services based on projected units of service. Allocating a part of a pipeline's cost-of-service to one service necessarily entails allocating the relevant costs away from other services, so that the rates for the other services are less than they would otherwise be. This can only be accomplished in a general section 4 rate case, where the pipeline's entire cost-of-service and all its services are before the Commission.²⁰ Moreover, using a penalty to increase the effective rate for

when its demand changes, because the shipper has two intraday nomination cycles in which to adjust its scheduled quantities at the receipt or delivery points. The last opportunity to submit an intraday nomination is at 5:00 p.m. on the gas day, which is sixteen hours before the end of the gas day at 9:00 a.m. the following morning. Therefore, when a shipper experiences a sudden change in demand shortly before 5:00 p.m. or thereafter, it simply is not possible for the shipper to modify its scheduling nomination.

¹⁸ The Commission recognizes that Columbia Gas credits its penalty revenues back to its customers. However, shippers incurring scheduling penalties for their use of SIT service would not receive credits equal to the full amount of the penalties paid, and thus they would effectively experience a rate increase.

¹⁹ *Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,044 (1997).

²⁰ *See Mojave Pipeline Co.*, 79 FERC ¶ 61,347, at 62,480 (1997). The only exception to this requirement is when the pipeline proposes a new open access service in a limited section 4 proceeding between general section 4 rate cases. *Id.*

a service, as Columbia Gas has attempted here, results in a rate that is neither cost-based, nor based on projected units of service.

35. For these reasons, the Commission reaffirms its holding that it is unjust and unreasonable for Columbia Gas to impose scheduling penalties on a shipper with SIT service, when that shipper has complied with all the terms and conditions of the transportation and SIT services it purchased from Columbia Gas.

2. Commission Precedent

36. Columbia Gas next argues that the May 2009 Order is inconsistent with the Commission's orders in Columbia Gas' Order No. 636 restructuring proceeding.²¹ Columbia Gas asserts that, in its restructuring proceeding, the Commission not only approved Columbia Gas' new Rate Schedule SIT but also its proposal to implement a daily scheduling penalty which Columbia Gas later withdrew. Columbia Gas states that the Commission did not require that Rate Schedule SIT be exempted from the scheduling penalties, even though the Commission recognized that SIT service was designed as a balancing service for customers with wide swings in daily demand. By contrast, Columbia Gas contends that the Commission expressly exempted no-notice services from the proposed scheduling penalty²² and distinguished Rate Schedule SIT from no-notice service.²³

37. Columbia Gas also asserts that, on rehearing of the Commission's first order in the restructuring proceeding approving both Rate Schedule SIT and the scheduling penalty, shippers argued that Rate Schedule SIT should have a tolerance level equal to the tolerance levels for the proposed scheduling penalty. Columbia Gas further asserts that the Commission rejected these arguments and recognized that Rate Schedule SIT was designed to manage imbalances and had nothing to do with scheduling penalties, holding that the "penalty provisions in Section 19.1 of the General Terms and Conditions relate to

²¹ Citing 64 FERC ¶ 61,060, 64 FERC ¶ 61,365, and 65 FERC ¶ 61,344.

²² Citing 64 FERC ¶ 61,060 at 61,541. Columbia Gas contends that under the traditional rules of interpretation, the inclusion of one is the exclusion of the other, and, therefore, the fact that the Commission only exempted no-notice services from scheduling penalties indicates that scheduling under all other services, including the deemed injections and withdrawals under SIT, would be subject to the scheduling penalties, citing *Glickstein v. United States*, 32 S. Ct. 71 (1911); *Transcontinental Gas Pipe Line Corp.*, 115 FERC ¶ 61,268, at P 26 (2006).

²³ Citing 64 FERC ¶ 61,060 at 61,510.

scheduling penalties and have no applicability to imbalances.”²⁴ Columbia Gas further argues that, later in the Order No. 636 restructuring proceeding, it proposed to eliminate the scheduling penalty and increase the imbalance penalty. Columbia Gas contends that the Commission rejected Columbia Gas’ proposal, holding that “[t]he purpose of scheduling penalties is entirely different from the purpose of balancing penalties. Scheduling penalties apply to the difference between scheduled amounts and [actual] amounts . . . while imbalance penalties apply to the difference between amounts actually put into the system and amounts [actually] taken out of the system.”²⁵

38. Columbia Gas argues that the Commission’s holdings in the Order No. 636 proceedings were consistent and clear that physical imbalances are different from scheduling variances, and Rate Schedule SIT was only designed to assist shippers with managing physical imbalances, without any impact on the application of scheduling penalties to the shipper’s scheduling of the transportation service agreement underlying or associated with the SIT service.

Commission Ruling

39. Columbia Gas mischaracterizes the Commission’s rulings in Columbia Gas’ Order No. 636 restructuring proceeding. Columbia Gas erroneously states that the Commission approved Columbia Gas’ proposed scheduling penalty in the Order No. 636 restructuring proceeding. The Commission did not. Columbia Gas’ proposed scheduling penalty, similar to the scheduling penalty at issue here, would have applied to the difference between scheduled deliveries and actual deliveries off of Columbia Gas’ system. The Commission required Columbia Gas to modify its proposed scheduling penalty so that it would apply to the difference between scheduled receipts on to Columbia Gas’ system and actual receipts.²⁶ Columbia Gas removed its proposed scheduling penalty, rather than comply with the Commission’s directive.²⁷

40. The orders in Columbia Gas’ Order No. 636 restructuring proceeding did not expressly address the issue before us in this proceeding: how amounts deemed scheduled for injection or withdrawal under Rate Schedule SIT should be treated for purposes of calculating any scheduling penalty incurred by a shipper with SIT service. However, those orders had the same practical effect as our orders in the instant proceeding. The

²⁴ *Citing* 64 FERC ¶ 61,365 at 63,504.

²⁵ *Citing* 65 FERC ¶ 61,344 at 62,744.

²⁶ 64 FERC ¶ 61,060 at 61,540; 64 FERC ¶ 61,365 at 63,550.

²⁷ 65 FERC ¶ 61,344 at 62,744.

requirement in the Order No. 636 restructuring proceeding that Columbia Gas apply its scheduling penalty at the receipt point, rather than the delivery point, meant that Columbia Gas could only penalize differences between the amount a shipper with SIT service scheduled to tender to Columbia Gas at its receipt point and the amount the shipper actually tendered at that point. The orders in Columbia Gas' restructuring proceeding did not permit Columbia Gas to do what it seeks to do in this proceeding: impose a scheduling penalty if a shipper puts the scheduled amount onto the system, but takes more or less gas off the system than it scheduled at the delivery point because of a sudden change in demand. In that situation, the only scheduling variance is at the delivery point, where the orders in Columbia Gas' Order No. 636 restructuring proceeding did not permit it to impose a penalty.

41. As illustrated by the example discussed in the preceding section, this is the same end result as we have reached here. Our orders in the instant proceeding permit Columbia Gas to impose a scheduling penalty whenever the shipper puts a different amount on the system than it scheduled at the receipt point, just as the orders in Columbia Gas' restructuring proceeding permitted. Our requirement that the "deemed scheduled" amounts be included in the calculation of the difference between the amounts scheduled to be delivered and the amounts actually delivered only results in no penalty where the shipper puts the scheduled amount onto the system but takes more or less off the system because of a sudden change in demand. The orders in Columbia Gas' restructuring proceeding similarly did not permit a scheduling penalty in that situation.

42. Columbia Gas also emphasizes that the Commission's orders in its Order No. 636 restructuring proceeding expressly held that Columbia Gas' no-notice services must be exempted from the scheduling penalties, but the Commission made no similar finding with respect to SIT service.²⁸ Columbia Gas suggests that this fact indicates that scheduling under all other services, including the deemed injections and withdrawals under Rate Schedule SIT would be subject to the scheduling penalties. However, as already discussed, in the instant case the Commission has not exempted shippers with SIT service from scheduling penalties, and thus has not treated SIT service as a no-notice service. The Commission has only held that, for purposes of applying the delivery point scheduling penalty to shippers with SIT service, the "deemed scheduled" amounts must be included in the calculation of the scheduling variance subject to the penalty, with the result that the penalty is imposed in essentially the same circumstances as the penalty approved in the Order No. 636 restructuring proceeding would have been imposed.

43. The remaining statements in the orders on Columbia Gas' Order No. 636 restructuring proceeding relied on by Columbia Gas provide no greater support to its

²⁸ 64 FERC ¶ 61,060 at 61,541.

position in this proceeding. In rejecting contentions that Rate Schedule SIT should include a tolerance level similar to that for scheduling penalties below which shippers would not be charged for amounts deemed injected or withdrawn, the Commission held that the proposed tolerance levels “relate to scheduling penalties and have no applicability to imbalances.”²⁹ The Commission then explained that SIT service is not a penalty but a service intended to cover short term imbalances arising on a daily basis, and therefore shippers should pay the SIT rate for all amounts injected into and withdrawn from service under that rate schedule. The Commission has not found anything to the contrary in this proceeding. Shippers with SIT service will continue to have to pay up to the \$0.0412 per Dth maximum daily SIT rate for all injections or withdrawals under that rate schedule, without any tolerance level.

44. Finally, when Columbia Gas withdrew its scheduling penalty proposal in its Order No. 636 restructuring proceeding, Columbia Gas sought to increase its imbalance penalty from \$0.25 to \$0.50. The Commission held that the withdrawal of the scheduling penalty did not justify an increase in the imbalance penalty, stating “the purpose of scheduling penalties is entirely different from the purpose of balancing penalties. Scheduling penalties apply to the difference between scheduled amounts and amounts actually put onto the system, while imbalance penalties apply to the difference between amounts actually put into the system and amounts taken out of the system.”³⁰ This statement simply explained why removal of a scheduling penalty provided no basis to increase an imbalance penalty. As we have already explained above, our orders in this proceeding recognize the difference between imbalance and scheduling penalties and simply hold that, when quantifying the difference between the amounts scheduled to be delivered and the amounts actually delivered in order to determine whether a scheduling penalty should be imposed, the scheduled and actual amounts should include the storage injection quantities which section 4(a) deems to have been scheduled in order to equalize actual receipts and deliveries.

3. Relationship to No-Notice Service

45. Columbia Gas and Washington Gas argue that the May 2009 Order has drastically modified the operation of Rate Schedule SIT, turning it into an essentially *de facto* no-notice service that undermines its actual no-notice services, for which other shippers pay a premium. Columbia Gas asserts that the May 2009 Order permits shippers to use Rate Schedule SIT to avoid both imbalance and scheduling penalties, and, therefore, under the

²⁹ 64 FERC ¶ 61,365 at 63,504.

³⁰ 65 FERC ¶ 61,344 at 62,744.

Commission's own definition,³¹ Rate Schedule SIT will be a *de facto* no-notice service. Washington Gas argues that this determination unduly discriminates in favor of SIT shippers. Columbia Gas asserts that the Commission has recognized that the "only purpose" of Rate Schedule SIT "is to provide shippers a method of managing imbalances resulting from differences in actual receipts and deliveries under other transportation agreements with Columbia Gas."³² Columbia Gas further asserts that the Commission has also recognized that "scheduling variances do not result in any imbalance to be addressed by an imbalance management service."³³ Columbia Gas contends that if Rate Schedule SIT can be used to manage scheduling variances, then it is no longer the imbalance management service Columbia Gas designed it to be.

46. Columbia Gas asserts that the May 2009 Order thus degrades its existing no-notice services, for which other shippers pay a premium. Columbia Gas contends that it has no economic incentive to impose scheduling penalties. Columbia Gas further contends that, under the Commission's position, SIT shippers would avoid a 19 cent penalty through SIT service that only costs 4 cents distorting the value of the service existing shippers receive under Columbia Gas' actual no-notice services and sending improper signals to the market, contrary to Commission policy. Columbia Gas argues that the Commission failed to address the argument in its August 29 Compliance Filing that Rate Schedule SIT was never intended to and does not create a form of no-notice service that insulates transportation shippers from scheduling variance penalties³⁴ or provide justification for turning Rate Schedule SIT into a premium no-notice service. Columbia Gas further argues that, for over fifteen years, the Commission has repeatedly confirmed that Rate Schedule SIT does not, nor should it, provide shippers the same benefits as, a no-notice service³⁵ and does not adequately explain this departure from long-standing precedent.

Commission Ruling

47. Columbia Gas and Washington Gas are in error. As the Commission stated in Order No. 720, "firm shippers that receive no-notice service can receive delivery of gas on demand up to their firm entitlements on a daily basis without incurring daily balancing

³¹ *Citing Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, Order No. 720, FERC Stats. & Regs. ¶ 31,283, at P 161 (2008) (Order No. 720).

³² *Citing July 2008 SIT Order*, 124 FERC ¶ 61,123, at P 16.

³³ *Citing July 2008 Scheduling Penalty Order*, 124 FERC ¶ 61,122, at P 12 (2008).

³⁴ *Citing August 29 Compliance Filing*, at 4-5.

³⁵ *Citing 64 FERC ¶ 61,365*, at 63,504.

and scheduling penalties.”³⁶ By contrast, SIT service is interruptible, and thus shippers with SIT service do not have a guaranteed right to take delivery of gas on demand up to their firm entitlements. It was for this reason that the Commission held in Columbia Gas’ Order No. 636 restructuring proceeding that SIT service is not a no-notice service, explaining, “SIT is not a firm service and has a very low priority. NTS and SIT differ sufficiently to be treated differently.”³⁷ Nothing in our orders in this proceeding changes the fact that the SIT service is an interruptible service with a very low priority, unlike firm no-notice service. Thus, while shippers with firm no-notice service have a guaranteed right to use that service up to their firm entitlements even during critical periods, shippers with SIT service do not have such a right, and they most likely will not be able to use that service to avoid either imbalance or scheduling penalties during critical periods.³⁸

48. Furthermore, while the Commission has completely exempted no-notice service from scheduling penalties, the Commission has not exempted SIT service from such penalties even during periods when the service is available. Thus, a no-notice shipper can tender more or less gas to Columbia Gas at its receipt point without incurring a scheduling penalty. However, a shipper with SIT service would incur a scheduling penalty if it tendered a different amount to Columbia Gas at a receipt point than it had scheduled. It is thus clear that the May 2009 Order has not turned SIT service into a *de facto* no-notice service.

49. Moreover, given the fact that SIT service continues to be interruptible, the May 2009 Order in no way degrades the higher priority, firm no-notice service. Columbia Gas complains that the May 2009 Order allows shippers with SIT service to avoid the 19 cent scheduling penalty by paying only 4 cents for the amounts injected or withdrawn from

³⁶ Order No. 720, FERC Stats. & Regs. ¶ 31,283 at P 161.

³⁷ 64 FERC ¶ 61,060, at 61,510.

³⁸ Pursuant to section 16 of Columbia Gas’ GT&C, if due to force majeure, other unforeseen conditions on its system, or operating conditions (such as, but not limited to, performing routine maintenance, making modifications, tests or repairs to the pipeline system or protection of the integrity and performance capability of storage and transmission facilities), the gas available for delivery from the system or portion thereof is temporarily insufficient to meet all of the authorized firm services on any day, then Columbia Gas shall interrupt all such services in accordance with the priorities set forth at section 16.4. Section 16.4 provides that Rate Schedule NTS has priority over SIT injections and withdrawals. Section 7 of Columbia Gas’ GT&C provides a scheduling priority for NTS service and firm services over interruptible services.

storage under that service, and that this would distort the value of the service existing shippers receive under Columbia Gas' no-notice services. As the Commission stated in the May 2009 Order, if Columbia Gas believes that its existing rates for SIT service are unreasonably low because too few of its costs have been allocated to that service, it may file a general section 4 rate case proposing to allocate appropriate costs to that service.³⁹ However, having agreed in Rate Schedule SIT that it will deem scheduled the storage injections or withdrawals necessary to put a shipper in balance at a rate of 4 cents per Dth, Columbia Gas may not impose a penalty on the shipper for failing to schedule the very amounts that Rate Schedule SIT deems to have been scheduled.

50. Finally, Columbia Gas points out that, in the July 2008 SIT Order, the Commission stated that the "only purpose" of SIT service "is to provide shippers a method of managing imbalances resulting from differences in actual receipts and deliveries under other transportation agreements with Columbia Gas,"⁴⁰ and that in the contemporaneous July 2008 Scheduling Penalty Order the Commission stated "scheduling variances do not result in any imbalance to be addressed by an imbalance management service."⁴¹ Columbia Gas argues that, if Rate Schedule SIT can be used to manage scheduling variances, then it is no longer the imbalance management service that Columbia Gas designed it to be. However, Columbia Gas designed Rate Schedule SIT to manage imbalances by deeming that the necessary storage injections and withdrawals be scheduled in order to eliminate the imbalance. By rejecting Columbia Gas' proposal to impose scheduling penalties on the amounts Rate Schedule SIT deems scheduled for the purpose of managing such imbalances, the Commission is maintaining the current design of the SIT service so that shippers can continue to manage imbalances in the same manner as Rate Schedule SIT has authorized since it was first implemented. It is Columbia Gas that seeks to fundamentally alter the design of the service by penalizing shippers for making use of the "deemed scheduled" provisions of the service in order to manage their imbalances resulting from the difference between actual receipts and deliveries.

51. The July 2008 SIT Order's statement concerning the purpose of the SIT service, relied on by Columbia Gas, was made in the context of rejecting protests to Columbia Gas' proposal to prohibit shippers from submitting scheduling nominations for SIT service that would increase their imbalances. Nothing in the May 2009 Order or this order alters that finding. We continue to find that the only purpose of SIT service is to

³⁹ May 2009 Order, 127 FERC ¶ 61,149 at P 29.

⁴⁰ July 2008 SIT Order, 124 FERC ¶ 61,123 at P 16.

⁴¹ July 2008 Scheduling Penalty Order, 124 FERC ¶ 61,122 at P 12.

provide shippers with a method for managing imbalances. All that we have held in the May 2009 Order and this order is that Columbia Gas may not impose scheduling penalties on shippers when they use the “deemed scheduled” provisions SIT service for the intended purpose of managing imbalances between actual receipts and deliveries.⁴²

4. Operational Considerations

52. Columbia Gas argues that the May 2009 Order ignores Columbia Gas’ need for accurate scheduling to manage its system. Columbia Gas asserts the May 2009 Order directly contradicts the orders approving its scheduling penalties where the Commission held it is not necessary for Columbia Gas to show actual operational harm or the impairment of reliable service. Columbia Gas and Washington Gas assert that shippers must be required to provide Columbia Gas with notice of physical imbalances through accurate scheduling so that Columbia Gas can properly manage its system. Columbia Gas asserts that the Commission has recognized that scheduling variances can have a significant impact on pipeline operations on Critical Days. Columbia Gas and Washington Gas argue that scheduling variances can also have a significant impact on the availability of secondary firm and interruptible transportation on non-Critical Days. Columbia Gas contends that, although Rate Schedule SIT is interruptible, once a shipper’s gas has been injected into storage under Rate Schedule SIT, it cannot force the removal of those quantities without issuing an Operational Flow Order (OFO). Columbia Gas further contends that the OFO would only have limited effect, since it is difficult to clear SIT Imbalance Quantities quickly. Washington Gas argues that Columbia Gas may have to curtail other services or issue OFOs. Columbia Gas asserts that the Commission also suggests that determining whether SIT service will be available on a particular day necessarily involves an evaluation of whether Columbia Gas’ system is capable of accommodating transportation scheduling variances obligation to schedule accurately while SIT service is an imbalance management service not a scheduling management service.

Commission Ruling

53. The Commission rejects these contentions. Columbia Gas claims that the “essential element” the May 2009 Order ignored is “the fact that under Rate Schedule SIT, shippers are still required to provide Columbia [Gas]with notice of physical

⁴² In our contemporaneous order on rehearing of the July 2008 Scheduling Penalty Order, the Commission found that section 284.12(b)(2)(iii) of the Commission’s Regulations also requires pipelines 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.

imbalances through accurate scheduling.”⁴³ However, Columbia Gas cites no provision of Rate Schedule SIT that requires such accurate scheduling. In fact, section 4(a) of that rate schedule provides that scheduling of SIT service will be “deemed to occur” whenever a shipper with SIT service has scheduled service under a transportation rate schedule and its actual receipts do not equal its actual deliveries thus creating an imbalance. It follows from this provision that Rate Schedule SIT does not require shippers to submit an actual scheduling nomination to provide Columbia Gas notice that it will incur a physical imbalance. Otherwise, there would be no reason for the provision deeming such scheduling to occur. In fact, as discussed previously, when a shipper is able to schedule its deliveries accurately, either in its original scheduling nomination for the gas day or in a subsequent intraday scheduling nomination modifying the original scheduling nomination, it does not incur any imbalance, and thus does not use the SIT service at all. In short, Columbia Gas’ contention that Rate Schedule SIT requires shippers to schedule accurately amounts to a contention that shippers should never use the “deemed scheduled” provisions of Rate Schedule SIT, despite paying for that service.

54. Since Columbia Gas’ restructuring under Order No. 636, Rate Schedule SIT service has been made available by Columbia Gas as an interruptible service under which deemed scheduled quantities are injected into storage rather than delivered to the shipper. As the Commission found in the May 2009 Order, “the very fact that Columbia Gas established the SIT service in its Order No. 636 restructuring proceeding, and has offered it ever since without evidence of operational harm to its system, shows that Columbia Gas has no operational need for the scheduling penalties as there is no potential operational harm to be deterred or punished.”⁴⁴ Columbia Gas contends that the Commission’s reliance on this fact is inconsistent with its statement in the June 2007 Scheduling Penalty Order that “it is not necessary for Columbia Gas to show actual operational harm or the impairment of reliable service in order for the proposed scheduling penalties to be approved. . . The Commission has found that it is not necessary for pipelines to demonstrate actual harm, and it is entirely appropriate to anticipate problems and take action to forestall them prior to such problems occurring.”⁴⁵

55. That statement only addressed the general evidentiary standard a pipeline must satisfy in order to implement scheduling penalties with respect to its non-no-notice services. Rate Schedule SIT, unlike Columbia Gas’ other non-no-notice services, contains a provision that expressly deems certain amounts to be scheduled, without the

⁴³ Columbia Gas’ Rehearing Request, at 12.

⁴⁴ May 2009 Order, 127 FERC ¶ 61,149 at P 28.

⁴⁵ June 2007 Scheduling Penalty Order, 119 FERC ¶ 61,267 at P 27.

need for a shipper purchasing that service to actively schedule those amounts. Columbia Gas' decision in its Order No. 636 restructuring proceeding to offer this service necessarily included a determination that it could offer the service without operational harm or the impairment of reliable service. With Columbia Gas having previously determined that it could offer the SIT service without requiring active scheduling, it is reasonable to expect that, when it subsequently proposes to impose penalties on a shipper's use of that service, Columbia Gas show some evidence that the service has, in fact, caused operational problems. Columbia Gas has not done so.

56. While Columbia Gas argues that there is an operational problem since an OFO is necessary to remove the deemed scheduled quantities, under SIT service these quantities would be injected into storage in any case. Rate Schedule SIT is an interruptible service and is only available if Columbia Gas has determined on any particular gas day that SIT service is operationally feasible. Therefore, the deemed scheduled quantities are only injected into storage when Columbia Gas determines to make SIT service available with the knowledge that the resulting storage volumes can only be removed when an OFO is issued. While the Commission did state in the May 2009 Order that evaluation of whether Columbia Gas' system is capable of accommodating transportation scheduling variances was a necessary factor to be considered in its evaluation of the operational feasibility of SIT service on any particular gas day, it did not intend to suggest this was the only factor to be considered. In fact, the Commission also specified that among the other necessary determinations would be whether Columbia Gas' system is operationally able to accommodate the physical imbalances that result in the injections into and withdrawals from storage.

57. For all of the above reasons, the Commission denies the requests for rehearing of both Columbia Gas and Washington Gas.

B. Allegheny's Request for Clarification or Rehearing

58. Allegheny asserts that the Commission's statement that "as noted in the July 31 Order, allowing volumes deemed scheduled under Rate Schedule SIT service to be reflected in the determination of whether scheduling penalties apply does not absolutely preclude scheduling penalties; it might only act to reduce any such penalty *in certain circumstances*"⁴⁶ is vague and subject to misinterpretation. Allegheny recognizes that the Commission did find that where actual receipts differ from scheduled receipts the scheduling penalty may not be eliminated entirely. However, Allegheny requests that the Commission clarify that, to the extent "deemed scheduled" quantities under Rate

⁴⁶ May 2009 Order, 127 FERC ¶ 61,149, at P 30 (emphasis added).

Schedule SIT have the effect of matching scheduled with actual deliveries, no other circumstance exists that would nevertheless cause or allow transportation scheduling penalties to be imposed.

59. Allegheny sets forth an example (at 8-9), as follows:

First, assume that under a transportation service agreement it has designated as subject to SIT service, Allegheny schedules for receipt and delivery, and actually receives, 10,000 Dth in a given gas day for one of its generation facilities in PJM. Assume further that PJM dispatches the facility for a period less than anticipated and, as a result, only 6,000 Dth is actually delivered to the facility, with the remaining 4,000 Dth injected into storage via Allegheny's SIT service. Under Section 4(a) and the May 21, 2009 Order, this remaining 4,000 Dth would be deemed scheduled and would count toward Allegheny's actual deliveries for such gas day. In this example, Allegheny's scheduled delivery amount of 10,000 Dth would be deemed to equal its actual delivery amount (6,000 Dth actually delivered + 4,000 Dth deemed scheduled) and no transportation scheduling penalty would result.

Allegheny is concerned that Columbia Gas may take the position that the May 2009 Order does not require Columbia Gas to apply the 4,000 Dth that was deemed scheduled to storage in order to reduce the otherwise applicable scheduling penalties and seeks clarification that its understanding is correct.

60. Allegheny presents another example (at 9), as follows:

Second, assume the reverse of the first example, *i.e.*, 10,000 Dth are scheduled for delivery, but PJM dispatches the facility for a period longer than expected, and the facility actually burns 14,000 Dth. In this example, 10,000 Dth are scheduled and delivered to the delivery point pursuant to Allegheny Energy's transportation service agreement, and the additional 4,000 Dth are deemed withdrawn from storage under Allegheny Energy's SIT service.

Allegheny seeks further clarification that, under this example, 14,000 Dth would be deemed scheduled for delivery and actually delivered, and no transportation scheduling penalties would be incurred.

61. In the alternative, Allegheny requests rehearing to the extent that the Commission does not agree with either of the above two examples, and there may be "circumstances" other than the example of actual and scheduled receipts not matching, in which quantities

deemed scheduled under section 4(a) of Rate Schedule SIT would not be taken into account for purposes of reducing or eliminating scheduling penalties.

Commission Ruling

62. The Commission intended that, in the circumstances presented in the first example, the deemed scheduled quantities injected into storage should be included in the calculation of the scheduling penalties as deliveries. As Allegheny notes, when scheduled receipts and amounts actually received by Columbia Gas are not equal to the deemed quantities injected into storage may not eliminate the scheduling penalties, as explained (at P 51) in the July 2008 SIT Order. Therefore, the request for clarification with respect to Allegheny's first example is granted.

63. By contrast, the Commission held in the May 2009 Order (at n.13) that the deemed scheduled amounts withdrawn from storage, as in the second example, should not be included in the calculation of scheduling penalties, and thus the shipper would incur a scheduling penalty on the full amount of the deemed scheduled storage withdrawal. The Commission stated that such storage withdrawals are receipts under the shipper's transportation agreement and are not relevant to the calculation of variances between scheduled and actual deliveries at transportation delivery points. Therefore, the Commission cannot grant the Allegheny's request for clarification with respect to its second example.

64. However, the Commission will grant Allegheny's alternative request for rehearing. Upon further consideration, the Commission has determined that overtakes of gas by a shipper with SIT service should be treated in the same manner as undertakes for purposes of scheduling penalties. In holding that amounts deemed withdrawn from storage under Rate Schedule SIT constitute receipts and thus are not relevant scheduling variances at the delivery point, the May 2009 Order took too narrow a view of what section 4(a) of Rate Schedule SIT deems to be scheduled. That section, as revised in this proceeding, provides that "scheduling of *service* under this Rate Schedule shall be deemed to occur when Shipper schedules service under any Transportation Service agreements that it has designated as subject to this SIT Rate Schedule and the actual receipt quantities do not equal the actual delivery quantities [emphasis added]." Since the purpose of Rate Schedule SIT service is to cure imbalances under the shipper's transportation service agreement, the "service" deemed scheduled by section 4(a) must include the entire transaction necessary to cure the shipper's imbalance. When the shipper takes more gas from the system at the delivery point than it put on the system at the receipt point, the "service" deemed scheduled is not just the withdrawal from storage but the delivery of that amount to the shipper.

65. The Commission's fundamental holding in this proceeding is that imposing scheduling penalties on a shipper with SIT service, when that shipper has complied with all the terms and conditions of the SIT services it purchased from Columbia Gas, is unjust

and unreasonable. That is as true when a shipper takes more gas off the system than it put on the system as in the reverse situation. In both situations, Rate Schedule SIT provides for SIT service to be deemed scheduled as necessary so that the shipper will not incur an imbalance. Therefore, Rate Schedule SIT does not require active scheduling in the overtake situation, any more than in the undertake situation. Thus, all our reasoning in the preceding section denying the requests for rehearing by Columbia Gas and Washington Gas applies equally to overtakes and undertakes. Accordingly, Columbia Gas will be directed, within thirty days of the date of this order, to file revised tariff sections to include quantities withdrawn from storage pursuant to section 4(a) of the SIT Rate Schedule in the determination of transportation scheduling penalties, consistent with the discussion above.

The Commission orders:

(A) The requests for rehearing of Columbia Gas and Washington Gas are denied, as discussed in the body of this order.

(B) The request for clarification or rehearing by Allegheny is granted, in part, and denied, in part, as discussed in the body of this order.

(C) Columbia Gas is directed, within thirty days of the date of this order, to file revised tariff sections to include quantities withdrawn from storage pursuant to section 4(a) of the SIT Rate Schedule in the determination of transportation scheduling penalties, consistent with the discussion above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.