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.

Columbia Gulf Transmission Company Docket No. RP07-174-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS
SUBJECT TO REFUND AND CONDITIONS AND FURTHER REVIEW

(Issued June 11, 2007)

1. On February 16, 2007, Columbia Gulf Transmission Company (Columbia Gulf) filed revised tariff sheets[1] to implement daily delivery point scheduling penalties and provisions for resolving monthly shipper imbalances, including a tiered cash-out mechanism. Columbia Gulf proposes an August 1, 2007 effective date, to coincide with the anticipated launch date of its new Electronic Bulletin Board (EBB) system.[2] Columbia Gulf asserts that the addition of these features will improve the scheduling and balancing practices of its shippers, its ability to efficiently and effectively schedule, allocate, and sell available capacity, and service reliability. Various parties filed protests and comments in opposition to the proposals, as detailed in the body of this order. For reasons discussed below, the Commission accepts and suspends the revised tariff sheets to be effective on the earlier of January 1, 2008, or a date specified in a further order of the Commission subject to refund and conditions and further review.

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[1] The revised tariff sheets are listed in the appendix to this order.

[2] In a letter filed on May 17, 2007 (May 17, 2007 letter), Columbia Gulf requested an effective date of August 1, 2007 to coincide with a revised launch date of its new EBB system, instead of its originally requested effective date of June 1, 2007. Columbia Gulf stated that it will file revised tariff sheets to reflect the August 1, 2007 date. In this order, the Commission will grant waiver to allow the tariff sheets to become effective on the earlier of January 1, 2008 or a date specified in a further order of the Commission. Accordingly, Columbia Gulf is not required to refile the tariff sheets to reflect the new requested effective date.

## I. Details of the Filing

### A. Daily Delivery Point Scheduling Penalties

2. Columbia Gulf proposes to revise section 19 of its General Terms and Conditions (GT&C) to implement new daily delivery point scheduling penalties. The penalties 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. During non-critical periods, the penalties 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 Gulf's then effective ITS-1 rate for Interruptible Transportation Service (ITS). If a critical notice is in effect on Columbia Gulf's system, the penalty would be imposed on each Dth taken that varies by 2 percent or more above or below the scheduled quantity, and would equal three times the midpoint of the range of prices reported for "Columbia Gulf, Louisiana" as published in *Platts Gas Daily* price survey.

3. Columbia Gulf maintains that the proposal satisfies the three requirements set forth in *Order No. 637*,[3] and in section 284.12(b)(2)(v) of the Commission's regulations[4] that a pipeline must meet to include a penalty in its tariff. Columbia Gulf further maintains that it has met the first requirement, that a penalty may be included in a tariff "to the extent necessary to prevent impairment of reliable service," because the proposed penalties are necessary to encourage shipper accuracy in nominating the amount of service that the shipper expects to take. Columbia Gulf asserts that shippers on its system have shown a historical inability to keep actual quantities within an acceptable tolerance range of scheduled quantities, which has made it more challenging to effectively forecast and manage available capacity on its system. Columbia Gulf contends that the data provided in exhibits A and B of the filing demonstrate wide variances between scheduled deliveries and actual deliveries which are common on its system. Columbia Gulf further contends that it does not have storage and therefore, must manage variances through its line pack, which can create operational issues at other points on its system.

4. Columbia Gulf asserts that its filing satisfies the second requirement of section 284.12(b)(2)(v), that pipelines credit all net penalty revenues to shippers.

5. Finally, Columbia Gulf asserts that its filing meets the third requirement in section 284.12(b)(2)(v), that pipelines with penalties provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and

[3] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No.637*, FERC Stats. and Regs., Reg. Preambles [1996-2000] ¶ 31,091 (*Order No. 637*).

[4] 18 C.F.R. § 284.12(b)(2)(v) (2006).

the imbalance of the system. Columbia Gulf maintains that its EBB ("Navigator", the EBB's proprietary name) provides its shippers with timely information concerning scheduling variances and will continue to do so under the new system. Columbia Gulf contends that since virtually all of its delivery meters are equipped with electronic measurement equipment, the management of daily scheduling quantities is simplified. Columbia Gulf further contends that this will give shippers the real time ability to manage scheduling variances. Columbia Gulf asserts the multiple nomination cycles provided in section 6 of its GT&C will allow shippers to self-correct, avoid scheduling penalties, and provide Columbia Gulf with timely and accurate scheduling information. Columbia Gulf further asserts that the Commission has consistently approved scheduling penalties to provide incentives for shippers to schedule accurately and that its proposed scheduling penalties are consistent with *Order No. 637*.

### B. Monthly Imbalance Resolution Process

6. Columbia Gulf also proposes an imbalance resolution process by revising section 19 of its GT&C to implement a tiered cash-out imbalance mechanism for Cumulative Monthly Imbalances. Columbia Gulf asserts that it currently only has an in-kind imbalance resolution process, and as a result, its shippers carry sometimes large imbalances over a number of months. Columbia Gulf further asserts that it proposes to resolve this problem and allow the system to better balance itself by employing an imbalance resolution process which will properly motivate shippers to resolve their imbalances in an efficient and effective manner.

7. Columbia Gulf states that, as defined in proposed section19.5(a), a shipper's Cumulative Monthly Imbalance means any outstanding imbalance associated with prior months that has yet to be resolved plus the difference between: (1) the total quantities of gas actually received by Columbia Gulf from or for the shipper's account at the point of receipt under all of the shipper's firm and interruptible transportation contracts, interruptible paper pooling service agreements and aggregation service agreements; and (2) the total quantities of gas actually delivered by Columbia Gulf to or for the shipper's account at the point of delivery under all of the shipper's firm and interruptible transportation contracts, interruptible paper pooling service agreements, and aggregation service agreements.

8. Columbia Gulf asserts that, consistent with section 284.12(b)(2)(ii),[5] the proposed monthly imbalance resolution mechanism will allow shippers to make up imbalances during the month and engage in the netting and trading of imbalances after the end of the month. Columbia Gulf proposes that an imbalance trade will be permitted to the extent the trade reduces the imbalance of each shipper involved in the trade. Columbia Gulf states that it will not charge a fee for imbalance trades that take place within a single

[5] 18 C.F.R. § 284.12(b)(2)(ii) (2006).

zone. However, Columbia Gulf further states that when shippers trade imbalances across rate zones, transportation charges may be assessed if applicable in order to prevent the loss of transportation revenue.

9. In section 19.5(e)(3), Columbia Gulf proposes to transfer all Cumulative Monthly Imbalances remaining after the netting and trading period to the rate zone incurring the lowest applicable transportation charges, after which any remaining imbalance will be cashed out under proposed section 19.6. Columbia Gulf asserts that this will allow it to reduce the administrative burden in managing the imbalance resolution program while also providing shippers with a fair method of resolving imbalances through the cash-out mechanism.

10. Under proposed section 19.6, if the shipper's remaining imbalance is negative due to monthly deliveries in excess of receipts, then the shipper will pay Columbia Gulf a "Sell" index price for each excess Dth, plus an additional percentage of the price depending on the percentage by which deliveries exceed receipts. If the shipper's remaining imbalance is positive due to monthly receipts in excess of deliveries, then Columbia will pay the shipper a "Buy" index price for each excess Dth, minus an additional percentage of the price depending on the percentage by which receipts exceed deliveries. The "Sell" index price is based on the highest weekly price for the imbalance month and the first week of the succeeding month as reported in Natural Gas Week for "Columbia Gulf-Rayne or "Columbia Gulf-Erath". The "Buy" index price is based on the lowest weekly price for the imbalance month and the first week of the succeeding month as reported in Natural Gas Week for "Columbia Gulf-Rayne" or "Columbia Gulf-Erath." Columbia Gulf maintains that the purpose of the high-low method and the use of a "fifth week" are to eliminate opportunities for price arbitrage. Columbia Gulf proposes the following imbalance and penalty tiers:

| Percentage of Excess Deliveries | Price Tier |
|---|---|
| >0 to 5 percent | 100 percent of sell price |
| >5 to 10 percent | 115 percent of sell price |
| >10 to 15 percent | 125 percent of sell price |
| >15 to 20 percent | 140 percent of sell price |
| >20 percent | 150 percent of sell price |

| Percentage of Excess Receipts | Price Tier |
|---|---|
| >0 to 5 percent | 100 percent of buy price |
| >5 to 10 percent | 85 percent of buy price |
| >10 to 15 percent | 75 percent of buy price |
| >15 to 20 percent | 60 percent of buy price |
| >20 percent | 50 percent of buy price |

Each price will apply only to those quantities within that tier.

11. Columbia Gulf also proposes to separately invoice shippers in order to make adjustments to imbalances that occurred in prior periods through a Prior Period Adjustment (PPA). A PPA reflecting over-deliveries will be invoiced as a charge. A PPA reflecting over-receipts will be invoiced as a credit. If the PPA is in the opposite direction from the original imbalance, then the original buy or sell price will be applicable to the PPA, up to the original imbalance quantity. If a portion of the PPA imbalance remains after the original imbalance is reversed, the remaining PPA will be invoiced at the index "Midpoint" price per Dth, defined as the average of the original imbalance month's buy and sell prices. The "Midpoint" index price will also apply to a PPA imbalance in the same direction as the original imbalance, or if there was no original imbalance. In addition, PPAs will be subject to netting and trading, but netting and trading will be limited to imbalances that are incurred during the same month.

12. Columbia Gulf states that, in compliance with *Order No. 637*, Columbia Gulf will refund to firm and interruptible shippers all penalty revenue, net of costs, derived from the operation of its cash-out mechanism. Columbia Gulf further states that it will file an Annual Cash-Out Report to reconcile all purchases and sales of gas pursuant to its cash-out mechanism, consistent with Commission precedent. Columbia Gulf maintains the Annual Cash-Out Report will report the quantities involved in cash-out transactions and the amounts paid to or by firm and interruptible shippers. Columbia Gulf further maintains that the Annual Cash-Out Report will compare the cash-out revenues received with the costs incurred under the cash-out procedures and will report any over-recovery or under-recovery for the 12-month period in question. Columbia Gulf states that where appropriate, its proposed Annual Cash-Out Report will provide for the refund of net over-recoveries.

### C. Waiver

13. Columbia Gulf requests that the Commission grant waiver of the 60-day time limit for the effective date of tariff sheets in section 154.207 of the Commission's regulations[6] in order to accommodate an effective date that is contemporaneous with the August 1, 2007 launch date of the new EBB system. Columbia Gulf asserts, in view of the need to have the effective date coincide with the launch date of the new EBB system, good cause exists for the Commission to grant waiver of section 154.207.

## II. Notice of Filing, Interventions, Comments, Protests, and Answers

14. Public notice of Columbia Gulf's filing was issued on February 23, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's

[6] 18 C.F.R. §154.207 (2006).

regulations (18. C.F.R. § 154.210 (2006)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Protests were filed by Enbridge Marketing (U.S.) L.P. (EMUS); Piedmont Natural Gas Company, Inc. (Piedmont); Lafayette Utilities System (LUS); Sequent Energy Management, L.P. (Sequent); the Process Gas Consumers Group (PGC); and Arena Energy, LLC, and Valiant Energy, LLC (Arena). Comments were filed by Baltimore Gas and Electric Company (BGE); Tennessee Valley Authority (TVA); Indicated Shippers;[7] the Easton Utilities Commission and the City of Charlottesville, Virginia (Cities); Orange and Rockland Utilities, Inc. (O&R); and Chevron U.S.A., Inc. (Chevron).[8] Several parties requested an evidentiary hearing, summary judgment, maximum suspension of the rates, or a technical conference. Columbia Gulf filed an answer to the protests and comments, and LUS filed an answer to that answer.[9] The protests, comments, and answers are discussed in detail below.

## III. <u>Discussion</u>

15. Columbia Gulf's revised tariff sheets are accepted and suspended to be effective on the earlier of January 1, 2008, or a date specified in a further order of the Commission subject to refund and conditions and further review. Columbia Gulf's proposals to implement daily scheduling penalties and a monthly imbalance resolution process are generally consistent with Commission policy and are accepted subject to refund and conditions and further review, as discussed below. The requests for summary rejection, a technical conference or formal hearing are denied as unsupported and unnecessary.

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[7] Indicated Shippers are comprised of Anadarko Petroleum Corporation; Anadarko Energy Services Company; BP Energy Company and BP America Production Company; ConocoPhillips Company; ExxonMobil Gas & Power Marketing Company, A Division of Exxon Mobil Corporation; and Hess Corporation.

[8] Chevron supports the comments filed by Indicated Shippers.

[9] The Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers (18 C.F.R. § 385.213(a)(2)(2006)). However, the Commission finds good cause to admit Columbia Gulf's answer and the answer to it by LUS since it will not delay the proceeding, assist the Commission in understanding the issues raised, and insure a complete record on which the Commission may act.

## A. Daily Delivery Point Scheduling Penalties

### 1. Showing Needed to Assess Penalties

16. The protesting parties generally assert that the data provided by Columbia Gulf in exhibits A and B are inadequate to support its proposed daily scheduling penalties. They generally argue that exhibits A and B are highly selective and limited in scope to only certain shippers, months, and points. Some parties contend that Columbia Gulf has not shown whether the proposed penalties are necessary or that these variances cause an impairment of reliable service.

17. Columbia Gulf responds that it has shown that as a pipeline that lacks storage capabilities the implementation of scheduling penalties is necessary and appropriate. Columbia Gulf asserts that exhibits A and B demonstrate that shippers routinely over or under schedule their gas, many times by a wide margin. Columbia Gulf further asserts that the information provided over four recent months of shipper activity, one during the winter of 2006 and three during the summer of 2006, which the parties have not contested as inaccurate, proves that it has significant scheduling variance issues.

18. Columbia Gulf notes that it has a total of seventeen delivery points on its system, but did not consider delivery points which have been inactive for several years, and intrastate and interstate pipeline connections because Operational Balancing Agreements (OBAs) cover these variances. Columbia Gulf explains that each shipper identified in exhibit B represents a different delivery point scheduling variance that occurred each day. Columbia Gulf further asserts that between one-third and over one-half of the delivery points on its system experienced scheduling variances each day during the months of January, June, July, and August 2006. Columbia Gulf contends that it is these shippers that create the overall scheduling variances displayed in exhibit A, showing that total daily scheduling variances often exceeding 50,000 Dth on the Columbia Gulf system. Columbia Gulf concludes that exhibits A and B do in fact provide sufficient support that there is a lack of shipper discipline on the Columbia Gulf system.

19. Piedmont asserts that the selected customers' impact on the system is exaggerated by Columbia Gulf's use of an imbalance percentage calculation and by neglecting to net out overdeliveries and underdeliveries since the actual quantitative imbalance is small and the practical effect is negligible. Similarly, LUS contends that Columbia Gulf should net scheduling deviations when presenting its evidence since it may mitigate the deviations. Columbia Gulf answers that exhibit A, which includes the smaller Dth variances shows that small numbers can add up to large variances.

20. PGC objects that the proposed penalties are used to enforce contractual obligations rather than to protect system integrity and prevent under-recovery. Piedmont complains that by making additional daily capacity available for short term or interruptible transportation, the Daily Delivery Point Scheduling Penalties are more economic than

operational. LUS asserts that the support Columbia Gulf presented does not demonstrate a risk of impairment to reliable service. Indicated Shippers contends that the support provided by Columbia Gulf does not even purport to show any impairment of reliable service.

21. Columbia Gulf states that it provided four months worth of current shipper activity, showing that actual takes versus scheduled quantities on the Columbia Gulf system often vary by a wide margin. Columbia Gulf argues that there is nothing atypical about these particular months, and the data underscores the fact that scheduling variances regularly occur on the Columbia Gulf system. Columbia Gulf asserts that, for example, some shippers, on certain days, clearly remained within a tolerable range (5 percent) of scheduled quantities, but on other days those same shippers would ignore their scheduled nominations and instead over (or under) take gas deliveries, without communicating their changes to Columbia Gulf. Columbia Gulf further asserts that, for example, during the month of July 2006, Shipper 7 varied its actual takes between .3 percent and 100 percent above or below its nominated quantities, while Shipper 4's variance ranged up to 70,000 percent. Columbia Gulf contends that such a wide variance makes it difficult to predict what each shipper will do, and therefore, what capacity is available for other shippers on its system.

22. Columbia Gulf contends that the scheduling variances it experiences on the system can only be resolved through the implementation of the proposed penalties. Columbia Gulf further contends that, at the present time, its options for dealing with scheduling variances are limited to (1) doing nothing, or (2) taking the drastic measure of issuing an Operational Flow Order (OFO), which can be shipper specific. Columbia Gulf contends that shippers will have opportunities to avoid the scheduling penalties since the EBB system provides virtually instant feedback to shippers on actual takes, and shippers will then be able to update their nominations through the intraday nomination cycles.

### a. Critical Periods

23. As adopted in *Order No. 637*, section 284.12(b)(2)(v) of the Commission's regulations provides, in part, that:

> A pipeline may include in its tariff transportation penalties only to the extent necessary to prevent the impairment of reliable service.

24. The protests and comments generally assert that Columbia Gulf has not shown that the penalties are necessary to preserve operational integrity or protect system reliability as required by the Commission's policy set forth in *Order No. 637*. Columbia Gulf responds that the scheduling penalties are designed to give it greater control over its system by requiring shippers to adhere to their nominations or communicate any changes thereto in a timely fashion. Columbia Gulf asserts that the complaining parties do not

attempt to rebut Columbia Gulf's showing that shippers on its system ignore and abuse the nomination and scheduling processes set forth in its tariff. Columbia Gulf further asserts that it has shown that shippers routinely fail to communicate their scheduling changes through the nomination cycles set forth in section 6 of its GT&C. Columbia Gulf states that the Commission has expressly recognized the operational impact associated with inaccurate nominating practices, stating that a shipper's failure to nominate accurately affects line pack on a pipeline's system.[10] Columbia Gulf contends that this potential effect is particularly significant on a pipeline, like itself, that lacks storage capabilities and, consequently, there is a definite operational impact associated with inaccurate nominating practices. Columbia Gulf asserts that the pipelines are not expected to wait until there is harm to the system before implementing a penalty.[11]

25. Columbia Gulf is not required to show actual impairment of service, only a potential threat to reliable service. The potential adverse effects of scheduling variances on system reliability are self-evident when a critical notice has been issued. Columbia Gulf has shown that the conduct to be deterred has the potential to cause operational problems which may threaten its system's integrity and reliability of service. There is no need for Columbia Gulf to show particular examples of shipper violations or general shipper behavior causing operational stress on its system. During critical periods, when a shipper schedules quantities of gas greater than the actual takes, or schedules quantities of gas less than actual takes, Columbia Gulf has less operational control over its system and may experience increased operational risk.

26. Thus, contrary to the arguments of some parties, it is not necessary for Columbia Gulf to show actual operational harm or the impairment of reliable service in order for the proposed scheduling penalties to be approved. Columbia Gulf's proposed critical period scheduling penalty is designed to deter conduct which potentially threatens pipeline system operations during the period when a critical notice is in effect. The Commission has found that it is not necessary for pipelines to demonstrate actual harm, and it is entirely appropriate for pipelines to anticipate problems and take action to forestall them prior to such problems occurring.[12]

27. However, the proposed tariff does not define when a "critical notice" will be issued or clarify for what period the proposed "critical notice" penalties will apply. We note that Columbia Gulf's sister pipeline, Columbia Gas Transmission Corporation

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[10] *Citing El Paso Natural Gas Co*., 114 FERC ¶ 61,305, at P 42 (2006).

[11] *Citing* 114 FERC ¶ 61,305, at P 40 and *Tennessee Gas Pipeline Co.*, 99 FERC ¶ 61,017 at P 181 (2002).

[12] 115 FERC ¶ 61,134 at P 15 (2006) and *Columbia Gas Transmission Corporation,* 64 FERC ¶ 61,365 at 63,550-63,551 (1993).

(Columbia Gas) has proposed similar scheduling penalties that apply during a "Critical Day" which its tariff defines in section 19.7 of its GT&C, proposed to be renumbered as section 19.8.[13] Therefore, Columbia Gulf is directed to file revised tariff sheets which incorporate the same or a similar definition, and to reflect conforming changes in section 19.5 of its GT&C and other parts of its tariff, to refer to "Critical Day" to clarify when the penalty shall apply.

**b. <u>Non-Critical Periods</u>**

28. Certain parties argue that Columbia Gulf must show an operational need or other justification to support the proposed scheduling penalty during non-critical periods. Columbia Gulf answers that it is well established that scheduling variances that occur during non-critical periods will not have operational effects on the pipeline.[14] Columbia Gulf further asserts that the purpose of such a scheduling penalty is to provide an incentive for shippers to schedule accurately, and to compensate the pipeline for its lost opportunity costs, *i.e.*, to sell the capacity as interruptible service.[15]

29. Columbia Gulf's proposal to charge a scheduling penalty during non-critical periods is consistent with Commission policy developed in the individual pipeline proceedings implementing *Order No. 637*.[16] The Commission agrees with Columbia Gulf that a showing of operational need is not required for implementation of a nominal scheduling penalty that is imposed during periods when a critical notice has not been issued. In *Natural*, the Commission stated that:

> During non-critical periods, a scheduling variance will not have operational effects on the pipeline. Establishing a scheduling penalty at the IT

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[13] Section 19.7 of Columbia Gas' GT&C provides in pertinent part:

> A "Critical Day" for transportation and/or storage will be declared by Transporter whenever Transporter, in Transporter's reasonable discretion, determines (based on criteria such as weather forecasts, line pack, storage conditions, pipeline pressures, horsepower availability, system supply and demand, and other operational circumstances) that operating conditions are such that Transporter faces a threat to its system integrity and/or Transporter's ability to meet its firm service obligations.

[14] *Citing Natural Gas Pipeline Co. of America*, 103 FERC ¶ 61,174, at P 63 (2003) (*Natural*).

[15] *Citing* 103 FERC ¶ 61,174, at P 63.

[16] *MIGC, Inc.*, 96 FERC ¶ 61,042, at 61,107 (2001). *Panhandle Eastern Pipe Line Co.*, 97 FERC ¶61,046, at 61,271 (2001). *Northern Natural Gas Co.*, 105 FERC ¶ 61,174, at P 143 (2003) and 103 FERC ¶ 61,174, at P 63 (2003).

> [Interruptible Transportation] rate for non-critical periods is intended to provide an incentive for shippers to schedule accurately, and to compensate the pipeline for its lost opportunity costs. [[17]]

30. The ITS-1 rate is such a nominal penalty rate that provides an incentive to schedule accurately and compensates Columbia Gulf for lost opportunity costs. Accordingly, it is permissible for Columbia Gulf to impose a scheduling variance penalty at the ITS-1 rate during non-critical periods and, as noted above in discussing critical period scheduling penalties, it need not show operational harm.

### 2. Penalty Level

#### a. Critical Periods

31. PGC asserts that, while the Commission has approved increasingly harsh penalties, PGC continues to oppose the use of penalties which are excessively punitive. Columbia Gulf asserts that, during critical periods, the proposed scheduling penalty is proportionate to the significant level of risk to system operations and the pipeline's ability to provide reliable service. Columbia Gulf further asserts that substantive penalties during critical periods are meant to deter shipper behavior that could disrupt system reliability. Columbia Gulf concludes that the proposed penalty for critical periods complies with *Order No. 637* since the penalty will only apply when there is an operational threat.

32. The Commission believes that the level of the proposed penalties must be adequate to prevent undesirable shipper behavior, in this case scheduling variances that, during a critical period, could threaten the pipeline's operational integrity, and which could occur but for the presence of such penalties in the tariff. The shippers' scheduling variance behavior, which would be deterred by such penalties, has a potential negative impact on the system and other shippers. Therefore, it is of critical importance that the level of the penalty be significantly higher during critical periods and sufficient to deter such conduct and to prevent impairment of reliable service. Thus, the Commission has held that "pipelines may impose substantial penalties during critical periods."[18] The level of penalties necessary to deter the undesirable conduct is a matter of the exercise of reasonable judgment. The level of penalties to deter impairment of reliable service in this

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[17] 103 FERC ¶ 61,174, at P 63. The Commission explained that if a shipper schedules 200 Dth, but takes delivery of only 100 Dth, the pipeline may have lost the opportunity to sell the remaining 100 Dth as interruptible service. 103 FERC ¶ 61,174 at P 63, n. 48.

[18] *See AES Ocean Express, LLC*, 111 FERC ¶ 61,291 at P 30 (2005) (*AES Ocean Express, LLC*).

case is similar to the level of other penalties proposed by Columbia Gulf and other pipelines and approved by the Commission.[19] Finally, the pipeline lacks an incentive to apply an unreasonably high penalty since it is required to credit the penalty revenues to the non-offending shippers.[20]

33. The Commission finds that the level of Columbia Gulf's proposed critical notice scheduling penalty is consistent with Commission policy. The Commission accepted the identical penalty level for Takes in Excess of Total Firm Entitlements (TFE), Failure to Interrupt Service (FTI), and Failure to Comply With Operational Flow Orders (OFO) in sections 19.1, 19.2, and 19.3, respectively, of the GT&C of its tariff.

**b. <u>Non-Critical Periods</u>**

34. PGC's argument regarding harsh penalties which are excessively punitive is also mistaken with respect to non-critical periods. As explained earlier herein, in *Natural*, the Commission found that the use of a nominal scheduling penalty based on the ITS rate for non-critical periods is appropriate.[21] In *AES Ocean Express LLC*,[22] the Commission accepted a non-critical period scheduling penalty equal to the pipeline's IT rate. Therefore, we find that the proposed penalty is consistent with Commission policy and is just and reasonable and not unduly discriminatory.

**3. <u>Tolerance Levels</u>**

35. Several of the parties claim that the tolerance levels proposed by Columbia Gulf (5 percent for non-critical periods and 2 percent for critical periods) are too strict, not consistent with Commission policy, or unsupported. PGC requests that Columbia Gulf be required to provide support for the proposed levels, or apply levels of at least 7 percent during non-critical periods and 3 percent during critical periods.[23] EMUS suggests a 10

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[19] *See, e.g., Columbia Gulf Transmission Co.*, 113 FERC ¶ 61,204 (2005), *order on reh'ng*, 115 FERC ¶ 61,135 (2006), where the Commission accepted an increase in penalties to prevent impairment of reliable service, reflected in section 19 of Columbia Gulf's tariff, to equal three times the midpoint of the range of prices reported for "Columbia Gulf, Louisiana" as published in *Platts Gas Daily* price survey as proposed in this case. *See also*, *Columbia Gas Transmission Corp.*, 113 FERC ¶ 61,191 (2005), *order on reh'ng*, 115 FERC ¶ 61,134 (2006).

[20] Section 284.12(b)(2)(v) of the Commission's regulations provides that pipelines may not retain net penalty revenues, but must credit them to shippers.

[21] 103 FERC ¶ 61,174, at P 63.

[22] 111 FERC ¶ 61,291 at P 30 (2005).

[23] *Citing* 114 FERC ¶ 61,305, at P 112.

percent tolerance for non-critical periods and a 5 percent tolerance for critical periods.[24] In addition, other parties contend that due to the proposed scheduling tolerances, the scheduling penalties will have a disproportionate impact on small contract entitlement shippers and shippers with heat sensitive loads.

36. Columbia Gulf argues that the Commission's policy with respect to scheduling penalties is to require some operating tolerance before the imposition of such penalties except in emergency situations. Columbia Gulf asserts that the Commission has approved scheduling penalty tolerance levels similar to those proposed here for other pipelines.[25]

37. As Columbia Gulf asserts, the Commission has approved similar tolerance levels for non-critical period scheduling penalties in other pipeline's tariffs and accordingly, the Commission accepts the 5.0 percent tolerance for non-critical period scheduling variances. A stricter tolerance level is permitted for critical periods in order to prevent threats to service reliability. However, the tariff provisions Columbia Gulf cites do not support its proposed 2.0 percent critical notice scheduling variance tolerance. Further, sections 19.1 and 19.2 of its existing penalty provisions provide for the same penalty level but with a 3.0 percent tolerance. Accordingly, Columbia Gulf is directed to explain why its critical notice scheduling tolerance should not be increased to 3.0 percent or some higher level.

38. PGC argues that the scheduling penalty tolerance levels should include an absolute volumetric limit or "safe harbor" and tiers based on percentages to avoid discrimination against small shippers. Piedmont asserts that there is a disproportionate impact on small shippers whose demands may change on an intraday basis.

39. Columbia Gulf responds that the use of a proportional tolerance does not unduly discriminate against small customers. Columbia Gulf asserts that those shippers serving heat sensitive loads whose demands may change on an intraday basis can use its intraday nomination procedures. However, Columbia Gulf states that it is not adverse to the inclusion of an absolute tolerance of 1,000 Dth, along with the proportional level, to ensure that small volume shippers are not negatively affected. In its answer, LUS states that it appreciates this new proposal and supports the concept of a scheduling safe harbor,

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[24] *Citing, e.g.*, *Panhandle Eastern Pipe Line Co.*, 97 FERC ¶ 61,046 at 61,271 (2001).

[25] *Citing, e.g.*, Guardian Pipeline, LLC, FERC Gas Tariff, Original Vol. No. 1, General Terms and Conditions, Section 14.1, Third Revised Sheet No. 162 (5.0 percent tolerance level) and Equitrans, L.P., FERC Gas Tariff, Original Vol. No. 1, General Terms and Conditions, section 8.9, First Revised Sheet No. 230 (4.0 percent tolerance level).

but argues that the level of 1,000 Dth for scheduling penalties is unsupported and requests the issue of the appropriate tolerance level be referred to a Settlement Judge.

40. Scheduling penalty tolerances based on a percentage of the amount scheduled have routinely been accepted by the Commission and are, therefore, consistent with Commission policy. However, Columbia Gulf has agreed to include an absolute tolerance level of 1,000 Dth in its proposed penalty provisions. Therefore, Columbia Gulf is directed to file revised tariff sheets providing for tolerance levels at the greater of an absolute tolerance level of 1,000 Dth or the proposed tolerance levels. LUS' request for a Settlement Judge is denied as unnecessary.

### 4. Waiver of Penalties

41. Some parties contend that the scheduling penalties should not be imposed where scheduling variances benefit the system or the shipper is not at fault. PGC asserts that the proposed daily scheduling penalties should only be imposed when the shipper is at fault for the scheduling variance and waived if it has no impact on system integrity. LUS argues that Columbia Gulf should waive or reduce scheduling penalties in cases where the scheduling variances are due to a public interest necessity, an emergency or uncontrollable forces. LUS suggests that the shipper's history of submitting accurate schedules and whether the pipeline experienced an operational problem or damage could be considered. In its answer, LUS also requests that the tariff contain explicit authority for waivers to ensure that the tariff is just, reasonable, and not unduly discriminatory and suggests a Settlement Judge to develop the waiver language. Sequent and TVA contend that the proposed daily scheduling penalties should take into account imbalances caused by Columbia Gulf or circumstances beyond the shipper's control.

42. Columbia Gulf contends that the beneficial effect of scheduling variances is illusory because the parties requesting waiver misconstrue the nature of scheduling variances and confuse them with imbalances. Columbia Gulf further contends that the concept of being "long" or "short" does not apply to scheduling variances. Columbia Gulf concludes that, as a result, a shipper scheduling more or less quantities of gas than it actually takes at the delivery point does not benefit its system. Columbia Gulf states that with respect to waiving or reducing penalties that are caused by events shippers cannot control, it will determine the merits of such waivers on a case-by-case basis. Columbia Gulf asserts that it is not possible for Columbia Gulf to know the circumstances under which a scheduling variance is created in advance.

43. The determination of whether a shipper is a repeat offender or operational impact would conflict with the purpose and nature of the proposed penalties and could be administratively burdensome. Columbia Gas in a similar filing in Docket No. RP07-340-000 also proposed daily scheduling variance penalties. In an order issued contemporaneously with this order, the Commission conditionally approved Columbia

Gas' daily scheduling penalties. Columbia Gas revised its tariff language in proposed section 19.6(e) to include scheduling variances to state that "To the extent that any imbalance or scheduling variance directly results from Shipper's reliance on inaccurate data from Transporter, or is otherwise caused by Transporter, no penalty will be assessed for that portion of the imbalance or scheduling variance shown by Shipper to be attributable to such inaccurate data." This revision is reasonable and consistent with the addition of the new penalties. Columbia Gulf is directed to revise proposed section 19.8(e) to provide the same exclusion for scheduling variances.

44. With respect to the requests for waivers on other grounds, existing section 19.5(d) of Columbia Gulfs' GT&C[26] provides that Columbia Gulf may waive its right to collect all or any portion of the penalties assessed against the shipper, provided that any such waiver is granted in a nondiscriminatory manner. In its answer, Columbia Gulf expressed its willingness to provide waivers or reductions of the proposed scheduling variance penalty caused by events the shipper cannot control and determine such waivers on a case-by-case. However, Columbia Gulf asserts that it is not possible to know the circumstances under which a scheduling variance is created in advance. The Commission agrees with Columbia Gulf that the requests are premature. Therefore, the Commission will not require Columbia Gulf to provide the specific circumstances under which it will grant waiver in its tariff at this time. LUS' request for a Settlement Judge is denied as unnecessary.

### 5. <u>Netting and Trading</u>

45. Piedmont argues that the proposed daily scheduling penalties fail to net out scheduling variances between positives and negatives and to account for instances where scheduling variances actually help the system. BGE argues that shippers with excess deliveries be allowed to trade with those shippers with negative deliveries because such deliveries cancel each other out.

46. Columbia Gulf argues, in response to the request for netting, that it cannot predict shipper activity when it is not communicated to the pipeline, and therefore, cannot plan Columbia Gulf's system needs and capacity availability by guess work. Columbia Gulf further argues that it is the shipper who should be responsible for scheduling via the interday and intraday nomination cycles set forth in its tariff. Columbia Gulf argues therefore, scheduling variances cannot be netted. Columbia Gulf asserts that scheduling variances are not imbalances and cannot be traded as imbalances.

47. The Commission will not require netting or trading of daily scheduling variances. As explained by Columbia Gulf, scheduling variances do not present the same problem as imbalances, *i.e.*, the difference between the amount of gas injected into and withdrawn

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[26] Proposed to be renumbered as section 19.8(d) in this filing.

from the pipeline, and cannot be netted or traded. Inaccurate scheduling affects availability of capacity for other shippers and may not be cured or negated simply because one shipper exceeds scheduled deliveries by the same amount as another shipper takes less than as scheduled. The shipper who took less than scheduled quantities still caused the pipeline to incur opportunity costs and both inaccurate nominations distort the amount and location of available capacity.

### 6. Multiple Penalties for the Same Conduct

48. Some parties assert that with the addition of the scheduling penalty, shippers will be subject to multiple penalties under both the scheduling penalty and existing penalty provisions. For example, Indicated Shippers request clarification that Columbia Gulf will not assess both the proposed scheduling penalties and either the TFE, FTI, or OFO penalties for the same infraction. EMUS asserts that the scheduling penalties will impose a second charge upon shippers for either using or not using capacity that they have already paid for under their contracts and for which Columbia Gulf is obligated to stand ready to provide. PGC argues that shippers should not be subject to an existing penalty, such as an overrun penalty, and the scheduling penalty.

49. In response, Columbia Gulf contends that an overrun charge is not a penalty, but rather a charge assessed when a shipper exceeds its Transportation Demand on any day and has nothing to do with providing incentives to shippers to schedule services accurately. Columbia Gulf clarifies that shippers will not be subject to multiple penalties for the same conduct. Columbia Gulf asserts that, for example, shippers that are assessed penalties for failure to comply with an OFO or for failure to interrupt will not also be assessed penalties for which the issuance of a critical notice is required. However, Columbia Gulf also asserts that, under this example, a shipper could still be assessed a nominal scheduling penalty, along with the OFO and FTI penalties.

50. The Commission has held that pipelines are prohibited from applying multiple penalties for the same infraction.[27] The Commission finds that Columbia Gulf must not impose a non-critical notice scheduling penalty for the same conduct for which it imposes a critical notice scheduling penalty. Nor may it impose either a critical notice or non-critical notice scheduling penalty for the same conduct that is also subject to a TFE, FTI, or OFO penalty.[28] Accordingly, Columbia Gulf must file revised tariff sheets to reflect the foregoing.

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[27] *Columbia Gas Transmission Corporporation.*, 100 FERC ¶ 61,084 at P 201 (2002).

[28] Section 19.2 currently prohibits imposition of both the FTI and TFE penalties for the same actions by a Shipper.

51. Although the proposed tariff language in section 19.4 limits the higher scheduling penalty to periods "When Transporter has issued a critical notice," the penalty at the ITS-1 rate is not expressly limited and could be interpreted as applying at all times, even when a critical notice has been issued. Therefore, Columbia Gulf is directed to file revised tariff sheets clarifying that the proposed scheduling penalty at the ITS-1 rate applies only when a critical notice is not in effect.

#### 7. Other Scheduling Variance Penalty Issues

52. Sequent complains that the filing fails to address how the proposed scheduling penalties will be implemented at OBA points. EMUS argues that Columbia Gulf should be required to provide an explanation of how its scheduling penalty proposal will affect shippers using an OBA point as well as the OBA party itself. The relationship of the proposed scheduling penalties to OBAs needs further explanation. Therefore, Columbia Gulf is directed to explain with adequate support how the proposed scheduling variance penalties will be implemented at OBA points.

### B. Monthly Imbalance Resolution Process

53. PGC argues that Columbia Gulf's proposed monthly imbalance resolution mechanism is inconsistent with *Order No. 637*. PGC further argues that the imbalance resolution mechanism together with the proposed scheduling penalties decrease the balancing flexibility Columbia Gulf now offers its shippers, particularly, when shippers have already paid scheduling penalties on the quantities cashed out. PGC further contends that because Columbia Gulf's cash-out mechanism is based on the percentage of excess deliveries and receipts it discriminates against small shippers, for whom a small quantity is a greater proportion of their scheduled deliveries/receipts. PGC requests that Columbia Gulf be required to add an absolute threshold component to the tiered cash-out mechanism. PGC also argues that Columbia Gulf's cash-out mechanism should not apply if the shipper has already paid a scheduling penalty.

54. Columbia Gulf responds that under *Order No. 637*, the Commission's policy is to authorize pipelines to implement imbalance cash-out mechanisms to permit imbalances that remain after netting and trading[29] to be eliminated through a cash-out charge, payment, or credit to the shipper.[30] Columbia Gulf asserts that there is no precedent for such absolute component requested by PGC, and that small shippers have the opportunity to avoid being subject to cash out through the make-up, netting and trading processes.

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[29] Columbia Gulf asserts that its proposed monthly imbalance cash-out mechanism fully complies with the requirement that pipelines provide for netting and trading of transportation imbalances, *citing* 18 C.F.R. § 284.12(b)(2)(ii) (2006).

[30] *Citing Order No. 637*, at 31,311.

Columbia Gulf further asserts that PGC's assertion that Columbia Gulf's cash-out mechanism should not apply where shippers have already paid a scheduling penalty is based on the erroneous assumption that scheduling penalties and cash-out mechanisms both address system imbalances, which is not the case. According to Columbia Gulf, imbalance resolution applies to the difference between actual receipts and deliveries, without consideration of what was nominated or scheduled, whereas a scheduling variance is the difference between quantities scheduled and quantities taken at the delivery point.

55. As Columbia Gulf explains, the proposed monthly imbalance resolution mechanism is consistent with *Order No. 637*. The proposed scheduling penalties are imposed on scheduling variances not imbalances and are also consistent with *Order No. 637*. Small shippers may avoid the cash-out through the make-up nominations, and the netting and trading processes. Further, the imbalance resolution mechanism and the percentages applied to receipts exceeding deliveries and deliveries exceeding receipts apply to all shippers. Finally, we agree that imbalances and scheduling variances are different. Accordingly, PGC's arguments and request for an absolute threshold in the cash-out mechanism, and for the mechanism to not apply if scheduling penalties are paid, are rejected as unsupported.

56. Indicated Shippers claims that Columbia Gulf must show operational need for approval of moving directly from in-kind balancing resolution to what it believes is a severe cash-out mechanism with no penalty-free minimum tolerance, *citing Northern Natural Gas Co.*, 105 FERC ¶ 61,172 at P 84 (2003), *order on reh'ng*, 107 FERC ¶ 61,252 (2004), *aff'd sub.nom. The Industrials v FERC*, 426 F.3d 405 (D.C. Cir. 2005) (*Northern*) and *Transcontinental Gas Pipe Line Corp.*, 91 FERC 61,282 at 61,954 (2000) (*Transco*). Indicated Shippers states that in *Northern*, the Commission noted that there was a "continuing problem with imbalances on Northern's system, leading to an under recovery of costs." Indicated Shippers complains that Columbia Gulf has provided no evidence that it has experienced any problems with monthly imbalances and provided no monthly imbalance data at all. Arena asserts that Columbia Gulf has failed to show that shippers' monthly imbalances on its system are large and incapable of being corrected on an in-kind basis and threaten system integrity or service reliability.

57. Columbia Gulf responds that the Commission has routinely authorized tiered mechanisms for cashing out monthly imbalances without requiring the pipeline to show that the imbalances are causing operational problems if the pipeline offers imbalance management services that allow shippers to minimize the possibility of incurring imbalances.[31] Columbia Gulf further responds that the proposed imbalance resolution

[31] *Citing, e.g.*, *ANR Pipeline Co.*, 105 FERC ¶ 61,236, at P 19 (2003). Columbia Gulf notes that its tariff provides for Parking and Lending and Imbalance Management Services.

procedures will apply regardless of whether there is a critical period during the month in which the imbalances were incurred, consistent with other approved pipeline tariff proposals.[32] Columbia Gulf asserts that currently shippers carry sometimes large imbalances over a number of months. Columbia Gulf further asserts that the imbalance resolution process will properly motivate shippers to resolve their differences in an efficient and effective manner.

58. Columbia Gulf's proposal is justified under Commission precedent and policy. In *Order No. 637-A*, the Commission stated that it "must consider the imbalance services, and netting and trading, OFO and penalty provisions together to evaluate how they function together in light of the pipeline's characteristics."[33] In cases where a pipeline lacks storage capabilities, such as Columbia Gulf, the Commission has determined that a monthly cash-out mechanism is an essential balancing tool.[34] The Commission has also rejected arguments for establishing a penalty-free tolerance band for the high/low pricing methodology stating that the goal of minimizing arbitrage supports the use of the high/low pricing methodology for all imbalances, not just those in excess of a tolerance level.[35]

59. Further, when proposing a cash-out mechanism, a pipeline must offer adequate imbalance management services that allow shippers to minimize imbalances. Columbia Gulf has adequate imbalance management services, including netting and trading and parking and lending services.

60. In *Northern*, the pipeline proposed to modify its existing tiered cash-out mechanism to add a new tier for imbalances greater than 25 percent, and use the highest or lowest of five weekly prices to determine the index price. The Commission accepted the pipeline's proposal to cash-out imbalances based on a weekly high/low index price and a five-week structure to discourage arbitrage without considering operational need. However, the proposal to increase an additional tolerance tier for imbalances over 25 percent was rejected on the basis that adding or restricting tolerance levels could result in an increase in an existing penalty level and no operational need for adding another level

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[32] *Citing Stingray Pipeline Co.*, 98 FERC ¶ 61,367, at 62,587 (2002) and *High Island Offshore System, L.L.C.*, 97 FERC ¶ 61,156, at 61,693 (2001).

[33] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, *Order No.637-A*, FERC Stats. and Regs., Reg. Preambles [1996-2000] ¶ 31,091, at 31,611 (*Order No. 637-A).*

[34] *See, e.g., Discovery Gas Transmission L.L.C.*, 99 FERC ¶ 61,145, at 61,609-10 (2002).

[35] 107 FERC ¶ 61,252, at P 23.

of imbalance tolerance was shown.[36] Columbia Gulf proposes no such revision of an existing tolerance level.

61. Further, although the Commission did state, in the order on rehearing in *Northern*, that the pipeline was experiencing a continuing problem with imbalances leading to an under recovery of costs, the Commission had previously noted in that order that the opportunity for arbitrage can lead to a substantial under recovery of costs and that “there is no reason to make the correction of such a problem contingent on a showing that the imbalances are causing operational problems.”[37] It is enough to show, as Columbia Gulf has, that imbalances are occurring. Accordingly, the Commission finds that Columbia Gulf’s proposed high/low prices and the fifth week are just and reasonable as they will address the potential for arbitrage opportunities. There is no need for a further showing of operational harm by Columbia Gulf.

62. Similarly, *Transco* is inapposite. In *Transco*, the Commission rejected a pipeline proposal to tighten its penalty levels by revising existing cash-out provisions to reduce the imbalance tolerance level and modify how the high/low price was calculated. In that case, unlike the instant case, the Commission found that the pipeline was not offering its customers sufficient imbalance management tools, such as imbalance netting and trading, and, in that context, imposed a stricter showing of operational harm.[38] Therefore, the arguments of Indicated Shippers and Arena are rejected.

63. Proposed sections 19.6(a) and (b) specify the cash-out indices to be used for settling imbalances. The proposed "Sell Price" for “Excess Deliveries” is “the highest price published weekly during the month, plus the first week of the succeeding month, by Natural Gas Week for "Columbia Gulf-Rayne and Columbia Gulf-Erath." Indicated Shippers asserts that this seems to mean that Columbia Gulf would take the highest price as between these two indices, but it is not clear. Indicated Shippers contends it also appears that the same would apply to the Buy Price, the lowest of these prices (*i.e.*, Columbia Gulf would use the lower of the two prices in any given month). Indicated Shippers argues that the Commission should direct Columbia Gulf to explain how it intends to determine the “Buy” and “Sell” prices. The Commission agrees with Indicated Shippers that these provisions should be clarified. Therefore, the Commission directs Columbia Gulf to clarify how the “Buy” and “Sell” prices will be determined.

[36] 105 FERC ¶ 61,172 at P 84.

[37] 107 FERC ¶ 61,252 at P 14, *quoting Texas Gas Transmission Corp.*, 97 FERC ¶ 61,349, at 62,634.

[38] 91 FERC ¶ 61,282, at 61,952-53.

64. Indicated Shippers also seeks a clarification related to cash-out revenue crediting. For the annual determination of net cash-out loss or gain, and crediting of net positive cash-out revenues, Columbia Gulf has proposed a new section 19.7, which provides that it will determine the cash balance and volumetric gas balance (Cash Pool) under its cash-out mechanism as of May 31 each year. Columbia Gulf will credit to shippers any positive Cash Pool Determination *pro rata* based on transportation throughput. Indicated Shippers asserts that this provision does not indicate how the cash balance or the volumetric gas balance will be derived. Indicated Shippers further notes that the Commission recently authorized Columbia Gulf to amend its tariff to govern its operational sales and purchases of gas.[39] Indicated Shippers argues that the Commission should direct Columbia Gulf to address whether it intends to include in the annual Cash Pool any costs associated with such operational sales and purchases of gas.

65. The Commission agrees with Indicated Shippers that the treatment of operational sales and purchases of gas needs clarification. Therefore, the Commission directs Columbia Gulf to clarify the manner, if any, the costs associated with operational sales and purchases of gas will be included in the Cash Pool.

66. Indicated Shippers also notes that section 19.7 does not refer to cash-out penalties in calculating the Cash Pool or the Cash Pool Determination. Indicated Shippers asserts that the Commission has held that the percentage multipliers for imbalances outside of the incremental tiers, constitute penalties.[40] Indicated Shippers further asserts that, however, the Commission has further held that imposition of high/low pricing does not constitute a penalty, citing the order on rehearing in *Northern*, 107 FERC ¶ 61,252 at P 37, (*citing Black Marlin Pipeline Com.*, 101 FERC ¶ 61,087 at P 9 (2002) (*Black Marlin*)). Indicated Shippers quotes a portion of the order on rehearing in *Northern* which states in part, that it is "only the pipelines revenues resulting from use of a cash-out higher or lower than 100 percent of the index price (*i.e.* the premium) the Commission considers a penalty for this purpose [penalty revenue crediting])."[41] Indicated Shippers contends that Columbia Gulf should clarify (1) whether it will credit all revenues attributable to high/low pricing of imbalances, regardless of the imbalance tier, to the annual determination of net cash-out loss or gain, and crediting of net positive cash-out revenues under proposed section 19.7, or (2) whether it will treat the revenue attributable to high/low prices as penalty revenue to be credited to shippers.

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[39] *Citing Columbia Gulf Transmission Co.*, 118 FERC ¶ 61,066 (2007).

[40] *Citing Order No. 637-A*, at 31,610 and *Order No. 637-B*, 92 FERC P 61,062 at 61,172 (2000).

[41] 107 FERC ¶ 61,252 at P 37.

67. Indicated Shippers argues that the Commission should direct Columbia Gulf to treat revenue attributable to high/low pricing as cash-out revenue, not penalty revenue, for crediting purposes. Indicated Shippers contends that the Commission should clarify that Columbia Gulf cannot treat all high/low price cash-outs as penalties, and thereby exclude penalized shippers from net revenue crediting. Indicated Shippers further contends that, otherwise, Columbia Gulf could find itself with substantial penalty revenues and no eligible recipients for revenue crediting.

68. In the order on rehearing in *Northern*, the Commission found that only premium revenues resulting from a cash-out price higher or lower than 100 percent of an index price are considered a penalty for crediting purposes.[42] In its transmittal letter, Columbia Gulf states that "In compliance with Order No. 637, Columbia Gulf will refund to firm and interruptible shippers all penalty revenue net of costs, derived from the operation of its cash-out mechanism." Columbia Gulf further states that where appropriate the proposed Annual Cash-Out Report will provide for refunds. However, the determination of the Cash Pool needs clarification. Columbia Gulf is directed to respond to Indicated Shippers' request for clarifications regarding determination of the Cash Pool.

69. BGE requests that the Commission require Columbia Gulf to provide numerical examples of how PPAs and OBA's will be impacted by the cash-out mechanism. In its answer, Columbia Gulf asserts that its proposed method of handling PPAs has been approved in other interstate pipeline tariffs.[43] Columbia Gulf also asserts that it will educate its shippers about its new imbalance resolution procedures over the coming months.

70. Columbia Gulf explains the operation of PPAs in its transmittal letter (at 8). BG&E has not asserted any conflict with law or Commission policy. In addition, Columbia Gulf states it will provide a response to requests to numerical examples during the training it will provide. Therefore, the Commission denies BGE's request for submission of numerical examples as premature, speculative, and unsupported. However, the relationship of the proposed cash-out mechanism to OBAs needs further explanation. Therefore, Columbia Gulf is directed to explain with adequate support how the cash-out mechanism will be implemented at OBA points.

### C. Other Issues

71. Indicated Shippers asserts that historically, Columbia Gulf has not netted any costs out of credited penalties. Indicated Shippers further asserts that, if penalty imposition

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[42] 107 FERC ¶ 61,252 at P 37.

[43] *Citing, e.g.*, Gulf South Pipeline Company LP, FERC Gas Tariff, Sixth Revised Vol. 1, General Terms and Conditions, section 20.1(C), Original Sheet No. 2704.

becomes a revenue opportunity, Columbia Gulf will have an incentive to force shippers into imbalance situations. Indicated Shippers argues that the Commission should require Columbia Gulf to clarify whether it intends to net costs out of the revenues associated with these penalties and to identify the types of costs it anticipates it would net out of the credited revenues.

72. Section 19.6(b)(i) of Columbia Gulf's GT&C[44] does define penalty revenues as net of Transporter's costs consistent with section 284.12(b)(2)(v) of the Commission's regulations. In addition, the Commission has responded to previous requests that Columbia Gulf define "net of Transporter's costs." The Commission directed Columbia Gulf to include a requirement that it will file a report within 60 days of the close of the contract year showing the penalty revenues, the costs netted against the penalty revenues, and the resulting penalty revenue credits for each month of the contract year (November 1 to October 31).[45] As the Commission pointed out, Columbia Gulf has the burden to support any costs included in the penalty revenue report and its customers may challenge the revenues, costs, and methods of identifying and accounting for these amounts when the report has been filed. While Columbia Gulf is permitted to recover its costs, this cost recovery does not give an incentive to increase penalties for use as a profit center. Therefore, Indicated Shipper's requested clarification regarding crediting is denied.

73. O&R argues that Columbia Gulf's tariff does not contain sufficient gas quality specifications or a merchantability standard and requests that Columbia Gulf waive the application of its proposed scheduling penalties and cash-out mechanism for undertakes when shippers reasonably reject gas receipts to protect its system or its customers, *e.g.*, because the gas does not meet gas quality specifications. The concerns expressed by O&R are related to issues that are outside the scope of this proceeding. Therefore, O&R's request is rejected.

74. Finally, Columbia Gulf should separate the proposed scheduling penalty provision into two separate subsections to recognize that critical period and non-critical period scheduling penalty levels and tolerances are different. Therefore, the Commission directs Columbia Gulf to separate the proposed scheduling penalties in section 19.4 as described.

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[44] Proposed to be section 19.9(b)(i).

[45] *Columbia Gulf Transmission Co.*, 100 FERC ¶ 61,344, at P 124-125 (2002). This reporting requirement, contained in section 19.6(d) of Columbia Gulf's currently effective tariff, is in proposed section 19.9(d).

### D. Effective Date

75. Columbia Gulf requests waiver of the requirement of section 154.207 of the Commission's regulations that all proposed changes in tariffs must be filed not less than 30 days nor more than 60 days prior to the proposed effective date to accommodate a date that is contemporaneous with the commencement of its new EBB system. Columbia Gulf filed its proposed tariff changes on February 16, 2007, and initially proposed an effective date of June 1, 2007. On May 17, 2007, Columbia Gulf filed to revise the proposed effective date of June 1, 2007 to August 1, 2007, in light of an expected delay until August 1, 2007 in launching its new EBB.

76. Some of the parties contended in their comments, that Columbia Gulf should delay implementation of its scheduling penalties until sometime after the proposed June 1, 2007 originally anticipated commencement date of the new EBB system, now revised to be August 1, 2007, as detailed in Columbia Gulf's May 17, 2007 letter. These parties state that they are concerned about the new computer system commencing concurrently with the new penalties, shipper confusion, and the need for formal training. Columbia Gulf answers that it does not believe that operating experience under the new EBB is necessary before the scheduling penalties go into effect. Columbia Gulf asserts that to the extent problems occur with the new EBB system that result in shippers incurring scheduling penalties, it will take the necessary measures to ensure that shippers are not inappropriately penalized. Responding to Indicated Shippers' suggestion of a technical conference on the EBB system, Columbia Gulf asserts that it will give its shippers training prior to the commencement of the EBB system.

77. The Commission finds good cause to grant waiver of section 154.207 of the Commission's regulations. However, in light of the fact that we have directed Columbia Gulf to modify its proposal and to further clarify how its proposed penalties will work, and because of the concern of its shippers over the implementation of its new EBB system at the same time as it implements the new penalties, the Commission will suspend the effectiveness of the filing until the earlier of January 1, 2008, or a date specified in a further order of the Commission. This suspension does not relieve Columbia Gulf of its promise to take corrective measures to protect shippers from being inappropriately penalized as result of problems with the implementation of its new EBB system.

## IV. Suspension

78. Based upon a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts the proposed tariff sheets, subject to refund, and suspends their effectiveness for the period set forth below, subject to the conditions set forth in this order.

79. The Commission's policy regarding rate suspensions is that rate filings should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[46] It is also recognized however, that shorter suspensions may be warranted under circumstances in which suspension for the maximum period may lead to harsh and inequitable results.[47] Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to suspend the tariff sheets for the maximum period and permit the rates to take effect on the earlier of January 1, 2008, or a date specified in a further order of the Commission, subject to refund and the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) The revised tariff sheets listed in the appendix to this order are accepted and suspended to become effective on the earlier of January 1, 2008, or a date specified in a further order of the Commission, subject to refund and conditions and further review, as discussed in the body of this order and the ordering paragraphs below.

(B) Columbia Gulf is directed, within 15 days of the date this order issues, to file revised tariff sheets and information and explanations with adequate support consistent with the discussion in the body of this order.

(C) The Commission grants the request of Columbia Gulf for waiver of section 154.207 of the Commission’s regulations, as discussed in the body of this order.

By the Commission

( S E A L )

Kimberly D. Bose,
Secretary.

[46] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

[47] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

## Appendix

**Columbia Gulf Transmission Company**
**Docket No. RP07-174-000**

**FERC Gas Tariff, Second Revised Volume No. 1**

Eighth Revised Sheet No. 216
Original Sheet No. 216A
Original Sheet No. 216B
Original Sheet No. 216C
Fifth Revised Sheet No. 217
Fifth Revised Sheet No. 218