

Columbia Gas system,⁶ and the June 26 filing, as in compliance with the June 11 Order, subject to conditions, as discussed below.

I. Background

3. On March 6, 2007, Columbia Gas filed to revise section 19 of its General Terms and Conditions (GT&C) to implement new daily delivery point scheduling penalties. The scheduling penalties 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 penalty would be imposed on each Dth taken that varies by 5 percent or more either above or below the scheduled quantity, and would be equal to Columbia Gas's then effective ITS rate for Interruptible Transportation Service (IT). If Columbia Gas declares a Critical Day,⁷ the penalty was to be imposed on each Dth taken that varies by 2 percent or more above or below the scheduled quantity, and would be equal to three times the midpoint of the range of prices reported for "Columbia Gas, Appalachia" as published in *Platts Gas Daily* price survey. Columbia Gas would credit any revenues from these penalties to its non-offending shippers pursuant to its existing penalty revenue crediting mechanism. Columbia Gas originally proposed the filing to be effective June 1, 2007, but subsequently filed on several occasions to move the effective date later in time to reflect the delay in implementation of its new Navigates computer system. The filing was protested.

change the requested effective date of the revised tariff sheets from May 1, 2008 to June 1, 2008, to coincide with the revised launch date of Navigates. On April 18, 2008, Columbia Gas's request to change the effective date to June 1, 2008, was granted in an unreported delegated letter order. On May 20, 2008, as corrected on May 21, 2008, and June 16, 2008, Columbia Gas filed notification that the launch date of Navigates would be delayed, and the affected tariff sheets would not be placed into effect until the launch date of Navigates. On July 21, 2008, as corrected on July 22, 2008, Columbia Gas notified the Commission that Navigates would be launched on August 1, 2008.

⁶ If Navigates commences on a date later than August 1, 2008, Columbia Gas is directed to file a letter at least thirty days prior to that commencement stating the revised commencement date.

⁷ Existing section 19.7, now proposed to be renumbered as section 19.8, provides in part, that a "Critical Day" will be declared if Columbia Gas determines, based on criteria such as weather forecasts, line pack, storage conditions, pipeline pressures, horsepower availability, system supply and demand, and other operational circumstances that operating conditions are such that it faces a "threat to its system integrity and/or [its] ability to meet its firm service obligations."

4. In the June 11 Order, the Commission accepted and suspended 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. The Commission found that the proposed scheduling penalties were generally consistent with Commission policy. However, the Commission directed Columbia Gas to file revised tariff sheets and provide information and explanations, including why its proposed Critical Day scheduling tolerance level of 2.0 percent should not be increased to 3.0 percent or some higher level, as described in detail below.

II. Discussion

A. Rehearing

1. Honeywell's Request for Rehearing

a. Consistency with Order No. 637 Penalty Policy

5. Honeywell contends that the Commission's acceptance of Columbia Gas's scheduling penalty proposal was contrary to *Order No. 637's*⁸ policies concerning penalties. Honeywell points out that *Order No. 637* added section 284.12(b)(2)(iii)⁹ to the Commission's regulations, requiring that a pipeline must provide, to the extent operationally practicable, park and loan and other services that facilitate the ability of its shippers to manage transportation imbalances. Honeywell asserts that, while Columbia Gas proposed to exempt customers with no-notice service from the proposed scheduling penalties, the Commission failed to properly consider the situation of Honeywell and others who are without no-notice service and were not given an opportunity to purchase no-notice, firm storage, or firm imbalance service prior to the implementation of the daily scheduling penalties. Honeywell asserts that Columbia Gas's proposal is grossly inequitable to those without no-notice and firm storage service who are located in constrained areas of the Columbia Gas system. Honeywell further asserts that Columbia Gas appears to have no intention of pursuing other new innovative balancing services for shippers without no-notice service.

⁸ *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091 (*Order No. 637*), *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 (*Order No. 637-A*), *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

⁹ 18 C.F.R. § 284.12(b)(2)(iii) (2008).

6. Honeywell contends that the Commission has approved new penalties when pipelines provided new balancing services giving shippers the opportunity to manage imbalances, citing *Panhandle Eastern Pipe Line Co.*, 97 FERC ¶ 61,046, at 61,267-271 (2001) (*Panhandle*) and *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305 (2006) (*El Paso*). Honeywell further contends that the Commission should not have approved the scheduling penalties without Columbia Gas demonstrating that it had available services that shippers could purchase to manage the newly proposed scheduling penalties as in *Panhandle* and *El Paso*.

7. Honeywell contends that the approved penalties will not deter misconduct but will merely provide penalty revenues to those who already have no-notice service, including some of Columbia Gas's affiliates. Honeywell states that it operates a complex manufacturing operation at its Hopewell plant. Honeywell asserts that production can be disrupted due to equipment and process problems throughout the day, which in turn dictate the amount of gas the plant will use. Honeywell further asserts that the current nomination times also do not allow it to adjust nominations for at least 16 hours of the gas day, i.e., after the Intraday 2 Nomination Cycle deadline (5 p.m. Central Clock Time) until 9:00 a.m. the following morning, and that it has variable gas load due to operating parameters that are impossible to predict. Thus, Honeywell contends that it is difficult to stay in scheduling balance, particularly on Critical Days. Honeywell further contends that it encounters nomination challenges because it does not receive real-time information about gas deliveries from Columbia Gas. Further, it asserts that use of current or future EBB data is insufficient for purposes of accurate scheduling. Honeywell asserts that, contrary to what Columbia Gas stated as noted by the Commission in the June 11 Order (at n.27), it is not possible that the availability of electronic metering will permit shippers to monitor their scheduling variances and adjust their nominations during later nomination cycles. Rather, Honeywell asserts that, as a 24 hour, 7 days a week manufacturing facility, it cannot make such adjustment due to the limitations of the nominations cycles which provide no opportunities to make adjustments between 5:00 p.m. and 9:00 a.m. the next morning.

8. Honeywell asserts that the Commission is well aware that at least the eastern part of Columbia Gas's system is severely constrained during peak periods and that there is no new firm storage and premium no-notice service currently available in this area for those who need it. It states that for many years it has had SIT (Storage In Transit) service on Columbia Gas, but Columbia Gas and now the Commission has made it clear that such service is not designed for managing scheduling imbalances.¹⁰ Honeywell asserts that the Commission is allowing Columbia Gas to penalize Honeywell and others and subsidize those who have the privilege of having such services under contract. Honeywell further

¹⁰ Citing June 11 Order at P 42.

asserts that the Commission should have required Columbia Gas to make available no-notice, firm storage, firm balancing, or other balancing services to Honeywell and others before allowing the scheduling penalty regime to go forward.

Discussion

9. The Commission finds that Columbia Gas's scheduling penalty proposal is generally consistent with the policies concerning penalties adopted in *Order No. 637*. In *Order No. 637*, the Commission modified its policy concerning penalties in several ways. Two of these modifications are relevant to addressing the issues raised by Honeywell's request for rehearing. First, *Order No. 637* found that "a general shift in Commission policy is warranted so that penalties are imposed only when needed to protect system integrity."¹¹ By this policy, which is codified in section 284.12(b)(2)(v) of the Commission's regulations,¹² the Commission sought to "increase pipeline efficiency by calibrating penalties to threats to system integrity."¹³ The Commission stated that such a calibration of penalties could "result in either no penalties for non-critical days or higher tolerances and lower penalties for non-critical as opposed to critical days."¹⁴ Second, *Order No. 637* found that "shippers need to be given tools that will enable them to reduce penalties without jeopardizing pipeline integrity, and shipper and pipeline incentives need to be properly structured to avoid the need to impose penalties."¹⁵ Accordingly, the Commission required pipelines to offer "imbalance management services, like parking and loaning service . . . to make it easier for shippers to remain in balance in the first instance."¹⁶ This aspect of the Commission's penalty policy is codified in section 284.12(b)(2)(iii) of the Commission's regulations.¹⁷

¹¹ *Order No. 637*, at 31,308.

¹² 18 C.F.R. § 284.12(b)(2)(v) (2008). That section provides, "A pipeline may include in its tariff transportation penalties only to the extent necessary to prevent the impairment of reliable service."

¹³ *Chevron Natural Gas Co. v. FERC*, Case No. 04-1347 (memo.), 199 Fed. Appx. 2, 4 (D.C. Cir. 2006), affirming *Tennessee Gas Pipeline Co.*, 99 FERC ¶ 61,017 (2002).

¹⁴ *Order No. 637* at 31,317. In *Order No. 637-A*, the Commission clarified, "The question whether penalties may be imposed during non-critical periods needs to be determined in the pipelines' compliance filing proceedings and cannot be decided in the abstract." *Order No. 637-A* at 31,608.

¹⁵ *Order No. 637* at 31,308.

¹⁶ *Order No. 637* at 31,309.

¹⁷ 18 C.F.R. §284.12(b)(2)(iii) (2008). Section 284.12(b)(2)(iii) provides:

(continued...)

10. In the June 11 Order, we found that Columbia Gas's proposed scheduling penalties are properly calibrated to potential threats to the system, consistent with the first aspect of the Commission's penalty policy described above. If Columbia Gas declares a Critical Day based on a finding that it faces a "threat to its system integrity and/or [its] ability to meet its firm service obligations,"¹⁸ Columbia Gas may impose a substantial scheduling penalty equal to three times the midpoint of the range of prices reported for "Columbia Gas, Appalachia" as published in *Platts Gas Daily* price survey.¹⁹ In non-critical periods, Columbia Gas will only impose a nominal penalty, equal to its maximum rate for interruptible transportation service, consistent with the policy developed in individual pipeline *Order No. 637* compliance proceedings. As the Commission explained in *Natural Gas Pipeline Co. of America, 103 FERC ¶ 61,174 (2003) (Natural)*:

During non-critical periods, a scheduling variance will not have operational effects on the pipeline. Establishing a scheduling penalty at the IT [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.^[20]

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

¹⁸ Section 19.7 of Columbia Gas's GT&C proposed to be renumbered section 19.8. *See* n.7 of this order.

¹⁹ As discussed below, Columbia Gas has agreed to increase the tolerance level for its Critical Day scheduling penalties to 3 percent, so that the penalties will only be imposed on each Dth taken that varies by 3 percent or more above or below the scheduled quantity.

²⁰ *Natural*, 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. While a shipper's scheduling of less service than it actually takes may not involve a similar lost opportunity cost for the pipeline, it is reasonable for the penalty for under-scheduling to be the same as for over-scheduling. Otherwise, there would be an incentive for shippers to schedule significantly less service than they expect

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11. Honeywell attacks the Commission's acceptance of Columbia Gas's scheduling penalty proposal primarily on the ground that, regardless of whether the penalty levels are properly calibrated to threats to system integrity, Columbia Gas does not offer all its shippers services which would enable them to avoid the scheduling penalties. As Honeywell recognizes, Columbia Gas proposes to exempt shippers who take no-notice services from the scheduling penalties. These services include any of three firm transportation services (SST with Rate Schedule FSS, NTS, and GTS service).²¹ However, Honeywell asserts that these services are fully subscribed on the eastern part of Columbia Gas's system and, therefore, are not available to shippers on that part of the system such as Honeywell, who have contracted only for firm transportation service under Rate Schedule FTS (Firm Transportation Service).²² Honeywell contends that, in these circumstances, approval of Columbia Gas's scheduling penalty proposal violates section 284.12(b)(2)(iii), requiring pipelines with imbalance penalty provisions to offer imbalance management services.

12. Honeywell's reliance on section 284.12(b)(2)(iii) as requiring Columbia Gas to offer services enabling all shippers to avoid scheduling penalties is misplaced. By its terms, that section only governs the services a pipeline must offer in order to include "imbalance penalty provisions in its tariff." As the Commission pointed out in the June 11 Order, an imbalance is the difference between the volumes a shipper puts on the system at the receipt point and the volumes the shipper takes off the system at the delivery point. Imbalance management services enable shippers to avoid or correct such imbalances by, for example, treating the excess amounts taken from, or left on, the system as a loan or a park under a park and loan service, or by trading a negative imbalance with a shipper who has a positive imbalance. Here, however, Columbia Gas is not proposing to penalize imbalances, but scheduling variances. In contrast to imbalances, scheduling variances reflect the difference between the volume the shipper nominated and scheduled for delivery and the volume which it actually shipped on the system and took delivery of.²³ Thus, a scheduling variance does not result from the shipper either taking more gas from the system than it put on, or vice versa. Therefore,

to take, so as to avoid the penalty for over-scheduling.

²¹ In *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,060, at 61,513-15 (1993), the Commission noted that Firm Storage Service (FSS) with Storage Service Transportation (SST), No-Notice Transportation Service (NTS), and General Transportation Service (GTS) are services provided on a no-notice basis on Columbia Gas's system.

²² In its rehearing request, Honeywell states that it has a contract demand of 50,050 Dth per day under Rate Schedule FTS service.

²³ June 11 Order at P 37.

scheduling variances do not result in any imbalance to be addressed by an imbalance management service. The Commission accordingly concludes that the requirements of *Order No. 637* and section 284.12(b)(2)(iii) concerning imbalance management services are inapplicable to scheduling penalty proposals, such as Columbia Gas's proposal.

13. Consistent with this interpretation of section 284.12(b)(2)(iii), the Commission carefully reviewed in the individual pipeline *Order No. 637* compliance proceedings each pipeline's imbalance management services, as part of deciding whether to approve the pipeline's proposed imbalance penalties, including tiered mechanisms for cashing out imbalances. However, the Commission reviewed the pipeline's scheduling penalties separately from any consideration of the pipeline's imbalance management services, and the Commission routinely approved scheduling penalty proposals similar to those Columbia Gas has proposed here,²⁴ without ever suggesting that the approval of such scheduling penalties was contingent on the pipeline offering services which allowed its shippers to avoid the scheduling penalties.²⁵

14. Nevertheless, as the Commission stated in the June 11 Order, Columbia Gas does offer several year-round premium no-notice services which enable shippers to avoid scheduling penalties. As required by *Order No. 636-C*, Columbia Gas offers these services to all shippers on a not unduly discriminatory basis, to the extent capacity is available.²⁶ Rate Schedule SST requires a firm storage contract under Rate Schedule

²⁴ See, e.g., *Panhandle*, 97 FERC ¶ 61,046 at 61,271; *MIGC, Inc.*, 96 FERC ¶ 61,042, at 61,107 (2001); *Gulf South Pipeline Company, LP*, 98 FERC ¶ 61,278, at 62,172-173 (2002); *PG&E Gas Transmission, Northwest Corporation*, 98 FERC ¶ 61,365, at 62,569 (2002); *Southern Natural Gas Co.*, 99 FERC 61,042, at 61,163 (2002); *Maritimes & Northeast Pipeline, L.L.C.*, 100 FERC ¶ 61,030, at P 83 (2002); and *Northern Natural Gas Co.*, 101 FERC ¶ 61,203, at P 168-70 (2002).

²⁵ In *Panhandle* and *El Paso*, the Commission separately considered scheduling penalties and imbalance services provided to avoid imbalances without any requirement that the pipeline provide imbalance services in order for the scheduling penalties to be approved. In any event, in Columbia Gas's *Order No. 637* compliance proceeding, the Commission found that Columbia Gas offered adequate imbalance management services and was in compliance with section 284.12(b)(2)(iii) since it offered Parking and Lending Service (PAL), SIT, other storage services, NTS, and a new Firm Balancing Service (FBS). *Columbia Gas Transmission Corp.*, 100 FERC ¶ 61,084, at P 112-47 (2002), *order on reh'g*, 104 FERC ¶ 61,168 (2003).

²⁶ June 11 Order at P 44, citing 18 C.F.R. § 284.7(a)(4) (2008) and *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636-C*, 78 FERC ¶ 61,186, at 61,769-72 (1997) (*Order No. 636-C*).

FSS. Under Rate Schedule NTS, Columbia Gas establishes a Gas Supply Quantity (GSQ) which must be replenished by the shipper. Columbia Gas's right to draw on those supplies to serve the no-notice shippers enables Columbia Gas to provide firm service to those shippers up to their firm entitlements, even on days when the shippers fail to schedule such service. As a result, Columbia Gas has proposed to exempt its three no-notice services from any scheduling penalties.

15. Honeywell contends that the June 11 Order was incorrect and misleading in stating that no-notice service is available to all shippers on the Columbia Gas system.²⁷ Honeywell points out that Columbia Gas's year-round no-notice service and its firm storage service are fully subscribed in certain areas of its system, including in Honeywell's location. In these circumstances, Honeywell asserts the Commission erred in finding that Columbia Gas need not offer any services other than no-notice service for the purpose of enabling shippers to avoid scheduling penalties. Honeywell argues that, by so holding, the Commission has retreated from *Order No. 637*'s policy that pipelines must provide balancing services. Honeywell also contends that the Commission mistakenly relied upon *Order No. 636-C*'s holding that pipelines offering no-notice service need only do so to the extent the pipeline has the capacity available. Honeywell asserts that *Order No. 636-C* was issued prior to *Order No. 637* in an era when the Commission was changing from command and control policies to a service oriented policy that gives shippers options to obtain flexibility. Honeywell further asserts that the Commission did not consider whether it was practical for Columbia Gas to provide new imbalance services or no-notice transportation with or without the need to construct new facilities. Honeywell contends that, while no one is asserting that the Commission can force Columbia Gas to undertake new construction and operate new facilities to be able to provide more storage and no-notice transportation, the Commission has the option to refuse to allow Columbia Gas to implement its daily scheduling penalties. However, Honeywell asserts that the Commission never considered this option.

16. Honeywell's arguments that the Commission is retreating from its *Order No. 637* policy are in error. As previously discussed, the imbalance management services required by *Order No. 637* are intended to avoid imbalance penalties, not scheduling penalties. In any event, even if the requirements in section 284.12(b)(2)(iii) concerning imbalance management services were applicable to Columbia Gas's scheduling penalty proposal, that section only requires pipelines to offer imbalance management services "to the extent operationally feasible." Therefore, there is nothing in *Order No. 637* to suggest a change in the policy finding in *Order No. 636-C* that:

a pipeline offering no-notice transportation service must do so only to the

²⁷ Citing June 11 Order at P 44.

extent the pipeline has capacity available (including the storage capacity that may be needed to perform no-notice service).^{28]}

Accordingly, Honeywell's argument that the Commission erred in not instituting an inquiry into the practicality of Columbia Gas providing Honeywell no-notice service ignores the Commission's policy of limiting the obligation of pipelines to provide no-notice service to available capacity.²⁹ The Commission, nonetheless, also recognizes and encourages Columbia Gas's voluntary efforts to increase capacity that may be used to provide incremental no-notice or other service that Honeywell and others may obtain to avoid scheduling penalties, such as the expansion project in Docket No. CP07-367 that Honeywell cites.³⁰

17. The Commission also rejects Honeywell's contention that the Commission should refuse to allow Columbia Gas to implement scheduling penalties unless and until it is able to provide all its shippers with no-notice services that would enable them to avoid all scheduling penalties. As discussed above, Columbia Gas's proposed scheduling penalties are consistent with the general policy established in *Order No. 637* that a pipeline's penalties should be calibrated to the potential threats to system integrity. Columbia Gas will only impose its Critical Day penalties, when it faces a "threat to its system integrity and/or [its] ability to meet its firm service obligations." At such times, a non-no-notice shipper's takes of more, or less, deliveries than it scheduled can clearly complicate the

²⁸ *Order No. 636-C*, 78 FERC ¶ 61,186 at 61,772.

²⁹ The Commission also rejects Honeywell's contention that Columbia Gas's proposed scheduling penalties are unduly discriminatory, unreasonable, and inequitable because Columbia Gas did not make no-notice service available to all customers and a windfall and subsidy through the distribution of penalty revenues to those customers with no-notice service. *Order No 636-C* held that, if a pipeline offers no-notice service, it must offer that service on a non-discriminatory basis to all customers that request it, and Honeywell has not requested relief pursuant to that requirement. In addition, those no-notice shippers pay for premium no-notice service after contracting for such service when sufficient facilities and transportation and storage capacity are available. Rate Schedule FTS shippers pay a Base Reservation Charge of \$ 5.636. In contrast, no-notice shippers under Rate Schedules NTS and SST with FSS service are charged higher Base Reservation Charges of \$ 7.152 and \$ 6.973 (5.466 for SST and 1.507 for FSS), respectively. Therefore, there is no windfall and/or subsidization of the no-notice shippers.

³⁰ Honeywell Request for Rehearing, at 15. *See Order Issuing Certificates and Abandonment*, 122 FERC ¶ 61,021 (2008), issued on January 14, 2008, in Docket No. CP07-367-000, *et al.*

pipeline's efforts to avoid operational problems and satisfy the firm service obligations of its other customers. By contrast, similar actions by a no-notice shipper do not threaten system operations in the same manner, because the no-notice service gives the pipeline the ability to use the no-notice shipper's storage capacity and inventory to address any operational problems caused by the no-notice shipper's scheduling variances. In these circumstances, it would not be reasonable for the Commission to refuse to permit a pipeline to implement Critical Day scheduling penalties, on the ground that the pipeline lacked the capacity to provide no-notice service to all who requested it. Honeywell's assertion that certain portions of Columbia Gas's facilities are subject to congestion during peak periods simply reinforces the fact that Columbia Gas needs the ability to impose Critical Day penalties in order to operate its system efficiently during periods when its system is under stress. Moreover, its argument for an "option" to reject scheduling penalties in the absence of the required capacity to provide no-notice service would only serve to penalize the pipeline for not doing what the Commission previously said it would not have to do, i.e., construct facilities to add capacity to provide additional no-notice service.³¹

18. Similarly, as previously discussed, Columbia Gas's proposed scheduling penalties for non-critical periods are consistent with the Commission's policy permitting pipelines to impose nominal scheduling penalties during such periods in order to give shippers an incentive to schedule accurately. Regardless of the pipeline's ability to provide no-notice service to all its customers, scheduling variances during non-critical periods involve the same possibility of lost opportunity costs for the pipeline, and a denial of interruptible service to shippers who might otherwise have been able to obtain such service. Accordingly, the Commission finds it reasonable for the pipeline to penalize shippers who cause such losses.

³¹ Honeywell observes that the Commission stated in *Order No. 636-C* that "to the extent there are shippers who desire no-notice service and cannot obtain it for any reason, such cases are appropriately resolved on an individual basis, rather than in a generic rule making proceeding." Honeywell Request for Rehearing at 13, n.20 (citing *Order No. 636-C* at 61,772). However, the Commission's statement was related to making no-notice service available on a non-discriminatory basis to all customers and did not suggest that it would consider denying or modifying proposed daily scheduling penalties when capacity is unavailable for no-notice transportation. In fact, Honeywell states that, in this case, it is not suggesting that the Commission can force Columbia Gas to construct and operate substantial new facilities to provide for more storage and no-notice transportation. Thus, we encourage Honeywell and Columbia Gas to enter into a discourse on potential construction projects, acquisition of off-system capacity, or the provision of new services, that may enhance Columbia Gas's ability to provide Honeywell and others no-notice or other services that permit them to avoid scheduling penalties.

19. While the Commission finds that Columbia Gas may implement scheduling penalties without providing every shipper a no-notice service enabling it to avoid the scheduling penalties, Columbia Gas's tariff does provide shippers a number of other methods of reducing their incurrence of such penalties. First, after the June 11 Order in this proceeding, Columbia Gas proposed, in Docket No. RP08-110, a new summer no-notice service to be provided under Rate Schedule NTS-S. That service will permit shippers that require accelerated flow rates within the Gas Day during the summer period to take up to their Maximum Hourly Quantity (MHQ) and up to the Maximum Daily Quantity (MDQ) on a no-notice basis,³² and thereby avoid the scheduling penalties. On March 20, 2008, the Commission approved the proposed Rate Schedule NTS-S service.³³

20. Second, while the Commission stated in the June 11 Order (at P 42), that Columbia Gas's service under Rate Schedule of SIT is not a no-notice service which may be used to avoid scheduling penalties, the Commission has further reviewed the provisions of that rate schedule in response to Columbia Gas's March 31, 2008 filing in Docket No. RP08-295-000 to clarify how SIT service is scheduled. Among other things, Columbia Gas clarifies that section 4(a) of Rate Schedule SIT automatically deems that a shipper has scheduled any SIT storage injections or withdrawals necessary to equalize its actual receipts and deliveries under other designated transportation rate schedules. In a contemporaneous order accepting and suspending Columbia Gas's filing, the Commission directs Columbia Gas to file revised tariff sheets appropriately including such SIT service quantities in the determination of scheduling penalties or to explain why quantities deemed to be scheduled pursuant to section 4 of the SIT Rate Schedule should not be included in the determination of scheduling penalties. In addition, the Commission explains how including the "deemed scheduled" volumes in the determination of scheduling penalties would help reduce Honeywell's incurrence of scheduling penalties.

21. Third, in the June 11 Order,³⁴ the Commission found that the nomination cycles in Columbia Gas's tariff give shippers an opportunity to self-correct their scheduled volumes. The Commission stated that the four nomination cycles in Columbia Gas's tariff comply with the Commission's regulations and the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant Standards and it is appropriate to require shippers to comply with the currently effective tariff's nomination cycles.³⁵ Honeywell contends, however, that it lacks sufficiently accurate and real-time

³² An NTS-S shipper's MHQ cannot exceed 100 percent on a daily basis or be less than 4.17 percent of its MDQ.

³³ *Columbia Gas Transmission Corp.*, 122 FERC ¶ 61,239 (2008).

³⁴ June 11 Order at P 47.

³⁵ *Id.*

information to adjust scheduling and that the last nomination cycle for a Gas Day (the Intraday 2 nomination cycle), occurs 16 hours before the end of the Gas Day and therefore it is unable to make nominations changes during the last 16 hours of the Gas Day. The Commission recognizes that Honeywell is unable to adjust nominations for the current Gas Day after the Intraday 2 nomination cycle. However, that nomination cycle does give shippers an opportunity to adjust their scheduling to reflect events that have occurred up to that time. In addition, as Columbia Gas stated in its answer in Docket No. RP07-340-000 (at 22), its EBB system provides virtually instant feedback to shippers on actual takes, and therefore, shippers do have the information necessary to update their nominations during the four nomination cycles. Moreover, the proposed scheduling penalties do not apply at delivery points that lack electronic metering capability. Therefore, Honeywell's assertions that the information provided concerning scheduling variances is not sufficiently accurate or timely are rejected as vague and unsupported.

22. Fourth, as the Commission noted in the June 11 Order, existing section 19.5(d) of Columbia Gas's GT&C³⁶ provides that Columbia Gas 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 non-discriminatory manner. In its answer in Docket No. RP07-340-000, Columbia Gas expressed its willingness to provide waivers or reductions of the proposed scheduling variance penalties caused by events the shipper cannot control and determine such waivers on a case-by-case basis. However, Columbia Gas asserted that it is not possible to know the circumstances under which a scheduling variance is created in advance, and the Commission did not require Columbia Gas to provide the specific circumstances in this proceeding under which Columbia Gas will grant waiver when the scheduling penalties become effective.

23. Fifth, Columbia Gas proposed in this proceeding, to revise existing section 19.5(e) of its GT&C, proposed to be renumbered as section 19.6(e), 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. [Emphasis added.]

Therefore, Columbia Gas will not impose a scheduling penalty if the scheduling variance resulted from the shipper's reliance on inaccurate data from Columbia Gas. Columbia Gas did not propose a similar revision to existing section 19.5(b) of Columbia Gas's GT&C, proposed to be renumbered as section 19.6(b), in order to expressly exempt

³⁶ Proposed to be renumbered as section 19.6(d).

shippers from scheduling penalties determined to be caused by a bona fide force majeure event. That section currently states that:

In the event Shipper seeks to avoid any penalty provided for in this section on the ground that such charge was incurred because of a force majeure event as defined at section 15 (Force Majeure) of the General Terms and Conditions, Shipper shall document such force majeure event to Transporter. Transporter shall waive penalties to the extent that it determines that the imbalance was caused by a bona fide force majeure event as defined at section 15. [³⁷]

However, Columbia Gas is directed, as reasonable and consistent with its revision of proposed renumbered section 19.6(e), to file revised tariff sheets clarifying proposed renumbered section 19.6(b) to include scheduling variances by inserting the words “or scheduling variance” after the word “imbalance” within thirty days of the date this order issues. Therefore, shippers will also be exempt from the scheduling penalty, if the scheduling variance is caused by a force majeure event.

24. Finally, proposed section 19.7(b) erroneously refers to “this” section as section 19.6. Therefore, Columbia Gas is directed to file revised tariff sheets correcting this tariff language to refer to section 19.7 within thirty days of the date this order issues.

³⁷ Section 15 states, in part, that:

15.1 Defined. Neither Transporter nor Shipper shall be liable to the other for any damages occurring because of force majeure. The term force majeure means an event that creates an inability to serve that could not be prevented or overcome by the due diligence of the party claiming force majeure. Such events include, but are not defined by or limited to, acts of God, strikes, lockouts, acts of a public enemy, acts of sabotage, wars, blockades, insurrections, riots, epidemics, landslides, earthquakes, fires, hurricanes, storms, tornadoes, floods, washouts, civil disturbances, explosions, accidents, freezing of wells or pipelines, partial or entire electronic failure (including the failure of the EBB and the EBB backup plan, or the failure of SCADA or electronic measurement equipment), mechanical or physical failure that affects the ability to transport gas or operate storage facilities, or the binding order of any court, legislative body, or governmental authority which has been resisted in good faith by all reasonable legal means. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension.

b. Non-Critical Day Tolerance Level

25. Honeywell contends that it was unreasonable for the Commission to approve a 5.0 percent tolerance for non-Critical Days on the mere basis that the Commission has approved similar tolerances for non-critical day penalties for two other pipelines: Guardian Pipeline, LLC and Equitrans, L.P.³⁸ Honeywell contends that the Commission should have considered the circumstances of Columbia Gas's system more carefully and failed to explain why it chose these two smaller pipelines rather than Panhandle Eastern Pipe Line Company (Panhandle) which has a 10.0 percent tolerance level for non-critical periods. Honeywell argues that the 5.0 percent tolerance does not take into account the lack of Columbia Gas's ability to provide no-notice service. It concludes that a 5.0 percent tolerance is unjust and unreasonable for customers without adequate imbalance management services or tools, and 10.0 percent is reasonable.

26. Under the statutory scheme in the Natural Gas Act (NGA), the pipeline has the initiative, through section 4 filings, to propose rates, terms, and conditions for the service it provides. If the pipeline's proposal is reasonable, the Commission will accept it, regardless of whether other rates, terms, and conditions may be reasonable.³⁹ There is no single just and reasonable tolerance level for non-Critical Day scheduling penalties. Rather, the appropriate tolerance level is a matter for the exercise of judgment in light of the purpose and level of the non-Critical Day scheduling penalty. As previously discussed, the purpose of this penalty is to provide shippers an incentive to schedule accurately and thereby minimize the pipeline's lost opportunity costs. The penalty, which is equal to the pipeline's maximum interruptible transportation rate, is a reasonable measure of those lost opportunity costs, because over-scheduling by one shipper may prevent the pipeline from scheduling another shipper's interruptible service.

³⁸ Honeywell also asserts that the Commission required an absolute tolerance level of 1000 Dth for small shippers yet failed to grant relief to it and certain other shippers. Columbia Gas stated, in its answer in Docket No. RP07-340-000, it was receptive to including an absolute tolerance "safe harbor" of 1,000 Dth to ensure that small volume shippers are not negatively affected, and, therefore, the Commission directed Columbia Gas to provide tolerance levels at the greater of an absolute tolerance level of 1,000 Dth or the proposed tolerance levels. However, this minor adjustment to the tolerance level agreed to by Columbia Gas applies to all shippers.

³⁹ *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993); *Consolidated Edison Co. v. FERC*, 165 F.3d 992 (D.C. Cir. 1999).

27. We find that Columbia Gas's proposed 5.0 percent tolerance level is reasonable, given the potential costs both to the pipeline and other shippers from inaccurate scheduling and the fact the penalty is relatively low.⁴⁰ The 5.0 percent tolerance level gives shippers some scope for reasonable scheduling inaccuracies, while at the same time recognizing the costs of significantly inaccurate scheduling. Honeywell's argument, that the 5.0 percent tolerance level for non-Critical Days fails to take into consideration Columbia Gas's lack of ability to provide new no-notice and firm storage rights, but a 10.0 percent tolerance apparently is high enough in its view to generally avoid penalties altogether like a no-service service, misses the point: the scheduling penalty must provide an incentive to schedule accurately and the absence of capacity to provide additional no-notice service does not relieve the shipper of its obligation to schedule accurately. Thus, a claimed lack of capacity available for no-notice service does not support picking a higher tolerance over a lower one.

28. The fact we have approved proposals by other pipelines, such as Panhandle,⁴¹ for higher tolerance levels does not undercut our approval of Columbia Gas's proposed 5.0 percent tolerance level. As discussed above, there is a range of reasonable tolerance levels. Accordingly, we will accept the pipeline's proposed tolerance level so long as it is just and reasonable even if other higher tolerance levels might also be just and reasonable. As we pointed out in the June 11 Order, the Commission has approved similar 5.0 percent or lower tolerance levels for non-critical period scheduling penalties in other pipelines' tariffs.⁴² Moreover, the relative size of the pipeline is not directly related to the level of tolerance appropriate to discourage inaccurate scheduling by an individual shipper.

⁴⁰ Consistent with Columbia Gas's currently effective ITS rate, Columbia Gas's proposed non-Critical Day scheduling penalty is 19.57 cents per Dth in the winter and 13.39 cents per Dth in the summer. In its rehearing request (at 20), Honeywell concedes that these penalty levels are "nominal."

⁴¹ *Panhandle*, 97 FERC ¶ 61,046 at 61,271 ("The Commission accepts Panhandle's existing scheduling penalties during non-critical periods, particularly as it [sic] is part of an overall settlement.").

⁴² June 11 Order at P 56, noting that Columbia Gas cited, 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).

c. Critical Day Tolerance Level

29. Honeywell argues that, by finding that the Critical Day tolerance level should be stricter than that for non-Critical Days, which was set at 5.0 percent, the Commission set a ceiling or cap for the tolerance level applicable to Critical Days of less than 5.0 percent. Reiterating its oft-repeated argument, Honeywell claims that this is grossly unreasonable and inequitable for Honeywell and others that need gas balancing and/or storage service or other tools to manage scheduling imbalances. Honeywell requests that we grant rehearing and order that the non-Critical Day tolerance level of 5.0 percent be utilized as the tolerance level for Critical Days.

30. Honeywell contends that, in setting the tolerance level for critical periods, the Commission should consider the availability of imbalance management services, no-notice service, and firm storage service in congested areas, and the need for additional opportunities to make adjustments to nominations. Honeywell further contends that the non-Critical Day tolerance level should be proportional to the capability of shippers to comply with balancing requirements and consider the ability of shippers to avoid the scheduling penalties using their best efforts.

31. As discussed later in addressing Honeywell's protest to Columbia Gas's compliance filing, Honeywell has not demonstrated that a 5.0 percent tolerance level for Critical Day scheduling penalties is just and reasonable or, most importantly, that the 3.0 percent level Columbia Gas has agreed to in its compliance filing is unjust and unreasonable. As the Commission noted, in the June 11 Order, a stricter tolerance level is permissible for critical periods in order to prevent threats to service reliability. Honeywell has not demonstrated otherwise.

32. As discussed later in this order, Columbia Gas has supported a Critical Day tolerance level of 3.0 percent as just and reasonable and that level is accepted for Critical Day scheduling penalties. The tolerance level for Critical Days must, in conjunction with the scheduling penalty level, be appropriate to deter the shipper misconduct which threatens service reliability during a critical period. Therefore, the Critical Day scheduling penalty tolerance level should be appropriate to deter the potential misconduct that may harm the system, and should not be eliminated or increased because of an individual shipper's inability to accurately schedule regardless of why the shipper does not have a no-notice service.

33. Honeywell asserts that since interruptible transportation generally does not flow on a Critical Day, the Commission's concern for loss of interruptible capacity due to shipper failure to communicate scheduling changes through the nomination cycle is not present on critical days. Honeywell has misinterpreted the June 11 Order. The Commission did not consider the potential loss of interruptible transportation in

evaluating the Critical Day tolerance level. Instead, the Commission stated that the non-Critical Day penalty level was established at the IT rate in order to provide an incentive for shippers to schedule accurately and compensate the pipeline for its lost opportunity costs.⁴³

d. Critical Day Penalty Level

34. Honeywell contends, on a number of grounds, that the Commission erred in approving Columbia Gas's proposal to set the level of the Critical Day scheduling penalty at three times the index price for a Critical Day. Honeywell requests that the penalty level for Critical Days be set at a nominal level, the same level as scheduling penalty for non-Critical Days.

35. As the Commission has previously discussed, a pipeline's imposition of a substantial penalty during critical periods is consistent with Commission policy under *Order No. 637*. Columbia Gas's proposed Critical Day scheduling penalty will only be imposed on days when it has found that there is a "threat to its system integrity and/or [its] ability to meet its firm service obligations." At such times, a shipper's takes that vary from the amounts Columbia Gas scheduled reduce Columbia Gas's operational control over its system and, therefore, increase operational risk. For this reason, the Commission has consistently permitted pipelines to impose substantial penalties on scheduling variances that occur during critical periods. As the Commission explained on rehearing when it approved Columbia Gas's similar proposal to increase its critical period penalties for takes in excess of Total Firm Entitlement (TFE penalty) and failure to interrupt service (FTI penalty) or comply with Operational Flow Orders (OFO):

The Commission's primary concern with respect to penalties which only apply to conduct that is harmful to the system is that the penalties be high enough to act as an effective deterrent to the harmful conduct. Since such conduct risks harm to other customers, as well as the pipeline, the Commission believes that significant penalties for such conduct are appropriate and consistent with *Order No. 637*.^[44]

Therefore, Honeywell's request for the Commission to set the Critical Day scheduling penalties at the same level as non-Critical Day penalties is unsupported.

36. In the June 11 order, the Commission approved Columbia Gas's proposal to set the level of the Critical Day penalty at three times the commodity index price for that day

⁴³ June 11 Order at P 29-30.

⁴⁴ *Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,134, at P 12 (2006) (*Columbia Gas*).

based in part on the fact that it had approved the identical penalty level for the TFE, FTI, and OFO penalties in sections 19.1, 19.2, and 19.3, respectively, of the GT&C of its tariff.⁴⁵ Honeywell asserts that those penalties are all related to physical imbalances. It argues that such physical imbalances are a greater threat to system integrity than scheduling variances, and, therefore, the approval of the TFE, FTI, and OFO penalty levels does not support setting the Critical Day scheduling penalty at the same level. Honeywell also asserts, in support of this contention, that the June 11 Order found that scheduling variances do not present the same problem as physical imbalances.

37. Honeywell's assertion that these other critical period penalties are imposed on physical imbalances is incorrect. As the Commission explained in the June 11 Order (at P 37), imbalances occur when a shipper takes off the system a different amount than it put on, whereas scheduling variances involve a difference between the amount of deliveries a shipper scheduled and its actual deliveries. The critical period penalties set forth in section 19 are not imposed on physical imbalances such as the Commission described in the June 11 Order.⁴⁶ For example, the penalty for a shipper taking deliveries in excess of its firm entitlement applies regardless of the amount of gas the shipper put on the system, just as the penalty for a shipper taking deliveries in excess of, or below, scheduled deliveries applies regardless of the amount of gas the shipper put on the system. Similarly, the penalty for failure to interrupt service or violating an OFO apply without regard to whether the penalized conduct involved a physical imbalance between the amount put on the system and the amount taken off the system. All these penalties have in common the fact that they penalize a shipper for taking actions contrary to what Columbia Gas ordered or authorized them to do during a critical period. All such actions by a shipper involve similar risks of operational harm, because they reduce Columbia Gas's operational control over its system.

38. Honeywell, in objecting to the Critical Day scheduling penalty, again asserts that the Commission overlooked the fact that during a Critical Day interruptible services do not flow on the Columbia Gas system. However, the Commission, similar to its consideration of Critical Day tolerance levels, did not rely on Columbia Gas's loss of the

⁴⁵ June 11 Order at P 51 and P 51, n.34, citing, *e.g.*, *Columbia Gas Transmission Corp.*, 113 FERC ¶ 61,191 (2005), *order on reh'g*, 115 FERC ¶ 61,134, where the Commission accepted an increase in penalties to prevent impairment of reliable service, reflected in section 19 of Columbia Gas's tariff, to equal three times the midpoint of the range of prices reported for "Columbia Gas, Appalachia" published in *Platts Gas Daily* price survey as proposed in this case.

⁴⁶ A penalty for monthly imbalances of \$0.25 per Dth for the difference in actual receipts and deliveries is set forth in section 19.4 of Columbia Gas's GT&C.

opportunity to sell interruptible transportation in accepting the scheduling penalty level for a Critical Day.

39. Honeywell argues that the Commission was incorrect in finding that the fact Columbia Gas must credit all penalty revenues means that it lacks an incentive to impose an unreasonably high penalty. Honeywell contends that the Commission failed to recognize that many of the local distribution companies (LDC) on the Columbia Gas system are its affiliates which have substantial no-notice service and will share penalty revenues since they are exempt from the scheduling penalty. However, since no-notice service is available to all shippers when there is sufficient capacity, Honeywell, in effect, is again arguing about the availability of no-notice service when capacity is not available. Further, all shippers which avoid the scheduling penalty due to no-notice transportation service pay a premium for such service and all non-offending shippers share in penalty revenues, not just Columbia Gas's affiliates. In addition, the penalty revenue crediting is not limited to scheduling penalties and non-offending shippers related to the scheduling penalties. The monthly revenues for all penalties are shared by shippers who were not assessed any penalty under Columbia Gas's tariff.⁴⁷

40. Finally, Honeywell argues that this penalty level or any higher level will not deter the undesirable conduct, since Honeywell and other shippers may encounter problems during the gas day beyond their control which will render them unable to avoid a scheduling variance. Honeywell states that it operates a complex manufacturing operation at its Hopewell plant and the plant consists of several process lines with miles of piping and hundreds of pieces of equipment. Honeywell further states that production can be disrupted due to equipment and process problems throughout the gas day which in turn dictate the amount of gas that the plant will use.

41. While there may be times when circumstances beyond a shipper's control make it impossible for it to take scheduled amounts, the Commission believes such situations are more appropriately dealt with through the waiver process provided for in existing section 19.5(d) of Columbia Gas's GT&C.⁴⁸ As previously discussed, that section permits Columbia Gas to waive penalties, provided that any such waiver is granted in a non-discriminatory manner, and Columbia Gas has expressed its willingness to provide waivers or reductions of the proposed scheduling variance penalties caused by events the shipper cannot control on a case-by-case basis. The Commission encourages Columbia Gas to seriously consider such waivers in circumstances where a shipper incurs a scheduling penalty due to circumstances beyond its reasonable control. In addition, as

⁴⁷ Existing section 19.6(c), proposed to be renumbered as section 19.7(c), of Columbia Gas's GT&C.

⁴⁸ Proposed to be renumbered as section 19.6(d).

discussed above, the Commission is requiring Columbia Gas to include scheduling variances in proposed section 19.6(b) which concerns waivers for bona fide force majeure events.

2. Piedmont's Request for Rehearing

42. In its request for rehearing, Piedmont argues that Columbia Gas offered no credible evidence of operational impairment in support of the scheduling penalty proposal. Piedmont asserts that the data is limited to four months of actual operational experience (three during the summer) and a limited number of customers, several of whom are very small, and, therefore, is highly selective. Piedmont argues that the mere fact that imbalances can occur does not provide any useful information related to determining operational risk. Piedmont further argues that this showing does not support the existence of actual operational issues arising from current operations or the need for scheduling penalties in order to preserve reliable service. Piedmont contends that the net impact of variations in Columbia Gas's support is highly exaggerated by its use of the percentage of the difference between scheduled and actual quantities delivered rather than the actual quantitative difference.

43. However, as the Commission found in the June 11 Order, Columbia Gas is not required to show actual impairment of service, and pipelines may anticipate potential threats to reliable service during critical periods and take action to prevent them.⁴⁹ As the Commission noted in the June 11 Order, when a Critical Day has been declared and a shipper schedules quantities of gas greater than the actual takes, or schedules quantities of gas less than actual takes, Columbia Gas has less operational control over its system and may experience increased operational risk. Therefore, Columbia Gas has shown that scheduling variances have the potential to cause operational problems which may threaten the system's integrity and reliability of service during critical periods. Columbia Gas is not required to demonstrate particular examples of shipper violations or general shipper behavior causing operational stress on its system. Further, Commission policy permits a nominal scheduling penalty at the IT rate level for non-Critical Days when scheduling variances will not have operational effects on the pipeline to provide an incentive to schedule accurately and to compensate the pipeline for its lost opportunity costs.⁵⁰ Therefore, there is no need to further address Piedmont's arguments related to the sufficiency of Columbia Gas's support.

⁴⁹ June 11 Order at P 27 citing *Columbia Gas*, 115 FERC ¶ 61,134, at P 15 and *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61, 365, at 63,550-51 (1993).

⁵⁰ *Natural*, 103 FERC ¶ 61,174 at P 63.

44. Piedmont further contends that Columbia Gas's assertion that scheduling variances make it difficult to predict and post capacity on a daily basis indicates that its motives are more economic than operational since it can not sell capacity if it is being used by its customers. Piedmont asserts that Columbia Gas will make additional capacity available for sale through its Auto Pal service accepted in Docket No. RP07-479⁵¹ and this is patently unjust when shippers are penalized for operating within their contract demands for which they are compelled to pay fully compensatory charges. Piedmont argues that Columbia Gas is compensated for its costs of service to provide up to maximum daily quantities to its shippers but is able to recapture capacity through variance restrictions and penalty structures.

45. However, consistent with Commission policy, a shipper does not have a right to scheduling flexibility within its contractual entitlements to create scheduling variances which could threaten the reliability of service to all customers. Columbia Gas does not have the asserted economic motive since penalty revenues are credited to non-offending shippers and not retained by Columbia Gas. Further, the scheduling penalties are not imposed at the pooling points where Auto PAL service is applicable.⁵²

46. Piedmont also argues that Columbia Gas's Auto PAL service filing in Docket No. RP07-479 contradicts its argument that system reliability requires daily scheduling penalties. Piedmont asserts that offering the Auto PAL service means that Columbia Gas's system is capable of handling the difference between scheduled and delivered volumes. Piedmont further asserts that the Auto PAL service, with its retained incremental revenues, is being proposed in order for customers to avoid the scheduling penalties. Piedmont argues that to the extent that Columbia Gas is able to offer Auto PAL at a given pooling point on a given day, there is no justification for allowing scheduling penalties at that point on that date.

47. However, as explained above, the scheduling penalties are not imposed at the pooling points where the Auto PAL service is applicable and, accordingly, a shipper need not subscribe to the Auto PAL service in order to avoid the scheduling penalties. Therefore, Piedmont's arguments concerning the Auto PAL service are without merit.

⁵¹ *Columbia Gas Transmission Corp.*, 121 FERC ¶ 61,148 (2007); unpublished delegated letter order issued March 7, 2008 accepting compliance filing.

⁵² 121 FERC ¶ 61,148 at P 12.

B. The Compliance Filing

1. Details of the Filing

48. In the June 11 Order, the Commission directed Columbia Gas to file revised tariff sheets eliminating the final sentence of proposed section 19.5 and stating that the scheduling penalties do not apply at delivery points covered by no-notice services.⁵³ In its June 26 compliance filing, Columbia Gas filed a revised tariff sheet that revised the last sentence of section 19.5 (c) to state that: “Scheduling penalties will not be imposed at delivery points covered by no-notice services (i.e., primary delivery points designated in a shipper’s SST, NTS or GTS contract(s)).”

49. In the June 11 Order, the Commission also directed Columbia Gas to respond to NiSource Distribution Companies’ (NiSource) request for clarification that shippers contracting for FSS and SST services are not subject to scheduling penalties at primary points listed on their SST contracts when using service other than SST.⁵⁴ In response to NiSource, Columbia Gas clarifies that a shipper that has contracted for SST and FSS service will not be subject to the scheduling penalty at any primary delivery point listed on that shipper’s SST contract(s), even when using service other than SST, with a supporting example.

50. Columbia Gas also was required to respond to certain specific hypothetical examples posed by Baltimore Gas and Electric Company (BGE) concerning the applicability of the scheduling penalty to no-notice services. In response to BGE, Columbia Gas provides answers to the hypothetical examples clarifying, among other things, that BGE would not incur a scheduling penalty in certain circumstances.

51. The Commission directed Columbia Gas to explain why its Critical Day scheduling tolerance should not be increased from 2.0 percent to 3.0 percent or some higher level.⁵⁵ Columbia Gas states that it submitted a revised tariff sheet increasing the

⁵³ June 11 Order at P 35. On March 15, 2007, Columbia Gas filed a letter with the Commission addressing the last sentence of proposed section 19.5, to clarify that the historical method of handling no-notice services would not be altered by its March 6, 2007 proposal. Columbia Gas stated that it would make a subsequent compliance filing deleting the last sentence of proposed section 19.5 and substituting the following language: “The scheduling penalty does not apply at delivery points covered by no-notice services.”

⁵⁴ June 11 Order at P 38.

⁵⁵ June 11 Order at P 56.

(continued...)

tolerance level in proposed GT&C section 19.5 to 3.0 percent for the Critical Day scheduling penalty. Columbia Gas asserts that the 3.0 percent level is fully consistent with its existing critical period penalties, the TFE⁵⁶ and FTI penalties⁵⁷ in GT&C sections 19.1 and 19.2, respectively.

52. In response to Columbia Gas's statement in its answer, that it was receptive to including an absolute "safe harbor" tolerance to ensure that small shippers are not negatively affected, the Commission directed Columbia Gas to revise the scheduling penalty to provide an absolute "safe harbor" of 1,000 Dth.⁵⁸ Columbia Gas revises proposed section 19.5 to include an absolute tolerance level for the scheduling penalties with a level of the higher of 1,000 Dth or 5 percent for non-Critical Days or 3 percent for Critical Days.

53. The Commission held that Columbia Gas cannot impose a non-Critical Day scheduling penalty for the same conduct for which it imposes a Critical Day scheduling penalty, and cannot impose either a Critical Day or non-Critical Day scheduling penalty

⁵⁶ Section 19.1 of Columbia Gas's tariff provides that, if a shipper takes gas in excess of 103 percent of its Total Firm Entitlement on any Day Columbia Gas shall assess a penalty. Section 19.7, proposed to be renumbered as section 19.8, provides that these penalties will only be imposed if a Critical Day has been declared and is in effect.

⁵⁷ Section 19.2 of the GT&C of Columbia Gas' tariff provides, in part, that if a shipper fails to interrupt service as directed by Columbia Gas pursuant to GT&C section 16 and thereby delivers or takes gas in excess of 103 percent of the lowered Scheduled Daily Receipt Quantity or Scheduled Daily Delivery Quantity under all applicable Rate Schedules as set by the interruption order Columbia Gas shall impose a penalty.

Section 16.1(a) provides, in part, that:

If due to force majeure, other unforeseen conditions on Transporter's system, or operating conditions (such as, but not limited to, performing routine maintenance, making modifications, tests or repairs to Transporter's pipeline system or protection of the integrity and performance capability of its storage and transmission facilities), the gas available for delivery from Transporter's system or portion thereof is temporarily insufficient to meet all of Transporter's authorized firm services on any day, then Transporter, upon providing as much notice as possible, shall interrupt all such services in accordance with the priorities set forth at section 16.4 below.

⁵⁸ June 11 Order at P 58.

for the same conduct that is also subject to a TFE, FTL, or OFO⁵⁹ penalty.⁶⁰ Columbia Gas revises proposed section 19.5 to prohibit the imposition of penalties under these circumstances. In addition, Columbia Gas revises proposed section 19.5 to clarify that the non-Critical Day penalty based on the Rate Schedule ITS rate will only apply when a Critical Day has not been declared.⁶¹ Columbia Gas also separates the scheduling penalty under proposed section 19.5 into two separate subsections to recognize that Critical Day and non-Critical Day penalty levels are different to comply with the June 11 Order.

54. In the June 11 Order, the Commission directed Columbia Gas to explain with adequate support how the proposed penalties will be implemented at Operational Balancing Agreement (OBA) points.⁶² Columbia Gas clarifies that variances between actual gas flows and confirmed nominations at each point covered by an OBA will be handled based on the terms of the specific OBA, and shippers at pipeline interconnects will be deemed to be always in balance with Columbia Gas.

55. On July 3, 2007, Columbia Gas submitted a substitute revised tariff sheet to correct a typographical error in the June 26 compliance filing. Columbia Gas states that the final sentence to proposed section 19.5(b) continued to refer to a "2%" Critical Day scheduling penalty, even though Columbia Gas had intended to increase the tolerance percentage for the Critical Day scheduling penalty from 2 percent to 3 percent.

⁵⁹ Section 17.1(a) of the GT&C of Columbia Gas' tariff provides, in part, that:

Transporter, in its reasonable discretion, shall have the right to issue Operational Flow Orders (OFO) as specified in this section upon determination by Transporter that action is required in order to alleviate conditions which threaten the integrity of Transporter's system, to maintain pipeline operations at the pressures required to provide reliable firm services, to have adequate supplies in the system to deliver on demand (including injection of gas into the mainline, providing line pack, and injecting gas into storage at the right place and time), to maintain and protect the integrity and performance capability of Transporter's storage fields, to maintain firm service to all Shippers and for all firm services, and to maintain the system in balance for the foregoing purposes.

⁶⁰ June 11 Order at P 69.

⁶¹ June 11 Order at P 70.

⁶² June 11 Order at P 78.

2. Notice, Protests, and Answer

56. Public notice of Columbia Gas's filings in Docket Nos. RP07-340-001 and RP07-340-002 was issued on June 29, 2007 and July 9, 2007, respectively. Protests were due as provided in section 154.210 of the Commission's regulations.⁶³ Indicated Shippers and Honeywell filed protests to the June 26 compliance filing in Docket No. RP07-340-001. No protests were filed to the corrected tariff sheet filed in Docket No. RP07-340-002. Columbia Gas filed an answer to the protests.⁶⁴ The protests and answer will be discussed in detail below.

3. Discussion of the Compliance Filing

57. Columbia Gas's compliance filing, as corrected on July 3, 2007, will be conditionally accepted as in compliance with the June 11 Order. The protests by Indicated Shippers and Honeywell are denied, as discussed below. Further, the Commission will conditionally accept the Substitute Sixth Revised Sheet No. 390, the corrected revised tariff sheet, as in compliance with the June 11 Order. Accordingly, Sixth Revised Sheet No. 390 is rejected as moot.

a. Indicated Shippers' Protest

58. The Commission directed Columbia Gas, in the June 11 Order, in response to a request by Chesapeake Appalachia, L.L.C. (Chesapeake), to explain with adequate support how the proposed penalties will be implemented at OBA points.⁶⁵ In its protest

⁶³ Virginia Natural Gas, Inc. and Pivotal Utility Holdings, Inc. (VGN and Pivotal, and Equitable Production Company (Equitable) filed untimely motions to intervene. Pursuant to rule 214(d) of the Commission's Rules of Practice and Procedure (18 C.F.R.

§ 385.214(d) (2008)), the Commission will grant the late interventions by VNG and Pivotal and Equitable. Except as otherwise ordered, a late intervenor must accept the record of the proceeding as the record developed prior to the late intervention.

⁶⁴ The Commission's Rules of Practice and Procedure do not permit answers to protests (18 C.F.R. § 385.213(a)(2) (2008)). However, the Commission finds good cause to admit Columbia Gas's answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record. Therefore, for good cause shown, Columbia Gas's answer is accepted.

⁶⁵ June 11 Order at P 78.

(at 5), Chesapeake sought clarification that Columbia Gas will continue to honor OBA agreements entered into in accordance with GT&C section 8.3.

59. Columbia Gas clarifies in its compliance filing (at 4) that:

variances between actual gas flows and confirmed nominations at each point covered by an OBA will be handled based on the terms of the specific OBA. Shippers at pipeline interconnects will be deemed to be always in balance with Columbia [Gas].

Columbia Gas also includes, in its revised tariff sheets, section 19.5(e) which expressly states that the scheduling penalties “will not apply at points of interconnection for which an OBA exists between [Columbia Gas] and the Shipper.”

60. Indicated Shippers argues that Columbia Gas’s compliance filing fails to provide the information required by the June 11 Order and necessary for the Commission to make a determination regarding the proposal, including how Columbia Gas’s OBAs would handle scheduling variances, or whether OBAs provide for scheduling penalties. Indicated Shippers asserts that the information provided does not indicate the extent to which Columbia Gas’s deliveries are covered by OBAs. Indicated Shippers further asserts that Columbia Gas’s tariff includes a *pro forma* OBA, and, therefore, Columbia Gas must provide information regarding the terms of its OBAs. Indicated Shippers asserts that Columbia Gas does not indicate whether shippers at OBA points are subject to any penalties. Indicated Shippers argues that shippers may not control whether their delivery point has OBA coverage and, therefore, imposing the penalty on these similarly situated shippers based on a circumstance beyond their control would be unduly discriminatory. Indicated Shippers further argues that, if the facts show that a substantial amount of gas is delivered to points covered by OBAs, whether Columbia Gas’s penalty proposal has any meaningful relationship to the protection of system integrity is called into question.

61. In its answer, Columbia Gas states that, in addition to its direct response, it also provided in the June 26 compliance filing (at 3) the following answer to a hypothetical posed by BGE:

If the amount BGE nominates is confirmed by the Interconnecting Operator, but the Interconnecting Operator takes in a lesser volume and does not have no-notice service at that point, is BGE subject to a scheduling penalty.

Answer: In the hypothetical posed by BGE, if BGE's SST contract includes the interconnecting point as a primary delivery point, then no scheduling penalty will be incurred. *If the point in BGE's hypothetical is at a point covered by an OBA, then no scheduling penalty will apply, as at these points shippers are kept whole by the OBA and receive volumes equal to what they have scheduled.* However, if the volume of gas ultimately delivered by BGE

at a point does not equal its scheduled volumes, and that point is not covered by an OBA, nor is a point designated as a primary delivery point under its rate schedule SST, then a scheduling penalty may be incurred. [Emphasis added.]

62. Columbia Gas argues that it has more than adequately answered the Commission's request for clarification by stating that scheduling penalties will not be implemented at OBA points. Columbia Gas asserts that, while Indicated Shippers claims that it did not provide adequate support showing how scheduling penalties will be handled at OBA points, such support is simply not necessary to prove the negative that scheduling penalties will not be implemented at OBA points.

63. There is no need for the information requested by Indicated Shippers. The Commission requested information regarding the imposition of the proposed scheduling penalty by Columbia Gas and not how or the extent to which the parties to the OBA would resolve scheduling variances based on the terms of their OBA agreements.⁶⁶ Columbia Gas adequately responded that it will not impose the scheduling penalty at OBA points. In any case, Columbia Gas, in its answer, responds to Indicated Shippers' contention that it did not indicate whether the shippers at OBA points or the point operators are subject to penalties, by stating that the OBAs that are currently in effect at Columbia Gas' interconnects with other pipelines do not impose scheduling penalties. Columbia Gas further responded that the OBAs provide terms and conditions for the reconciliation of operational imbalances⁶⁷ through physical flow adjustments, but do not set forth penalties for imbalances.

64. With respect to the request for information regarding the assertion of undue discrimination related to shippers not covered by OBAs, the exemption from scheduling penalties applies to all shippers at a delivery point covered by an OBA and the scheduling variances at such points are governed by the terms of the OBA. The Commission has encouraged pipelines to enter these types of arrangements where appropriate and directed that the OBAs be implemented on a non-discriminatory basis.⁶⁸ Further, the Commission's regulations require pipelines to have OBAs at all pipeline interconnects.⁶⁹

⁶⁶ While OBAs are a jurisdictional activity, the Commission does not require pipelines to file OBAs if copies of executed agreements and detailed records are made available by the pipeline. *Transcontinental Gas Pipe Line Corp.*, 65 FERC ¶ 61,315, at 62,437 (1993) (*Transco*).

⁶⁷ The term operational imbalance as used in the *pro forma* OBA in Columbia Gas's tariff refers to the inadvertent overdelivery or underdelivery of gas by one party to the other party relative to the shipper's nominated quantities.

⁶⁸ *Transco*, 65 FERC ¶ 61,315 at 62,436.

⁶⁹ 18 C.F.R. § 284.12(b)(2)(i) (2008).

Accordingly, the Commission allows pipelines to permit OBAs to govern the resolution of the scheduling variances.⁷⁰ Consistent with that policy, Columbia Gas states that the OBAs on its system provide terms and conditions for the reconciliation of operational imbalances through physical flow adjustments to which the parties have agreed. Therefore, it is appropriate that Columbia Gas does not implement its scheduling penalty at points subject to OBA agreements. Indicated Shippers also requests information concerning the extent of coverage of OBAs related to the protection of system integrity. However, as the Commission pointed out in the June 11 Order, the possibility that only a small number of shippers will be subject to the penalties has no relevance to the need for penalties to potentially deter conduct by any shipper.⁷¹

65. In addition, Indicated Shippers did not raise these issues related to OBAs in its comments or request rehearing of the June 11 Order. Therefore, the information requested by Indicated Shippers is outside the scope of this compliance proceeding, and Indicated Shippers' request for further information is denied.

66. Finally, Columbia Gas includes revised language in section 19.5(e) which states that the scheduling penalties "will not apply at points of interconnection for which an OBA exists between [Columbia Gas] and the Shipper." Columbia Gas is directed to file, within thirty days of the date this order issues, revised tariff sheets eliminating the portion of the above-quoted tariff language following the word "exists." The Shipper may or may not be a party to the OBA. This language is unclear and unnecessary.

b. Honeywell's Protest

67. In the June 11 Order, the Commission noted that the existing penalty provisions for Columbia Gas's TFE and FTI penalties provide for the same penalty level but with a 3.0 percent tolerance. Accordingly, Columbia Gas was directed to explain why its Critical Day scheduling penalty tolerance should not be increased to 3.0 percent or some higher level. Columbia Gas submits a revised tariff sheet increasing the tolerance level in GTC section 19.5 from the proposed 2.0 percent to 3.0 percent for the Critical Day scheduling penalty. Columbia Gas asserts that the 3.0 percent level is fully consistent with existing critical period penalties approved by the Commission for Columbia Gas's Tariff, citing the existing tolerances for the TFE and FTI penalties.

⁷⁰ See, e.g., *Iroquois Gas Transmission System, L.P.*, 63 FERC ¶ 61,285, at 62,913 (1993); *Viking Transmission Co.*, 63 FERC ¶ 61,104, at 61,659 (1993). See also NAESB Standards 2.13, *Business Practice Standards Book 1*; 2.2.1, 18 C.F.R. § 284.12(a)(iii) (2008); and 2.3.64, 18 C.F.R. § 284.12(a)(iv) (2008).

⁷¹ June 11 Order at P 40.

68. In its protest, Honeywell argues that Columbia Gas has failed to explain why its Critical Day scheduling tolerance should not be increased to 3.0 or some higher level. Honeywell contends that Columbia Gas simply refers to other penalties in its tariff without showing their relevance to its new scheduling penalty or addressing why a higher level is not appropriate. Honeywell asserts that Columbia Gas refers to tolerances levels for TFE and FTI are penalties for actual takes of gas, and, in contrast, the scheduling penalty is for takes of gas above or below a nominated quantity. Honeywell further asserts that, as pointed out by the Commission, in the June 11 Order, the scheduling variances are not the same as physical imbalances.⁷² Honeywell contends that when physical imbalances occur or deliveries exceed Total Firm Entitlements during Critical Days above a certain tolerance, system reliability may be threatened, but it is much less likely that system reliability will be threatened when a scheduling imbalance occurs, because physical receipts and deliveries may be in balance or within acceptable tolerance levels. Honeywell argues that, therefore, the scheduling imbalance does not pose as severe a situation as the TFE or FTI situation. Honeywell asserts that a scheduling imbalance does not deal with a physical imbalance, which is a different problem and is addressed by the TFE and FTI provisions.

69. Honeywell argues, as it did in its request for rehearing, that when a Critical Day is declared, interruptible transportation on Columbia Gas's system does not flow and the concern of Columbia Gas for the loss of interruptible business is not present. Honeywell asserts that a 5.0 percent tolerance level for Critical Days is strict enough to induce shippers to use the nominating and scheduling processes in Columbia Gas's tariff. Honeywell argues again that the Commission failed to consider that it and others have not been given the opportunity to contract for no-notice service, firm storage service or other firm imbalance services to avoid the scheduling penalties. Honeywell asserts that it is very difficult for an industrial user of gas like Honeywell to manage scheduling imbalances when it operates 24 hours a day and seven days a week without such services and those that already have no-notice service have a significant advantage over Honeywell and others. Honeywell argues that this is a grossly unfair, inequitable, and unduly discriminatory situation. Honeywell further argues those that do not have no-notice service will be subsidizing those that do have such premium exempt service through the distribution of penalty revenues. Honeywell contends that a tolerance level of 5.0 percent or higher is reasonable under these circumstances and has been used on the Panhandle system, which is a large interstate pipeline like Columbia Gas, citing *Panhandle*.

70. Columbia Gas answers that, since the Commission approved a 5.0 percent tolerance level for non-Critical Day scheduling penalties on Columbia Gas's system, Honeywell's assertion that the tolerance level for Critical Day penalties should be

⁷² Citing June 11 Order at P 64.

5.0 percent or higher is devoid of logic. Columbia Gas further argues that the three percent tolerance level is also consistent with other penalty provisions its tariff and there is precedent for the approval of a 3.0 percent tolerance for scheduling penalties.

71. Columbia Gas has adequately supported the revised 3.0 percent tolerance level. Honeywell complains that Columbia Gas relied on other penalties imposed during critical periods in its own tariff. However, the Commission, in the June 11 Order, noted that these existing TFE and FTI critical period penalties provide for the same penalty level but with a three percent tolerance level.⁷³ The scheduling penalties are imposed at this penalty and tolerance level only during critical periods to deter shipper misconduct consistent with other penalty and tolerance levels approved for critical period penalties on the Columbia Gas's system. The Commission did distinguish actual physical imbalances from the scheduling variances on which the scheduling penalties are imposed in the June 11 Order. However, contrary to Honeywell's attempted distinction, as discussed above, the TFE and FTI penalties are not imposed on physical imbalances. These penalties are imposed during critical periods for takes in excess of Total Firm Entitlement and the failure to interrupt service without regard to physical imbalances. Therefore, consistent with the Commission's finding above, Honeywell's contention concerning the relative threat to the system of scheduling variances and physical imbalances is inapplicable and unsupported.

72. Honeywell's assertions, in its protest, regarding the lack of interruptible transportation on Critical Days, the availability of no-notice service resulting in a grossly unfair, inequitable, and unduly discriminatory situation, the requirement of an absolute tolerance level (at 3, n.4), and subsidization of shippers with no-notice service by those shippers without no-notice service through the distribution of penalty revenue (at 3, n.5) are addressed and rejected above in the discussion on Honeywell's request for rehearing in response to similar assertions. Therefore, Columbia Gas's reliance on the tolerance level of its other existing critical period penalties in support of a 3.0 percent tolerance is in compliance with the Commission's directive.

73. Finally, Honeywell's request for a 5.0 percent or higher tolerance level for Critical Day scheduling penalties is in conflict with the Commission's acceptance of a 3.0 percent tolerance level in this order. Honeywell mistakenly relies on the *Panhandle* decision. In *Panhandle*, the Commission accepted a tolerance of 5.0 percent for periods when an OFO is issued in conjunction with a different scheduling penalty as consistent with *Order No. 637* in the context of an *Order No. 637* settlement.⁷⁴ In this case, the Commission has accepted a 3.0 percent Critical Day tolerance level consistent with other existing critical period penalties on Columbia Gas' system and in the reasonable judgment of the pipeline necessary to

⁷³ June 11 Order at P 56.

⁷⁴ *Panhandle*, 97 FERC ¶ 61,046 at 61,271-72.

preserve operational integrity on its system during critical periods. As noted above, the relative size of the pipeline is not directly related to the appropriate tolerance level. Further, the Commission accepted a 5.0 percent tolerance level for non-Critical Days in the June 11 Order. As the June 11 Order noted, a stricter tolerance level is permitted for Critical Days than the tolerance level for non-Critical Days.⁷⁵

The Commission orders:

(A) Columbia Gas's revised tariff sheets conditionally accepted in the June 11 Order, except Fifth Revised Sheet No. 390, are accepted to become effective on the later of August 1, 2008, or the commencement of Navigates on the Columbia Gas system, subject to conditions, as discussed in the body of this order and the ordering paragraphs below.

(B) The June 26 compliance filing, as corrected on July 3, 2007, is accepted as in compliance with the June 11 Order, subject to conditions, as discussed in the body of this order and the ordering paragraphs below.

(C) Substitute Sixth Revised Sheet No. 390 is accepted subject to conditions, as discussed in the body of this order and the ordering paragraphs below. Sixth Revised Sheet No. 390 is rejected as moot.

(D) The requests for rehearing of Honeywell and Piedmont are denied, as discussed in the body of this order.

(E) Columbia Gas is directed to file revised tariff sheets (1) including scheduling variances in proposed section 19.6(b) of its GT&C, (2) correcting language in proposed section 19.7(b) of its GT&C, and (3) eliminating revised tariff language in proposed section 19.5(e) of its GT&C, consistent with the Commission's discussion in the body of this order, within thirty days of the date this order issues.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁵ June 11 Order at P 56.

Document Content(s)

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