124 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Norstar Operating LLC v. Columbia Gas Transmission Corporation	Docket Nos.	RP06-231-005 RP06-231-006 RP06-365-003
Columbia Gas Transmission Corporation		RP06-365-004

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued July 17, 2008)

1. On March 24, 2008, Columbia Gas Transmission Corporation (Columbia) filed tariff sheets[1] in Docket Nos. RP06-231-006 and RP06-365-004 (March 2008 compliance filing or compliance filing), to comply with the Commission's February 21, 2008 *Order on Rehearing and Compliance Filing*,[2] which related to natural gas standards on Columbia's system. The February 2008 Order denied requests for rehearing of the Commission's March 16, 2007 order on technical conference in this proceeding,[3] granted partial clarification sought by one party and accepted Columbia's tendered tariff sheets subject to certain modifications. Several parties requested rehearing or clarification of the February 2008 Order and filed comments or protests to the March 2008 compliance filing. This order grants clarification in part, denies rehearing, and accepts the tariff sheets listed in footnote 1, subject to conditions, effective June 1, 2007, as discussed herein.

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[1] Substitute Fifth Revised Sheet No. 406, Substitute Fourth Revised Sheet No. 407 and Substitute First Revised Sheet No. 408 to Columbia's FERC Gas Tariff, Second Revised Volume No. 1. Columbia proposed a June 1, 2007 effective date.

[2] *Norstar Operating LLC v. Columbia Gas Transmission Corporation and Columbia Gas Transmission Corporation*, 122 FERC¶ 61,163 (2008) (February 2008 Order).

[3] *Norstar Operating LLC v. Columbia Gas Transmission Corporation and Columbia Gas Transmission Corporation*, 118 FERC ¶61,221 (March 2007 Order).

I. Background

2. On April 21, 2006, the Commission issued an order[4] in Docket No. RP06-231-000 denying Norstar's February 22, 2006 complaint with respect to Columbia's refusal to accept Norstar's deliveries of gas because the nitrogen content exceeded the limit in Columbia's meter set agreements (MSAs). The April 2006 Order denied the complaint and initiated a Natural Gas Act (NGA) section 5 proceeding requiring Columbia to revise section 25.5(e) of the General Terms and Conditions of its tariff (GT&C)[5], pertaining to gas quality standards.

3. On May 22, 2006, Columbia filed a revised tariff sheet in Docket No. RP06-231-002 revising section 25.5(e) of its tariff to comply with the Commission's April 2006 Order. Columbia also filed on May 22, 2006 revised tariff sheets in Docket No. RP06-365-000, incorporating into its tariff most of the gas quality specifications found in its MSAs. On June 21, 2006, the Commission issued an order[6] accepting and suspending the tariff sheets filed in Docket No. RP06-365-000, to be effective no earlier than November 22, 2006, and establishing a technical conference to address the issues presented in both filings. The June 2006 Order also deferred consideration of Columbia's compliance filing in Docket No. RP06-231-002 pending further consideration following the technical conference.

4. On March 16, 2007, the Commission issued the March 2007 Order that accepted in part and rejected in part Columbia's gas quality and interchangeability proposals. That order required Columbia to modify (1) its gas quality proposals concerning its Appalachian exception to the proposed Wobbe Index and maximum heating value limits for Appalachian Gas, (2) its delivery standards provision, and (3) section 25.5(e) of its tariff relating to Columbia's rights and obligations with respect to non-conforming gas received by Columbia. Columbia made a tariff filing to comply with the March 2007 Order on April 16, 2007 (April 2007 compliance filing).[7]

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[4] *Norstar Operating LLC v. Columbia Gas Transmission Corporation*, 115 FERC ¶ 61,094 (2006) (April 2006 Order).

[5] Unless otherwise noted all references herein to sections of Columbia's tariff are to the GT&C.

[6] *Norstar Operating LLC v. Columbia Gas Transmission Corporation*, 115 FERC ¶ 61,351 (2006) (June 2006 Order).

[7] Docket Nos. RP06-231-003 and RP06-365-001.

5. Several parties sought rehearing or clarification of the March 2007 Order and filed comments or protests to Columbia's April 2007 compliance filing.

6. In the February 2008 Order, the Commission denied the requests for rehearing, clarified that Columbia could not grant a waiver of its receipt point gas quality standards under section 25.9 its tariff[8] if such waiver would result in Columbia not meeting its delivery specifications, and directed Columbia to make a compliance filing to modify certain of its tariff provisions consistent with the Commission's discussion in the order. Specifically, the Commission directed Columbia to: (1) further revise and refine its definition of the area to which the Appalachian exception applies; (2) eliminate section 25.6 of its tariff and make certain specifications in section 25.5 of the tariff applicable to deliveries by Columbia, including retaining merchantability language; and (3) revise section 25.8 of its tariff to refer to only section 25 so as to permit waiver of Columbia's minimum British Thermal Unit (Btu) requirement. The February 2008 Order also conditionally accepted the proposed compliance tariff sheets effective June 1, 2007, as motioned into effect by Columbia.

7. On March 24, 2008, Columbia submitted a filing to comply with the February 2008 Order. The March 2008 compliance filing proposed tariff revisions that (1) modified the quality standards for gas delivered by Columbia; (2) redefined the Appalachian exception; and (3) revised Section 25.8 of its tariff to refer to section 25 instead of section 25.5.

8. Columbia, Chesapeake Appalachia, LLC (Chesapeake), the Ohio Oil and Gas Association (OOGA), and the Independent Petroleum Association of America (IPPA) filed requests for clarification or rehearing of the February 2008 Order. The Independent Oil &Gas Association of West Virginia (IOGA) filed a request for rehearing.

II. Public Notice, Interventions, Comments, Protests and Responses

9. Public notice of Columbia's March 2008 compliance filing was issued on March 25, 2008. Protests were due April 7, 2008.

[8] Section 25.9 provides that Columbia may accept non-conforming gas so long as such acceptance will not interfere with Columbia's ability to (1) maintain an acceptable gas quality through prudent and safe operation of its system; (2) ensure that acceptance of such gas does not interfere with Columbia's ability to provide service to its customers in accordance with the applicable rate schedule and its tariff; and (3) ensure that such gas does not adversely affect Columbia's ability to deliver gas at its delivery points.

10. Chesapeake, OOGA, IOGA and Baltimore Gas and Electric Company (BG&E) filed comments on the March 2008 compliance filing. Norstar Operating LLC (Norstar) and Washington Gas Light (WGL) filed protests to the compliance filing and Orange and Rockland Utilities (O&R) filed a reply to Columbia's request for clarification and rehearing and a protest to the compliance filing. On April 14, Columbia filed a motion for leave to answer and an answer to the protests and comments on the compliance filing. On April 22, National Fuel Distribution Corporation (Distribution) filed a reply to Columbia's April 14 answer, and on April 29, Consolidated Edison of New York Company (Con Ed) and O&R filed an answer to Columbia's April 14 answer. On May 9, Columbia filed a further answer to Con Ed's and O&R's answer.

11. Under Rule 213(a)(2) of the Commission's rules of Practice and Procedure, 18 C.F.R. § 385.12 (2008), answers to protests and replies to answers are not accepted unless otherwise ordered by the decisional authority. The Commission will accept the answers and replies filed in this proceeding because they provided information that assisted us in our decision-making process.

III. Discussion

12. For the reasons stated below, the Commission grants clarification in part and denies rehearing. The Commission also accepts Columbia's compliance filing subject to modification.

A. Deliverability and Merchantability

13. Prior to the initiation of this proceeding, section 25.5 of Columbia's tariff contained six gas quality standards that applied to both receipts and deliveries. Those standards were that (1) gas received and delivered shall be commercially free from particulates or other solid matter that might interfere with its merchantability or cause injury to or interference with the proper operation of the lines, regulators, meters and other equipment of Columbia; (2) gas received and delivered shall not contain more than 0.25 grains of hydrogen sulfide per 100 cubic feet of gas; (3) gas received and delivered shall not contain more than twenty grains of sulfur per 100 cubic feet (4) when odorized gas is delivered the quality and specifications of the gas shall be determined prior to the addition of the malodorant, with allowances for changes to the malodorant; (5) Columbia may refuse to accept gas or may impose additional gas quality specifications to limit elements or compounds that may interfere with, among other things, the merchantability of the gas; and (6) Columbia may impose restrictions on the temperature of the flowing gas or on the Utilization Factor of the gas if it

determines that they are necessary, among other things, to insure the merchantability of the delivered gas.[9]

14. In Columbia's initial filing in Docket No. RP06-365-000, Columbia sought to incorporate into its tariff the long standing gas quality specifications from its MSAs that applied to receipts on its system, and to limit the applicability of section 25.5 of its tariff to receipts. Columbia also proposed a separate section 25.6 to its tariff to apply to deliveries. That section also included new merchantability language. In the March 2007 Order, the Commission accepted many of the receipt point specifications proposed by Columbia, rejected its section 25.6 delivery standards proposal, and directed Columbia to retain the existing provisions of section 25.5 relating to gas delivered by the pipeline subject to the exception that Columbia make the revised sulfur specification approved in that order applicable to deliveries as well. The Commission also directed Columbia to retain its existing merchantability language and make it applicable to deliveries by the pipeline.

15. In its April 2007 compliance filing, Columbia reverted to its originally filed language on merchantability in section 25.6, kept section 25.5 applicable to receipts only and added new language to section 25.6 to apply to deliveries only. The Commission determined in the February 2008 Order that Columbia had not complied with the directives of the March 2007 Order with regard to delivery standards and merchantability. The Commission explained that the March 2007 Order required Columbia to eliminate section 25.6 and to retain the existing provisions of section 25.5 applicable to deliveries. The Commission thus ordered Columbia to "fully comply with the March 16 Order by eliminating section 25.6 and reinstating the language that makes section 25.5 applicable to deliveries by the pipeline" including the merchantability language.[10]

16. In its March 2008 compliance filing, Columbia included tariff revisions retaining its existing tariff language addressing merchantability, hydrogen sulfide, and total sulfur for both receipts and deliveries of gas.[11] Columbia also added language providing examples of certain particulates such as dust, gum, gum-forming constituents and paraffin. Columbia also states that because it was retaining its original tariff language for gas received and delivered, it created a new section 25.6

[9] *See* March 2007 Order at P 119-120 citing Columbia's FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 406 and First Revised Sheet No. 407.

[10] February 2008 Order at P 62.

[11] Compliance filing at 4.

that sets forth the additional gas quality specifications that the Commission approved for receipts of gas by Columbia.

17. Columbia and others request clarification that the February 2008 Order requires Columbia to apply the gas quality specifications included in Columbia's currently effective tariff to gas deliveries and not the additional specifications that were in Columbia's MSAs.[12] Columbia states that in the March 2007 Order the Commission directed Columbia to retain the existing provisions of section 25.5 relating to gas delivered by Columbia, to modify the sulfur limit, and to make the existing merchantability language applicable to deliveries of gas.[13] Chesapeake argues to the same effect. They note that in the March 2007 Order, the Commission found that there were six quality standards in the tariff that existed at that time that were applicable to deliveries.[14] Chesapeake states that the March 2007 Order rejected Columbia's proposed delivery standard and instead directed Columbia to retain the six delivery point quality standards in its existing tariff, with the exception that it should utilize a different sulfur standard that was approved in that order. The Commission also directed Columbia to keep its existing merchantability language and make it applicable to those delivery standards.

18. Columbia, Chesapeake and IOGA contend that the language in the February 2008 Order finding that Columbia had not fully complied with the March 2007 Order and requiring Columbia to reinstate the language that makes section 25.5 applicable to deliveries could be interpreted to mean that the new receipt point standards from the MSAs approved in the March 2007 Order should also apply to deliveries. Columbia and Chesapeake assert that such an interpretation is unfounded, not supported by record evidence, would be contrary to the Natural Gas Act (NGA) and would inhibit Columbia from granting waivers contrary to the Commission's intent in its previous orders in this proceeding. IOGA also contends that if the Commission intended that Columbia have identical receipt point and delivery point specifications, then the clarification that Columbia cannot issue a receipt point waiver if it would result in Columbia being unable to meet its delivery point specifications would result in the extensive shut in of Appalachian gas that will require receipt point waivers. OOGA and IPAA argue similarly that the Commission should clarify that if the February 2008 Order is meant to impose new delivery specifications on Columbia, then Appalachian Gas should not be subject to those specifications.

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[12] Columbia rehearing request at 1.

[13] *Id*. at 2.

[14] Chesapeake clarification request at 4.

19. In its reply to Columbia's request for clarification and rehearing, O&R argues that Columbia's compliance filing, which presumes that the clarification will be granted, essentially results in no delivery point standards for the Wobbe Index and maximum heating value and also that the receipt point standards for those specifications are waivable at Columbia's sole discretion. O&R asserts that the Commission's analysis that the Appalachian exception must be narrowly tailored for waivers of the Wobbe Index and maximum heating values cannot be squared with what O&R describes as unfettered discretion to waive those same specifications pursuant to the section 25.9 waiver provision. O&R requests that the Commission either adopt the Wobbe Index and maximum heating value specifications as delivery point specifications for all points other than those affected by the Appalachian exception or make the section 25.9 waiver provision inapplicable to the Wobbe Index and maximum heating value specifications.

20. Columbia responds in its answer that O&R's and other LDC's requests take issue with actions taken by the Commission in the February 2008 Order and is thus a collateral attack on that order.

21. In their reply, ConEd and O&R resist Columbia's allegations and assert that Columbia's compliance filing does not comply with the February 2008 Order. They contend that the February 2008 Order directed Columbia to apply each gas quality specification in section 25.5 of its tariff to both receipts and delivery points. They also reiterate their contentions that the Wobbe Index and maximum heating value should be applicable at delivery points because the compliance filing as proposed by Columbia would allow Columbia "virtually unlimited ability" to waive those specifications.[15]

22. In its second answer to Con Ed and O&R, Columbia asserts that ConEd and O&R's interpretation of the February 2008 Order is legally incorrect in that both the March 2007 and the February 2008 Orders required that Columbia make only certain provisions of its current tariff (objectionable matter, total sulfur and hydrogen sulfide) applicable to receipts and deliveries. Columbia argues that the Commission did not make an NGA section 5 finding to apply all its gas quality specifications to receipts and deliveries. Columbia notes that if ConEd's interpretation is adopted, it would decrease supply on its system that Columbia has accepted for decades without operational problems. Columbia also argues that contrary to ConEd's and O&R's contention, section 25.9 does not provide Columbia with the ability to grant virtually unlimited waivers of its receipt point specifications because any waiver it grants is subject to the limitation that it not interfere with Columbia's ability "to ensure that

[15] ConEd and O&R answer at 5.

such gas does not affect [Columbia's] ability to provide service to its customers" consistent with the its tariff.[16]

23. BG&E and WGL protest Columbia's compliance filing on the basis that the language filed in section 25.5 makes the merchantability language contained therein applicable only to Columbia's system and provides no protection to facilities to which Columbia delivers gas. The April 2007 compliance filing assured that gas delivered to shippers would be free from objectionable particulates or other solid matter that might interfere with the merchantability of the gas or cause injury to or interference with proper operation of "lines, regulators, meters and other gas handling equipment **through which it flows"** and whereas the language proposed in the instant proceeding would protect only "lines, regulators, meters and other **equipment of Transporter**.[17]

24. The Commission grants clarification that the February 2008 Order did not intend to make all of Columbia's gas quality and interchangeability specifications in revised section 25.5 of the tariff applicable to deliveries. The March 2007 Order found that there were six specifications in Columbia's tariff applicable to deliveries by the pipeline.[18] The March 2007 Order rejected Columbia's proposed standard for deliveries, directed Columbia to eliminate section 25.6 and directed Columbia to retain the existing provisions of section 25.5 relating to gas delivered by Columbia, with certain modifications, and to make its existing merchantability language applicable to those delivery specifications. The Commission did not make findings in the February 2008 Order that all of Columbia's gas quality and interchangeability specifications should apply to both receipts and deliveries.

25. In its compliance filing, Columbia submitted revised tariff provisions as if the Commission had granted its clarification request. Specifically, Columbia's Substitute Fifth Revised Sheet No. 406 includes in section 25.5 the language regarding the fact that gas shall be commercially free from dust, gum, gum-forming constituents, paraffin, etc. applicable to both receipts and deliveries. Revised section 25.5 also

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[16] Columbia May 9 Answer at 7.

[17] Emphasis added. Comments and Protest of WGL at 2, Comments of BG&E at 4.

[18] Columbia notes that section 25.5 of the compliance filing applies the delivery specifications to three items instead of the original six. Columbia explains this is because odorization, originally in section 25.5(d), is retained in re-designated section 25.7, and the original 25.5(e) and (f) have been eliminated from the tariff based on previous rulings in this proceeding.

makes Columbia's hydrogen sulfide and revised sulfur limit applicable to both receipts and deliveries.

26. Given the above clarification, the Commission accepts Substitute Fifth Revised Sheet No. 406, subject to Columbia modifying it to revise the merchantability language to apply to lines, regulators, meters and other gas handling equipment through which it flows, and not just to Columbia's facilities. The Commission agrees with the protesters that its intention in the February 2008 Order was to require Columbia to retain language that gas delivered by the pipeline be merchantable upon entry as well as exit out of the pipeline. To the extent that the February 2008 Order is ambiguous as to which merchantability language Columbia should include in its tariff, the Commission clarifies here that Columbia should apply the merchantability assurance to deliveries by the pipeline.

27. By its clarification the Commission rejects ConEd's and O&R's request that the Wobbe Index and maximum heating value specifications apply to deliveries by the pipeline other than those qualifying for the Appalachian exception. The Commission finds herein that neither the March 2007 nor the February 2008 Orders required that those specifications apply at delivery points.

28. The Commission further rejects ConEd's and O&R's contention that section 25.9 allows Columbia unfettered discretion to waive its Wobbe Index, maximum heating value, or any other of its receipt point gas specifications. In the February 2008 Order the Commission granted ConEd's and O&R's request for clarification that Columbia cannot grant a receipt point waiver pursuant to section 25.9 if it would result in Columbia not being able to meet its delivery point standards. The Commission found there that the plain language of section 25.9 permits Columbia to accept non-conforming gas only if accepting such gas would not affect Columbia's ability to provide service to its customers consistent with the applicable rate schedule and its tariff or if it did not adversely affect Columbia's ability deliver gas at its delivery points. Section 25.9, therefore, does not allow Columbia unlimited discretion to waive its receipt point standards. Thus the Commission finds no reason to make that section inapplicable to the Wobbe Index and maximum heating value receipt point specifications.

B. Appalachian Exception

29. Prior to the proceeding in Docket No. RP06-365, Columbia did not have Wobbe Index or maximum heating value (Btu) standards in its tariff.[19] Columbia first

[19] *See* March 2007 Order at P 42. Columbia's MSAs had a Wobbe index of 1300 plus or minus 6 percent, and the MSAs had no maximum heating value specification.

proposed such standards in its initial comments after the technical conference, conditioned on an exception for Appalachian gas that typically exceeded the proposed Wobbe and maximum heating values but caused Columbia no operational problems.[20] Columbia originally proposed to define Appalachian gas as gas produced in the states of Ohio, Kentucky, West Virginia, Virginia, Tennessee, Maryland, Pennsylvania and New York. The Commission determined in the March 2007 Order that Columbia's proposal did not define the gas that would be eligible for the Appalachian exception with sufficient specificity. The Commission directed Columbia to narrowly tailor its Appalachian exception to indicate the portions upstream of certain receipt points where the Wobbe and heating value limits would not apply, or if Columbia was not able to perform an analysis for other parts of its system as it had done for the portion upstream of Kenova, then it should provide support showing why the Wobbe Index and heating value exception must apply to all states identified in the proposed exception.[21]

30. In its April 2007 compliance filing, Columbia proposed to narrow the exception by geographically narrowing the parts of respective states where the exception applies[22] and by including a map depicting the area. The Commission determined in the February 2008 Order that Columbia had not complied with the March 2007 Order's directives regarding the Appalachian exception because it still did not identify with adequate specificity the areas to which the exception would apply and lacked any indication of an objective quantifiable method for defining the scope of the exception. The Commission directed Columbia to further refine its definition in a manner that is testable and not subject to Columbia's discretion.[23]

31. In its March 2008 compliance filing, Columbia submitted new tariff language that identifies the specific furthermost upstream pipeline systems where the Appalachian exception will apply according to pipeline and county.[24] Columbia explains that under the revised definition, all gas received within and upstream of the specified pipelines in the specified counties will qualify for the Appalachian exception,

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[20] *See* Initial Comments of Columbia dated October 13, 2006.

[21] March 2007 Order at P 64.

[22] In that compliance filing, Columbia proposed to define Appalachian Gas as "natural gas produced in Ohio, eastern Kentucky, West Virginia, southwestern Virginia, western Maryland Pennsylvania and southern New York." *See* April 2007 compliance filing at 3.

[23] February 2008 Order at P 32.

[24] Compliance filing at 5.

including gas flowing on discrete pipeline segments connected to the specified lines upstream of the identified locations. Columbia states that it did not list all the receipt points because it considers pipelines to be a better defining factor due to the fact that they change less frequently. Columbia also notes that while it believes the revised approach will encompass most if not all Appalachian production that does not meet the standard Wobbe Index and heating value specifications, gas that does not fall within the exception may still be allowed on the system pursuant to the waiver provision in section 25.9 of the tariff.

32. OOGA and the IPAA argue on rehearing that the gas delivery standards imposed by the Commission on Columbia should not apply to gas that qualifies for the Appalachian exception. IOGA argues similarly that if the Commission requires Columbia's receipt specifications to match the delivery specifications then it puts certain Appalachian basin gas at risk of being rejected by Columbia. Chesapeake and IOGA also assert that the Commission erred if it applied new quality specification to delivery points in the Appalachian Basin that traditionally fell within the Appalachian exception. Chesapeake also takes issue on rehearing with the Commission's clarification in the February 2008 Order that Columbia may not grant a receipt point waiver if to do so would result in Columbia not being able to meet its delivery specifications. It claims that the record is devoid of any evidence to base a finding that would apply gas quality specifications to prohibit the use of non-conforming Appalachian gas to continue service to local Appalachian markets, and that to do so would essentially vitiate the Appalachian exception.

33. In its comments on Columbia's compliance filing, IOGA contends that Columbia's revised Appalachian exception language "will lead to confusion and misunderstanding among producers, shippers, upstream gatherers and Columbia" because Columbia's list could unintentionally miss gas that is universally considered Appalachian gas.[25] IOGA also argues that the map previously filed by Columbia and rejected by the Commission in the February 2008 Order is a reasonable means for ensuring that "gas continues to flow as it has for decades."[26] IOGA suggests therefore, that the Commission should find that Columbia's county map sufficiently describes the area qualifying for the Appalachian exception and allow Columbia to refile the map to set the parameters of the exception.

34. Norstar protests similarly that Columbia has without explanation or justification narrowed its application of the Appalachian exception, with the result that certain gas that previously met the definition would now be excluded, including

[25] IOGA comments at 2-3.

[26] *Id*. at 3.

Norstar's production. Norstar contends that the Commission requested that Columbia explain why the Appalachian exception applies to production areas noted on its previously filed map but did not instruct Columbia to narrow the exception further. Norstar also protests that its basis for withdrawing its complaint in this proceeding was that Norstar's gas would qualify for the Appalachian exception. Thus, if the narrowed definition is allowed to stand, then Norstar's settlement agreement should trump the tariff language.[27]

35. Chesapeake comments that it supports Columbia's compliance filing with regard to the Appalachian exception and that the language submitted is ultimately workable. Chesapeake conditions its support on the Commission granting the clarification that the February 2008 Order did not require Columbia to have identical receipt and delivery point specifications and that the list of pipelines filed by Columbia may need to be adjusted. OOGA is also generally supportive of the compliance filing but submits that the Commission should direct Columbia to include in its definition additional lines identified by Appalachian or other qualifying producers by a date set by the Commission or otherwise establish a methodology for such lines to be added.

36. In its April 14 answer, Columbia states its compliance filing meets the February 2008 Order's directive to further revise and define the scope of the Appalachian exception and that it recognized in the filing that the list may not accompany all qualifying production and may need future revision. Columbia further states that based on the comments of the producers concerned that the specific definition may omit some qualifying production, it does not oppose reverting to its previous methodology of listing the geographic areas covered by the exception in the tariff combined with a county map. Columbia states that it agrees with IOGA that this is a better approach because it avoids tariff filings to revise the exception.

37. Columbia also states in its answer that while it does not consider its revised definition of the Appalachian exception to breach its settlement agreement with Norstar, Columbia interprets the language in the settlement to mean that Columbia will accept Norstar's production whether or not that production is expressly included in the Appalachian exception in the tariff definition.[28] Columbia further states that to the extent Norstar still has concerns that the tariff definition will trump the settlement, that Columbia will add language to the settlement to allay Norstar's concerns.

38. Distribution filed a reply to Columbia's answer on this issue, claiming that Columbia is suggesting that it be permitted to revert to its previous approach for

[27] Norstar protest at 4-5.

[28] Columbia Answer at 5-6.

defining the Appalachian exception through the mere use of a county map. Distribution argues that the Commission already rejected the methodology to which Columbia wants to revert due to its lack of specificity, and should not now allow Columbia to regress.

39. The Commission accepts Columbia's revised definition of the Appalachian exception as in compliance with the February 2008 Order. In accordance with the February 2008 Order, the revised language identifies, with specificity, the furthermost upstream pipeline systems to which the Appalachian definition applies.[29] As the Commission found in the February 2008 Order, Columbia's April 2007 compliance filing did not sufficiently explain its revised proposal and did not define the areas to which the Appalachian exception would apply with adequate specificity. The Commission thus rejects the requests to allow Columbia to revert to this deficient methodology.

40. The Commission also rejects the various arguments that the revised and specific language is too narrow and may omit gas supplies that previously qualified for the Appalachian exception. The Commission fails to see how a specific list as proffered by Columbia will lead to confusion and misunderstanding. Moreover, Columbia itself notes in its compliance filing that it believes the revised approach will encompass most, if not all, Appalachian production that does not meet the Wobbe Index and heating value specifications. Columbia also acknowledges that the list may need further revision. Accordingly, the Commission encourages Columbia and producers that believe their gas should be eligible for the Appalachian exception to work together to compile an appropriate list of upstream pipeline systems.

41. Given the above clarification with respect to the delivery point standards, the various arguments that Columbia's delivery standards should not apply to gas that is eligible for the Appalachian exception are rendered moot.

42. The Commission also rejects Norstar's protest. Columbia has answered that it interprets the settlement to mean that Columbia must accept Norstar's gas regardless of whether its production is specifically listed in the pipelines that qualify for the Appalachian exception, and that it will modify the settlement to specifically reflect that interpretation. The Commission finds that Columbia's representations are reasonable and should alleviate Norstar's concerns.

[29] *See* February 2008 Order at P 31-32.

C. Acceptance of Non-Conforming Gas

43. The February 2008 Order directed Columbia to revise section 25.8, which relates to acceptance of non-conforming gas by Columbia, to refer to section 25 as a whole rather than to just section 25.5 in order to permit waiver of the minimum Btu requirement contained in section 25.4.[30] In its compliance filing, Columbia so revised section 25.8. The Commission therefore accepts Columbia's filing as in compliance with the February 2008 Order.

The Commission orders:

(A) The requests for clarification are granted in part and denied in part and the requests for rehearing are denied as discussed above.

(B) The tariff sheets listed in footnote 1 are accepted effective June 1, 2007, subject to the modifications discussed herein. Within 30 days of this order Columbia is directed to make a compliance filing in Docket Nos. RP06-365 and RP06-231 consistent with the discussion above.

(C) Any issues raised by the parties that have not been addressed by this order are deemed denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[30] February 2008 Order at P 57.