152 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

In re: Columbia Gas Transmission, LLC | Docket No. IN15-7-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued July 30, 2015)

1. With this order, the Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Columbia Gas Transmission, LLC (Columbia Gas). This order is in the public interest because it resolves on fair and equitable terms all issues relating to the transparency of Columbia Gas' auctions of its available firm capacity. The Agreement requires Columbia Gas to pay $350,000 in civil penalties. As noted in the Agreement, as part of the compliance plan to the Division of Audits and Accounting (Audits), Columbia Gas has agreed to implement written procedures and internal controls to ensure that the company reports accurate and consistent data in its posted capacity reports.

A. Background

2. Columbia Gas is an interstate natural gas pipeline, jurisdictional to the Federal Energy Regulatory Commission (FERC) under the Natural Gas Act (NGA).[1] Columbia Gas is engaged primarily in interstate transportation and storage services.

3. In response to a September 23, 2014 referral from Audits relating to the transparency of Columbia Gas' auctions of its available firm capacity, the Division of Investigations, Office of Enforcement (DOI), opened a preliminary, non-public investigation on November 21, 2014, into whether Columbia Gas violated Section 4 of the General Terms and Conditions of its FERC Gas Tariff by failing to post the notices of the auctions of its available firm capacity on the public side of its Electronic Bulletin

[1] 15. U.S.C. § 717, *et seq.*

Board ([EBB] – Navigates). The investigative period extended from January 1, 2010 through April 30, 2013.

4. Beginning in 1993, Columbia Gas offered available firm capacity through auctions in which the notices were posted on the public side of its EBB, known at that time as Navigator.[2] In 2008, Columbia Gas replaced Navigator with a new software program (Navigates) that required a login ID to access its password-protected side. All shippers on Columbia Gas had a login ID. Anyone else could obtain a login ID by requesting one from Navigates' Help Desk.

5. In 2009, the notices of the auctions were removed from the public side of Navigates and placed on its password-protected side. Columbia Gas restored the notices to the public side of Navigates on May 1, 2013. During the investigative period, no bidders affiliated with Columbia Gas participated in auctions that included capacity awarded at a discount.

6. On August 20, 2014, Columbia Gas filed tariff sheets to revise Section 4, proposing, in relevant part: (1) to remove the current requirement that it auction all available firm capacity; (2) to provide that newly available capacity may be awarded on either a first-come, first-served basis or through an open season; and, (3) to clarify posting procedures for existing firm capacity. *See Columbia Gas Transmission LLC*, 148 FERC ¶ 61,218 (2014) (RP14-1193). The effective date of the tariff is November 1, 2014.

B. Violation

7. Section 4.2 (Electronic Bulletin Board) of Columbia Gas' tariff provided during the investigative period that:

> Capacity that becomes or will become available will be posted by Transporter on its EBB for at least the following periods:
>
> (1) five business days for firm capacity that will be available for a term of twelve months or longer;
>
> (2) three business days for firm capacity that will be available for a term of at least five but less than twelve months; and

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[2] Section 4 (Auctions of Available Firm Capacity) of Columbia Gas' tariff authorized the auction of available firm capacity and contained the requirements governing the capacity auction process.

(3) one hour ending at 10:00 a.m. (E.T.) for firm capacity that will be available for a term of less than five months.

8. Enforcement determined that between January 1, 2010 and May 1, 2013, Columbia Gas violated Part 4 of its tariff by failing to post the notices of the auctions of its available firm capacity on the public side of its EBB (Navigates).

C. Stipulation and Consent Agreement

9. Enforcement and Columbia Gas have entered into the attached Agreement to resolve Enforcement's investigation into the transparency of Columbia Gas' auctions of its available firm capacity. Columbia Gas admits that the previously described conduct violated Part 4 of its tariff.

10. Columbia Gas shall pay a civil penalty of $350,000 to the United States Treasury, by wire transfer, within ten days of this order accepting and approving the Agreement.

D. Determination of the Appropriate Remedy

11. Pursuant to Section 16 of the NGA,[3] the Commission may assess a civil penalty of up to $1 million per day per violation against any person who violates an order made by rule, regulation or condition of the Commission. In determining the amount of a proposed penalty, NGA Section 16(c) requires the Commission to consider "the nature and seriousness of the violation and the efforts to remedy the violation."[4] In 2010, the Commission adopted the Penalty Guidelines that articulates the factors the Commission is to consider in assessing civil penalties.[5] We have considered these factors in determining the appropriateness of the remedy to which Columbia Gas has agreed.[6]

12. We find that the civil penalties set forth in the Agreement provide a fair and equitable resolution of this matter and that the Agreement is in the public interest.[7]

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[3] 15 U.S.C. § 717o.

[4] 15 U.S.C. § 717t-1(c).

[5] Revised Penalty Guidelines, 132 FERC ¶ 61,216 (2010).

[6] 18 C.F.R. § 385.1505(b) (2014).

[7] Since Columbia Gas implemented compliance measures in connection with the audit, further compliance measures are not necessary.

<u>The Commission orders:</u>

The Commission approves the attached Stipulation and Consent Agreement in its entirety and without modification.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

In re: Columbia Gas Transmission, LLC Docket No. IN15-7-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Columbia Gas Transmission, LLC (Columbia Gas) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2014). The investigation examined whether Columbia Gas violated Section 4 of the General Terms and Conditions of its FERC Gas Tariff by failing to post the notices of the auctions of its available firm capacity on the public side of its Electronic Bulletin Board ([EBB] - Navigates).

II. STIPULATED FACTS

1. On September 23, 2014, the Division of Audits and Accounting (Audits) referred to DOI for further investigation matters relating to the transparency of Columbia Gas' capacity auctions. On November 14, 2014, DOI opened a preliminary, non-public investigation. The investigative period extended from January 1, 2010 through April 30, 2013.

2. Audits staff believed that it was onerous and confusing for many shippers and potential shippers to locate Columbia Gas' capacity auctions on Navigates. Additionally, Audits staff believed that there was little transparency and notice of when the auctions were to occur, because: (1) the notices of the auctions were posted on only the password-protected side of Navigates and (2) some auctions were held on different days and at different times. However, there was no notice of the changes in the auction schedule.

3. Columbia Gas is a natural gas company engaged primarily in interstate transportation and storage services subject to the jurisdiction of the Commission. Columbia Gas operates facilities located in twelve eastern states. Unlike the typical FERC-jurisdictional pipeline which is longline in configuration, Columbia's pipeline system is reticulated or web-like. Columbia Gas has

extensive storage facilities and, thus, can offer its transportation customers a variety of transportation and storage services.

4. Beginning in 1993, Columbia Gas offered available firm capacity through auctions in which the notices were posted on the public side of its EBB, known at that time as Navigator. Auctions became a part of Columbia Gas' tariff as part of its Order No. 636 compliance filing.

5. Section 4 of Columbia Gas' tariff (Auctions of Available Firm Capacity) authorized the auctioning of available firm capacity and contained the requirements governing the capacity auction process. Auctions were conducted for capacity subject to a shipper's Right-of First-Refusal (ROFR) under existing contracts and for unsubscribed capacity. ROFR capacity was required to be sold in the auction. The auction process was very similar both for ROFR and non-ROFR capacity.

6. Capacity to be auctioned was noticed pursuant to the terms set forth in sections 4.2 of Columbia Gas' tariff. Most capacity was offered for a term of at least 12 months; thus, in accordance with Columbia Gas' EBB procedures described in Paragraph 13 (below), most of the auctions ran for five business days.

7. In 2008, Columbia Gas replaced Navigator with a new software program (Navigates) that requires a login ID to access its password-protected side. All shippers on Columbia Gas had a login ID, and anyone else could obtain a login ID by requesting one from Navigates' Help Desk. No creditworthiness determination was required to obtain a login ID.

8. In 2009, the notices of the auctions of available firm capacity were removed from the public side of Navigates and placed on its password-protected side. On May 1, 2013, Columbia Gas restored the notices to the public side of its EBB.

9. During the investigative period, only 11 out of 1,121 auctions included capacity that was at a discount. Out of the 11 auctions, capacity was awarded in only two, and none of the bidders were Columbia Gas affiliates.

10. On August 20, 2014, Columbia Gas filed tariff sheets to revise Section 4, proposing, in relevant part, to: (1) remove the current requirement that it auction all available firm capacity; (2) provide that newly available firm capacity may be awarded on either a first-come, first-served basis or through an open season; and (3) clarify posting procedures for existing firm capacity. *Columbia Gas Transmission LLC*, 148 FERC ¶ 61,218 (2014) (RP14-1193). The effective date of the tariff is November 1, 2014.

11. In mid-April 2015, Columbia Gas requested that staff suspend discovery in order to explore the possibility of a settlement. Discussions occurred between mid-April and early May 2015, at which time Columbia Gas offered to admit that between January 1, 2010 and May 1, 2013, Columbia Gas violated Section 4 of its tariff by failing to post the notices of the auctions of its available firm capacity on the public side of its EBB (Navigates).

III. VIOLATION

12. Enforcement determined that from January 1, 2010 until May 1, 2013, Columbia Gas failed to post the notices of the auctions of its available firm capacity on the public side of its Electronic Bulletin Board (Navigates).

13. Section 4.2 provided that:

> EBB Posting Procedure. Capacity that becomes or will become available will be posted by Transporter on its EBB for at least the following periods:
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> (4) five business days for firm capacity that will be available for a term of twelve months or longer;
>
> (5) three business days for firm capacity that will be available for a term of at least five but less than twelve months; and
>
> (6) one hour ending at 10:00 a.m. (E.T.) for firm capacity that will be available for a term of less than five months.

14. Between January 1, 2010 and May 1, 2013, Columbia Gas violated Part 4 of the General Terms and Conditions of its FERC GAS Tariff by failing to post the notices of the auctions on the public side of its EBB.

IV. COMPLIANCE AND MITIGATION EFFORTS

15. Columbia Gas now has in place a specific compliance function at the company level under the direction of the Senior Vice President and Deputy General Counsel, FERC Compliance and Regulatory. The pipeline regularly conducts training sessions with senior management in attendance. Columbia Gas also has taken significant remedial measures to improve compliance with the Commission's open-access transportation requirements. On May 1, 2013, the auction notices were returned to the public side of Navigates. Also, prior to this matter being referred to DOI, Columbia Gas thoroughly revised its capacity award

procedures and eliminated weekly capacity auctions.[8] Columbia Gas now sells available capacity through open seasons or via the unsubscribed postings on its public website.

16. Audits recently completed an audit of Columbia Gas and one of the recommendations of that audit was that Columbia Gas: "Establish, implement and update as needed, written procedures and internal controls to ensure Columbia Gas reports accurate and consistent data in its posted capacity reports." Columbia Gas accepted the recommendation in that audit and submitted the updated procedures as part of the compliance plan to Audits on January 29, 2015.

V. REMEDY AND SANCTION

17. Columbia Gas stipulates to the facts regarding Columbia Gas' conduct as described in Section II of this Agreement. Columbia Gas admits to the violation as described herein. To resolve the finding contained in this Agreement, Columbia Gas agrees to the remedy set forth in the following paragraph.

18. Columbia Gas agrees to pay a civil penalty of $350,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

VI. TERMS

19. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to Columbia Gas and any affiliated entity, their agents, officers, directors and employees, both past and present, and any successor in interest to Columbia Gas.

20. Commission approval of this Agreement in its entirety and without material modification shall release Columbia Gas and forever bar the Commission from holding Columbia Gas, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the investigation addressed in this Agreement.

21. Failure to make a timely civil penalty payment or to comply with any provision of this Agreement shall be deemed a violation of a final order of the

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[8] *Columbia Gas Transmission LLC*, 148 FERC ¶ 61,218 (2014).

Commission issued pursuant to the Natural Gas Act and may subject Columbia Gas to additional action under the enforcement and penalty provisions of the NGA.

22. If Columbia Gas does not make the civil penalty payment above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 154.501(d) (2014) from the date that payment is due, in addition to the penalty specified above.

23. This Agreement binds Columbia Gas and its agents, successors, and assigns. This Agreement does not create any additional or independent obligations on Columbia Gas, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Paragraph 18 of this Agreement.

24. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or Columbia Gas has been made to induce the signatories or any other party to enter into the Agreement.

25. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Columbia Gas and its affiliates shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Columbia Gas.

26. In connection with the payment of the civil penalty provided for herein, Columbia Gas agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under Natural Gas Act, 17 U.S.C. §717, *et seq*. Columbia Gas waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

27. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

28. The undersigned representative of Columbia Gas and its affiliates affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information

and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

29. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

7/15/15

Larry R. Parkinson
Director
Office of Enforcement
Federal Energy Regulatory Commission

Date

14 2015

Robert Smith
General Counsel
Columbia Pipeline Group
Columbia Gas Transmission, LLC

Date