

170 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.
Before Commissioners:

Columbia Gas Transmission, LLC

Docket Nos. RP19-1191-000
RP19-763-000

ORDER FOLLOWING TECHNICAL CONFERENCE

(Issued March 5, 2020)

1. On March 1, 2019, in Docket No. RP19-763-000, Columbia Gas Transmission, LLC (Columbia Gas) filed revised tariff records to reflect its annual Transportation Costs Rate Adjustment (Annual TCRA Filing), pursuant to Section 36 of the General Terms and Conditions (GT&C) of its tariff, to be effective April 1, 2019. In addition, on May 1, 2019, in Docket No. RP19-1191-000, Columbia Gas filed revised tariff records to reflect a periodic TCRA to be effective June 1, 2019 (Periodic TCRA Filing). In orders issued March 27, 2019¹ and May 31, 2019,² the Commission accepted and suspended the tariff records, subject to refund, to be effective April 1, 2019 and June 1, 2019, respectively and found that the issues raised by these filings were to be addressed at a technical conference. On July 10, 2019, Commission staff convened the technical conference and established a schedule for comments. As discussed below, we affirm the Commission's prior ruling and accept the tariff records on the dates referenced in the Appendix. The refund obligation is removed.

I. Background

2. Columbia Gas states that it recovers costs attributed to upstream capacity that the pipeline has acquired on other pipelines to serve its customers through the TCRA mechanism of its tariff (Account No. 858 costs). According to Columbia Gas,

¹ *Columbia Gas Transmission, LLC*, 166 FERC ¶ 61,229 (2019) (March 27 Order).

² *Columbia Gas Transmission, LLC*, 167 FERC ¶ 61,191 (2019) (May 31 Order).

Section 36.1 of the GT&C of its tariff defines qualifying Account No. 858 costs as amounts Columbia Gas pays to upstream pipelines for contracts it retained as a result of its Order No. 636³ restructuring proceeding or utilized in post-restructuring operations. Columbia Gas states that GT&C section 36.2 requires Columbia Gas to make an annual TCRA rate filing on or before March 1 of each year to be effective April 1, and also permits it to adjust its TCRA rates pursuant to a periodic TCRA filing.

3. On March 1, 2019, Columbia Gas submitted its Annual TCRA Filing to recover Account No. 858 costs for the 12-month period beginning April 1, 2019. Columbia Gas sought to recover annual costs of \$45,380,926. Columbia Gas proposed an increase in its TCRA surcharge rates to recover costs related to new capacity release contracts with Texas Eastern Transmission, LP (Texas Eastern) and costs attributable to a capacity lease contract with Columbia Gulf Transmission, LLC (Columbia Gulf) that had not been previously included in the TCRA mechanism.

4. On May 1, 2019, Columbia Gas submitted a Periodic TCRA Filing to increase the recoverable Account No. 858 costs for the period of June 1, 2019, through March 31, 2020, by \$6,383,617. Columbia Gas stated that this filing reflected an increase in costs related to Texas Eastern's transportation rates, which increased during the subject period and included capacity release costs incurred by Columbia Gas and costs related to a lease under which Columbia Gas leases capacity from Texas Eastern.⁴

5. In the March 27 and May 31 Orders, the Commission found that it required additional information to determine whether Columbia Gas's proposed tariff records were just and reasonable. Accordingly, the Commission directed staff to convene a technical conference to allow Commission staff and the parties an opportunity to discuss

³ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (cross-referenced at 59 FERC ¶ 61,030), *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 (cross referenced at 60 FERC ¶ 61,102); *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992); *order on reh'g*, 62 FERC ¶ 61,007 *aff'd in part, vacated and remanded in part*, *United Dist. Companies v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

⁴ May 1, 2019 Transmittal letter at 3 n. 13 ("Pursuant to Article IV, Section 4.2(C) of the Capacity Lease and Operating Agreement Columbia and Texas Eastern entered into on June 6, 1998, Columbia is obligated to reimburse Texas Eastern for all actual electric costs associated with the compressors utilized to make available Columbia's capacity pursuant to the Capacity Lease.").

all the issues raised by Columbia Gas's filings.⁵ On July 10, 2019, Commission staff convened a technical conference to address issues raised in the instant proceedings and established a schedule for parties to submit initial⁶ and reply comments.⁷

II. Discussion

6. On August 9, 2019, Columbia Gas submitted its initial comments on the technical conference. In its initial comments, Columbia Gas proposed no modifications to its Annual and Periodic TCRA filings. Columbia Gas requested that the Commission determine that the off-system capacity costs that Columbia Gas proposed to recover through the TCRA mechanism were prudently incurred, and accept Columbia's TCRA rates as proposed.

A. Texas Eastern Account No. 858 capacity costs

7. In its initial filing, Columbia Gas stated that Account No. 858 costs associated with two new Account No. 858 contracts entered into with Texas Eastern through capacity release arrangements were included in its TCRA rates. Columbia Gas states that in the past it utilized a no-fee exchange agreement with Texas Eastern to effectuate deliveries on non-contiguous sections of its system serving Ohio markets (Exchange Agreement). Columbia Gas maintains that Texas Eastern provided notice to Columbia Gas of its desire to terminate the Exchange Agreement, effective October 31, 2018. To replace the Exchange Agreement, Columbia Gas acquired contracts through Texas Eastern's capacity release market.⁸

8. In support of its initial filing, Columbia Gas stated it appropriately included the costs of off-system capacity that Columbia Gas obtained on Texas Eastern's system in the TCRA rates. Columbia Gas asserted that these costs permit it to meet its firm service obligations following Texas Eastern's notice to terminate the Exchange Agreement.

⁵ March 27 Order, 166 FERC ¶ 61,229 at P 6.

⁶ On August 9, 2019, the following parties filed initial comments: Columbia Gas; Exelon Corporation (Exelon); City of Charlottesville, Virginia and the City of Richmond, Virginia (Cities); Washington Gas Light Company (Washington Gas); Antero Resources Corporation (Antero); and Indicated Shippers (ConocoPhillips Company, Direct Energy Business Marketing LLC, Noble Energy, Inc., Shell North America (US) LP, and XTO Energy, Inc.).

⁷ On or before August 30, 2019, the following parties filed reply comments: Indicated Shippers, Exelon, Washington Gas, Antero, Columbia Gas, and Cities.

⁸ Columbia Gas March 1, 2019 Transmittal Letter at 3.

Columbia Gas stated that before entering into the capacity release contracts, Columbia Gas prudently evaluated all reasonable options, and ultimately determined that these capacity release contracts represented the least-cost, readily available, best alternative to the Exchange Agreement.

9. In the initial proceeding, protesting parties generally argued that the Commission should not allow Columbia Gas to recover the costs of these capacity release contracts with Texas Eastern through the TCRA mechanism. Protesting parties generally asserted that Columbia Gas secured these new contracts with Texas Eastern without consulting its shippers. Moreover, the parties asserted that Texas Eastern and Columbia Gas both filed to abandon the Exchange Agreement,⁹ and that Columbia Gas executed the new capacity release contracts before the Commission approved the abandonment of the old exchange service agreements. Commenters stated that Columbia Gas's acceptance of termination of the Exchange Agreement prior to the abandonment authorization demonstrates that Columbia Gas did not prudently incur the costs associated with the new capacity release contracts.

1. Initial Comments

10. Columbia Gas states that on September 29, 1986, it entered into an Exchange Agreement with Texas Eastern to effectuate deliveries on non-contiguous sections of its system serving Ohio markets (Rate Schedule X-130 (Columbia Gas) and Rate Schedule X-128 (Texas Eastern)). Columbia Gas states that Texas Eastern provided notice to Columbia Gas that Texas Eastern was terminating this agreement effective October 31, 2018. Thereafter, Columbia Gas states that it included costs associated with two new Account No. 858 contracts with Texas Eastern that it obtained through capacity release arrangements to continue the service associated with the X Rate Schedule.

11. Columbia Gas states that, on October 31, 2013, Texas Eastern provided a notice of termination of the Exchange Agreement to become effective October 31, 2015.¹⁰ Columbia Gas states that prior to entering into the capacity release contracts, Columbia Gas had negotiated to extend the Exchange Agreement for three additional years, beyond Texas Eastern's previous termination date of October 31, 2015, to allow its shippers to further benefit from the no-fee service. Columbia Gas argues that its prior negotiation to extend the Exchange Agreement for three additional years demonstrates its prudence as

⁹ Abbreviated Application for Authorization to Abandon Exchange Service under Rate Schedule X-130 of Columbia Gas Transmission, LLC, Docket No. CP19-103-000 (filed March 1, 2019) (Abandonment Application); Abbreviated Application for Authorization to Abandon Exchange Service under Rate X-128 of Texas Eastern Transmission, LP, Docket No. CP19-104-000 (filed March 1, 2019).

¹⁰ Columbia Gas Initial Comments at n.49.

Texas Eastern initially provided written notice of termination of the Exchange Agreement to be effective on October 31, 2015.¹¹

12. Columbia Gas states that on October 30, 2014, Texas Eastern informed Columbia Gas that it was terminating the Exchange Agreement effective October 31, 2018. Upon receipt of this termination notice, Columbia Gas asserts that it again engaged Texas Eastern in negotiations to extend the agreement. Once it failed to negotiate a further extension of the Exchange Agreement, Columbia Gas determined that it was obligated to replace the Exchange Agreement capacity that it relied upon to meet its firm service obligations. Columbia Gas states that after evaluating several options to replace this capacity, it determined that it was prudent to enter into the capacity release contracts, which were the least-cost contracts available to Columbia Gas that provided the same benefits as the Exchange Agreement.

13. Columbia Gas also argues that the fact that it entered in-to the capacity release contracts before seeking abandonment authorization for Rate Schedule X-130¹² has no bearing on whether it is entitled to recover the costs of the capacity release contracts. Columbia Gas asserts that Texas Eastern, not Columbia Gas, exercised its contractual right to terminate service to Columbia Gas under Rate Schedule X-128. Columbia Gas asserts that it had no control over this termination or the timing in which Texas Eastern sought authorization from the Commission to abandon Rate Schedule X-128.

14. Commenting parties other than Columbia Gas generally assert that no recovery should be allowed for costs of the capacity release contracts that Columbia Gas entered into prior to receiving abandonment approval for the no-fee arrangement and without consultation with its shippers. Further, they assert that no cost recovery should be allowed for the capacity release contracts even after the Commission granted such abandonment unless Columbia Gas demonstrates that its acquisition of the capacity release contracts was prudent.¹³

15. Several commenting parties request that the Commission only permit costs from this arrangement from the date the Commission approved the abandonment of Rate Schedule X-128 on August 2, 2019,¹⁴ and disallow any costs of the capacity release contracts incurred by Columbia Gas prior to that date, *i.e.*, from October 31, 2018

¹¹ Columbia Gas Initial Comments at 14.

¹² *Texas Eastern Transmission, LP*, 168 FERC ¶ 61,008 (2019) (Order Granting Abandonment).

¹³ See e.g., Antero Initial Comments at 3.

¹⁴ Order Granting Abandonment, 168 FERC ¶ 61,008.

through August 2, 2019. Several commenting parties assert that in this way, the Commission will be following the requirement of section 7(b) of the NGA that prohibits a natural gas company from abandoning service, without the permission and approval of the Commission.¹⁵ Many commenting parties also argue that Columbia Gas has not shown that the costs arising from the replacement of the Exchange Agreement with the new Texas Eastern contracts were prudently incurred. Parties argue that Columbia Gas had at least five years to adjust to the initial Texas Eastern notice to terminate the Exchange Agreement and thereby allow for the loss of this agreement but they assert that Columbia Gas waited until October 2018 to enter into the Texas Eastern capacity release contracts and then waited until the instant TCRA filings in these dockets to disclose its plans to the Commission and interested shippers.¹⁶

16. Several commenting parties continue to state that Market Area 6, near Columbus and Dayton, Ohio (where the no-fee exchanges were intended to serve) is named in new Columbia Gas contracts with start dates after notification of termination was given to Columbia Gas by Texas Eastern. Many commenting parties assert that Columbia Gas knew that the Exchange Agreement was going to end but still contracted to serve the affected area after the termination. Most commenting parties argue that this raises concerns as to why new obligations were being entered into at the cost of existing general system customers when operating conditions were insufficient to meet such demands absent incurring millions of dollars of additional and ongoing capacity release volumes. Commenting parties conclude that without a clear explanation from Columbia Gas as to the prudence of the new arrangement, the Commission should disallow recovery through the TCRA of the \$7.6 million cost of the capacity release contracts sought in this proceeding.

2. Reply Comments

17. Columbia Gas states the location of its customers is irrelevant to whether the costs of the capacity release contracts are appropriately recovered through the TCRA. Columbia Gas asserts the TCRA mechanism authorizes Columbia Gas to recover the costs incurred for the transmission and compression of gas by others “utilized in Columbia Gas’s post-restructuring operations,”¹⁷ and the Commission has explained that “the TCRA allows Columbia to flow through the costs of *any prudently incurred*

¹⁵ Initial Comments of Exelon at 4 (citing 15 U.S.C. § 717(b) (2012)).

¹⁶ Initial Comments of Washington Gas at 14.

¹⁷ Order Granting Abandonment, 168 FERC ¶ 61,008 at P 3.

off-system capacity costs, without filing a general section 4 rate case.”¹⁸ Columbia Gas states the capacity release contracts are utilized in Columbia Gas’s post-restructuring operations and qualify for recovery under the TCRA. Columbia Gas asserts the capacity release contracts further support Columbia Gas’s system operations to the benefit of all shippers by providing system balancing, meeting pressure obligations, and supporting Columbia’s firm storage and no-notice services. Columbia Gas states the inclusion of this off-system capacity in the TCRA is entirely consistent with the purpose of the TCRA.

18. Several commenting parties state that Columbia Gas’s current FTS transportation reservation charge of \$0.2226 per dekatherm (Dth) per day is lower than the reservation charge that Columbia Gas has agreed to pay (from 28 to 35 cents per Dth per day) for the capacity release contracts.¹⁹ These parties assert that the only reason that Columbia Gas would enter into an agreement that would entail losing from 6 to 13 cents on each dekatherm of capacity sold each day would be if the costs could be recovered from others. Many commenting parties assert that this use of the TCRA mechanism to support service to a market at below cost is unjust and unreasonable and the resulting rate increase should be rejected.

19. Cities argue that Columbia Gas undertook new obligations to serve customers in Market Area 6 after it had been informed that Texas Eastern intended to terminate the exchange service. Cities assert that Columbia Gas itself created the need to acquire replacement service on Texas Eastern by contracting for new service on its own system when it knew that Texas Eastern intended to cease providing service pursuant to the Exchange Agreement, and when Columbia Gas, as demonstrated by its own subsequent conduct, knew it would not oppose that termination.²⁰

3. Commission Determination

20. The Commission approved the TCRA surcharge as a mechanism for Columbia Gas to recover “any prudently incurred off-system capacity costs, without filing a general section 4 rate case.”²¹ As discussed below, based on the record and arguments in this

¹⁸ *Columbia Gas Transmission Corp.*, 131 FERC ¶ 61,093, at P 29 (2009) (*Columbia Gas*).

¹⁹ Initial Comments of Washington Gas at 15.

²⁰ Initial Comments of Cities at 9.

²¹ Order Granting Abandonment, 168 FERC ¶ 61,008 at P 29.

proceeding, we find that Columbia Gas prudently incurred the costs of the contracts for capacity on Texas Eastern and is entitled to recover those costs through its TCRA.

21. On July 8, 2019, the Commission issued an order finding that Texas Eastern provided Columbia Gas with notice of its intent to terminate the Exchange Agreement and service thereunder on October 31, 2018. The Commission approved abandonment of the agreement as Texas Eastern stated that it no longer utilized the Exchange Agreement to provide firm service to its customers, and Columbia Gas stated that since October 31, 2018, it has replaced the service it had received from Texas Eastern with capacity release contracts.²² In the July 8, 2019 Order, the Commission stated that it granted certificate authority for the Part 157 X Rate Schedules in 1985, and that the certificate authorized Texas Eastern and Columbia Gas to exchange up to 80,000 Dth per day to provide each pipeline with operational flexibility to meet their customers' needs.²³ The Commission acknowledged that Texas Eastern and Columbia Gas had entered into an agreement whereby Texas Eastern delivered natural gas at designated delivery points on a year-round, firm basis, and Columbia Gas delivered to Texas Eastern equivalent firm quantities at designated delivery points on the same year-round, firm basis. This agreement provided that after the primary term, which ended on October 31, 2000, the agreement would continue until either party terminates the agreement by providing written notice to the other party not less than two years before the termination date designated in such notice.

22. Contrary to several commenting parties' arguments, we find that Columbia Gas reasonably entered into the capacity release contracts, and thus prudently incurred those costs. As Columbia Gas shows, the new capacity release contracts with Texas Eastern were necessary to allow Columbia Gas to continue to meet its historical firm service obligations and maintain the operational integrity of its system after Texas Eastern

²² *Texas Eastern Transmission, LP*, 168 FERC ¶ 61,008 at P 5. Washington Gas states that one of these capacity release agreements is an annual contract with shipper DTE Energy Trading, Inc., for 47,143 Dth per day at a daily reservation charge of 28 cents per Dth or a total fixed cost of \$4.8 million. That contract term began on November 1, 2018 and expired on October 31, 2019. Washington Gas points out that the second capacity release agreement is a seasonal contract with shipper EQT Energy, Inc., for 35,000 Dth per day at a daily reservation charge of 35 cents per Dth or a total fixed cost of \$1.8 million. That contract term also began on November 1, 2018, and expired on March 31, 2019. Washington Gas states that both capacity release contracts provide service wholly within the boundaries of Texas Eastern's Zone M-2. Washington Gas Initial Comments at 10.

²³ *Id.* P 4 (Citing *Texas Eastern Transmission Corp.*, 32 FERC ¶ 61,227, at ordering para. (B)(3) and (E) (1985)).

provided notice of termination of the Exchange agreement. We cannot find that such action is imprudent. Columbia Gas had no control over Texas Eastern's decision to terminate the Exchange Agreement, and Columbia Gas acted to maintain its service to its customers.²⁴ Columbia Gas maintains that it obtained the capacity release contracts for service on Texas Eastern for only as much capacity as was required to replace 80,000 Dth per day formerly provided by Rate Schedule X-128. The fact that the new capacity is more costly than the original no-fee exchange does not render the action imprudent.²⁵ Moreover, the assertion that the price of the released capacity is higher than the system-wide reservation charge is not relevant to the fact that this is the price of capacity that Columbia Gas contracted for to serve customers it previously served by virtue of its no-fee arrangement with Texas Eastern. Whether the system-wide rate is higher or lower than the cost of the new capacity release capacity is not a reliable benchmark to compare against the cost of service to these customers because Columbia Gas could not obtain capacity from Texas Eastern following Texas Eastern's termination of the Exchange Agreement.

23. We also reject the contention that Columbia Gas should be denied the recovery of costs prior to the date the Commission grants abandonment of Rate Schedule X-128. As Columbia Gas demonstrates, Texas Eastern's termination of the Exchange Agreement did not excuse Columbia Gas from meeting its firm service obligations.²⁶ Upon notification

²⁴ In granting the subject abandonment the Commission stated:

While this may result in increased costs to Columbia [Gas]'s customers (as the service was previously provided at no fee), the Commission does not believe that requiring Texas Eastern to continue to provide a service that is no longer operationally viable **and that was terminated according to the terms of the contract with appropriate notice**, is justified in order for Columbia [Gas] to continue to provide service to its customers (Order Granting Abandonment, 168 FERC ¶ 61,008 at P 19) (emphasis added).

²⁵ In approving the abandonment the Commission recognized that the costs for Columbia Gas may increase, reasoning that Columbia Gas may now incur costs to replace the exchange service previously provided at no cost under the Exchange Agreement does not make it unreasonable for the Commission to decline to require Texas Eastern to continue its current services to Columbia Gas under Part 157 case-specific certificate authority upon expiration of the underlying contract (Order Granting Abandonment, 168 FERC ¶ 61,008 at P 22).

²⁶ Columbia Gas Reply Comments at 15. Moreover, the Commission stated in granting abandonment authority in the subject proceeding that Texas Eastern's

of the termination of the Exchange Agreement Columbia Gas sought additional off-system capacity to meet its existing obligations under that agreement and determined that the released capacity on Texas Eastern was the most cost-effective option that would allow it to meet its firm service obligations.²⁷

24. Upon notification of the termination of its agreement with Texas Eastern, Columbia Gas took steps to replace the capacity needed to serve its firm customers formerly served by Texas Eastern's Rate Schedule X-128. The fact that Columbia Gas's customers enjoyed the benefits of the no-fee arrangement and could have possibly enjoyed such benefits from the period between the termination notice to the end of the Commission's abandonment proceeding does not render Columbia Gas's action in the instant case imprudent.²⁸ In this instance, Columbia Gas has an obligation to continue providing service to its firm customers and it could not have known the length or outcome of the abandonment process.²⁹ Accordingly, Columbia Gas's move to solidify its ability to maintain its service obligations prior to the Commission-approved abandonment of the Exchange Agreements was reasonable and necessary. Accordingly, the costs incurred by Columbia Gas for that upstream capacity may be recovered through its TCRA mechanism.

25. Moreover, we also reject the argument that we should not permit the collection of the capacity release contract costs from the system-wide customers. Certain Columbia Gas firm customers enjoyed firm service on the Columbia Gas system that Columbia Gas was at one point able to provide through a no-fee exchange service with Texas Eastern. Once this capacity was no longer accessible to Columbia Gas it took steps to ensure the

termination of the Exchange Service "does not relieve Columbia [Gas] of its obligation to maintain service to its customers." (Order Granting Abandonment, 168 FERC ¶ 61,008 at P 19 n.22).

²⁷ Columbia Gas Initial Comments at 15. Columbia also maintained that it examined potential expansions of its own system to meet its obligations but determined that the expense was unwarranted. *Id.*

²⁸ Columbia Gas maintains that once Texas Eastern exercised its right to terminate Rate Schedule X-128 it informed Columbia Gas that the capacity used to provide the service was no longer available due to flow changes on Texas Eastern's system. Columbia Gas Initial Comments at 15.

²⁹ For its part Columbia Gas maintains that it did not protest Texas Eastern's abandonment application because it would not have changed the fact that Texas Eastern's system was no longer operationally capable of providing service under the Exchange Agreement. Columbia Gas Initial Comments at 11.

capacity necessary to provide service to its customers. Columbia Gas has a postage stamp rate design whereby all parties pay the same rate regardless of whether they use certain facilities on Columbia Gas's system. Although parties argue that the TCRA was meant to collect costs associated with supplying the system to the benefit of all customers, not isolated markets, this misses the point of a cost tracker that permits Columbia Gas to recover all upstream capacity costs by flowing the costs through to all customers, regardless of location.

B. Columbia Gulf Lease Costs

26. In its initial filing, Columbia Gas stated that it reflected costs for inclusion in the TCRA mechanism that were associated with a lease of capacity from Columbia Gulf.³⁰ Columbia Gas maintained that this leased capacity enabled it to provide firm service to customers located on discontinuous Columbia Gas pipeline assets and eliminated the need for Columbia Gas to construct duplicative facilities to maintain service to those customers. The Commission order approving the lease arrangement stated that Columbia Gas would account for off-system capacity costs such as the Columbia Gulf Lease costs in its Account No. 858 and that Columbia Gas's TCRA contemplates the recovery of "costs incurred for the transmission and compression of gas by others (Account No. 858 costs or 858 costs), applicable to Operational 858 costs...."³¹ In approving the subject lease between Columbia Gas and Columbia Gulf which gives rise to the costs at issue, the Commission acknowledged that Columbia Gas had proposed that it "not seek to recover the costs of the leased capacity from its customers at least through the primary term of the existing Modernization Settlement."³² The Commission stated that Columbia Gas's Modernization Settlement provided for, among other things, a rate moratorium through January 31, 2018 and a requirement for the pipeline to file an NGA section 4 general rate case by February 1, 2019.³³

27. Subsequently, Columbia Gas filed what it termed as the Modernization II Settlement offer with the Commission to preserve and extend the core elements of the Modernization I settlement. The Commission approved the Modernization II Settlement

³⁰ Columbia Gas March 1, 2019 Transmittal letter at 4.

³¹ *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,028, at P 10 (2013) (Columbia Lease Order).

³² *Id.*; *See also Id.* PP 16, 21 ("Columbia [Gas] has agreed not to attempt to recover the leased capacity costs at least through the primary term of the existing Modernization Settlement.").

³³ *Id.* P 6 ((citing *Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062 (2013) (approving Modernization Settlement) (Order Approving Modernization Settlement)).

stating that it appeared to be modeled after the Modernization I Settlement, that it extended the term of the Capital Cost-Recovery Mechanism (CCRM) for three additional years, and that it provided numerous benefits to the Columbia Gas customers.³⁴ The Commission also found that numerous parties representing a diverse cross-section of customers of Columbia Gas filed comments supporting or not opposing the Modernization II Settlement and that no party contested or opposed the Modernization II Settlement.³⁵

1. Initial Comments

28. Columbia Gas states the Commission should permit Columbia Gas to include the costs associated with the Columbia Gulf Lease in its 2019 Annual TCRA Filing. Columbia Gas states as a general matter, “[t]he TCRA allows Columbia Gas to flow through the costs of *any prudently incurred off-system capacity costs*, without filing a general section 4 rate case.”³⁶ Columbia Gas asserts it had made a commitment in the lease application filing³⁷ to avoid seeking recovery of the Columbia Gulf Lease costs through the TCRA for a limited, but defined, time period. Specifically, Columbia Gas states it committed to “not seek to recover the costs of the Lease Capacity from its customers *through the primary term of the existing Modernization settlement*.”³⁸ Columbia Gas continues that the primary term of the Modernization Settlement ended on January 31, 2019,³⁹ prior to Columbia’s 2019 Annual TCRA Filing. Columbia Gas asserts that now that the limited commitment period has ended, the Columbia Gulf Lease costs are eligible for inclusion in the TCRA. Columbia Gas asserts that the Commission should hold that Columbia Gas is permitted to include the Columbia Gulf Lease cost in its TCRA.

³⁴ *Columbia Gas Transmission, LLC*, 154 FERC ¶ 61,208, at P 3 (2016) (Order Approving Modernization II Settlement).

³⁵ *Id.* P 19.

³⁶ Order Granting Abandonment, 168 FERC ¶ 61,008 at P 29. (emphasis added).

³⁷ Abbreviated Joint Application of Columbia Gas Transmission, LLC and Columbia Gulf Transmission, LLC to Acquire and Abandon Capacity by Lease, Docket No. CP13-480-000 (filed May 15, 2013) (Lease Application)

³⁸ Lease Application at 9.

³⁹ Order Approving Modernization Settlement, 142 FERC ¶ 61,062 at P 2.

29. Columbia Gas requests that the Commission reject the argument that the Columbia Gulf Lease costs should be excluded from the TCRA because Columbia Gas and its customers agreed to a second term of the Modernization Settlement. Columbia Gas asserts this argument ignores the language of Columbia Gas's commitment, which states that Columbia Gas would avoid seeking recovery of the Lease costs "through the *primary term* of the existing Modernization settlement."⁴⁰ Columbia Gas continues that while Columbia Gas reserved its right "to seek recovery of future lease costs in its first Section 4 general rate proceeding following expiration of the primary term of the Capacity Lease,"⁴¹ this does not prohibit Columbia Gas from seeking to recover the Lease costs at this time through its TCRA mechanism. Columbia Gas contends the subject language does not refer to the current term of the Columbia Gulf lease but instead refers to a future term of any such lease. Columbia Gas argues that as a result, and now that the primary term of the Modernization Settlement has ended, Columbia Gas is permitted to seek recovery of the lease costs through the TCRA mechanism.

30. Columbia Gas states the Columbia Gulf Lease costs are off-system capacity costs that are eligible for recovery via the TCRA mechanism. Columbia Gas asserts the Commission's order approving the Lease expressly notes that Columbia Gas "will account for the cost of leasing capacity from Columbia Gulf as an Account No. 858 expense."⁴² Columbia Gas continues that the Commission has held that the TCRA mechanism permits Columbia Gas to "recover all Account No. 858 costs on a system-wide basis from all transportation customers."⁴³ Additionally, Columbia Gas states the Columbia Gulf Lease costs are the type of Account No. 858 costs (*i.e.*, off-system transportation costs) that are eligible for inclusion in the TCRA now that the primary term of the Modernization Settlement has ended.

31. Commenting parties other than Columbia Gas generally argue that the Commission should not allow the costs associated with the lease of Columbia Gulf capacity to be included in the TCRA. They argue that Columbia Gas is incorrect in claiming that it is currently eligible to recover these costs through the TCRA because Columbia Gas stated in its application for authorization of the lease with Columbia Gulf that it would not seek to recover costs of the leased capacity from its customers through at least the term of the Modernization I Settlement, which expired on January 31, 2019,

⁴⁰ Initial Comments of Columbia Gas at 20 (emphasis added by Columbia Gas).

⁴¹ *Id.* at 20.

⁴² Columbia Lease Order, 145 FERC ¶ 61,028 at P 10.

⁴³ *UGI Utils., Inc. v. Columbia Gas Transmission Corp.*, 75 FERC ¶ 61,017, at 61,061 (1996).

or prior to expiration of the primary term of the lease, which expires March 31, 2024. Commenting parties argue that:

Columbia will not seek to recover the costs of the Lease Capacity from its customers through the primary term of the Existing Modernization settlement. Columbia retains the right, however, to seek recovery of the future lease costs in its first Section 4 general rate proceeding following expiration of the primary term of the Capacity Lease.⁴⁴

32. Several commenting parties state that Columbia Gas now selectively quotes only its commitment not to seek recovery during the Modernization I Settlement but omits reference to its later statement in which it indicated it retains the right to seek cost recovery in a general rate case after the primary term of the lease expires.⁴⁵

33. Several commenting parties further assert that Columbia Gas and its customers extended the Modernization I Settlement, including extending the rate moratorium through January 31, 2021, and requiring Columbia Gas to file an NGA section 4 general rate case to be effective no later than February 1, 2022.⁴⁶ Many commenting parties state that to the extent that the Modernization I Settlement was a reason Columbia Gas did not recover the lease expense, the nearly identical Modernization II Settlement provides essentially the same basis for Columbia Gas not obtaining cost recovery now. Most commenting parties argue that because the modernization program has been extended through a new settlement, and because Columbia Gas signaled that it reserved only the right to recover the lease expenses in a base rate proceeding, the Commission should hold Columbia Gas to its word and deny its request to recover the lease costs paid to its affiliate until either a rate case follows the termination of the Modernization II Settlement, or after the primary term of the capacity lease expires.⁴⁷

34. Several commenting parties state that deferring recovery of the lease expense until a rate case is appropriate because the lease raises significant issues regarding the restructured nature of service on Columbia Gas and Columbia Gulf. Many commenting parties explain that historically Columbia Gulf flowed gas northward into Columbia Gas,

⁴⁴ Initial Comments of Columbia Gas (citing Columbia Gas May 15, 2013 Application for authorization to lease Columbia Gulf Capacity, Docket No. CP13-480-000 at 9).

⁴⁵ Initial Comments of Cities at 7.

⁴⁶ Order Approving Modernization II Settlement, 154 FERC ¶ 61,208.

⁴⁷ Initial Comments of Cities at 12 and 13.

and at the time the two pipelines restructured their services under Order No. 636, Columbia Gas's customers were obligated to take unbundled transportation service on both Columbia Gas and Columbia Gulf. Most commenting parties assert that with the operational changes on Columbia Gulf resulting in a southbound flow pattern, the provision of service to customers under the capacity lease obviates the need for the shippers located on the non-contiguous portions of Columbia Gas's system to hold Columbia Gulf capacity through which the gas is transported by Columbia Gas.⁴⁸

35. Several commenting parties state there are significant issues regarding the allocation of the capacity lease expense that are not and cannot be addressed under the TCRA mechanism and must be adjudicated in a rate case. Many commenting parties assert that Columbia Gas's representations to the Commission when it sought approval for the lease, as well as the inappropriateness of shifting the cost burden associated with holding Columbia Gulf capacity from the non-contiguous shippers to the entire Columbia Gas system through the TCRA, warrant rejection of the lease expense until Columbia Gas files a rate case at the end of its Modernization II Settlement term.⁴⁹

36. Several commenting parties request that the Commission deny Columbia Gas's request to recover the lease costs paid to Columbia Gulf through the TCRA while the Modernization II Settlement remains in effect.

2. Reply Comments

37. Columbia Gas asserts that it committed to "not seek to recover the costs of the Lease Capacity from its customers through the primary term of the existing Modernization settlement."⁵⁰ Columbia Gas argues that no party disputes that the primary term of the Modernization Settlement ended on January 31, 2019, prior to Columbia's 2019 Annual TCRA Filing. Columbia Gas states that the parties argue that because the Modernization II Settlement preserves and extends certain core elements of the Modernization Settlement, Columbia Gas should be prohibited from including the lease costs in its 2019 Annual TCRA Filing. Columbia Gas asserts that it has fulfilled its commitment to not seek recovery of the lease costs during the entirety of the primary term of the Modernization Settlement. Columbia Gas states that commitment has been completed and the Commission should hold that Columbia Gas is now permitted to include the lease costs in its TCRA rate.

⁴⁸ *Id.* at 13.

⁴⁹ *Id.*

⁵⁰ Lease Application at 9.

38. Several commenting parties contend that the shippers' ability to examine whether Columbia Gas's base rates are just and reasonable will be deferred until January 31, 2021, at the earliest.⁵¹ Many commenting parties continue that the purpose of excluding the Columbia Gulf lease cost from the TCRA during the term of the Modernization Settlement was to provide for the examination of the lease costs in the context of an NGA general section 4 rate case. Most commenting parties argue that Columbia Gas should not be permitted to recover the lease costs prior to the time the Commission and shippers have an opportunity to comprehensively examine Columbia Gas's base rates.⁵²

3. Commission Determination

39. We reject the non-Columbia Gas commenting parties' arguments and find that the TCRA allows for the recovery of off-system capacity costs.⁵³ Because the Columbia Gulf lease is off system capacity, recovery of the lease costs in the TCRA is appropriate. Columbia Gas agreed not to seek to recover those costs until at least the end of the primary term of the Modernization Settlement. The primary term of that settlement terminated on January 31, 2019, prior to Columbia Gas's instant Annual TCRA Filing to recover such costs. Thus, at the time of the TCRA filing, Columbia Gas had fulfilled its commitment not to seek recovery of the costs until the end of the primary term of the Modernization Settlement.

40. We also reject the argument that because the Modernization II Settlement preserves the core elements of the Modernization I settlement, Columbia Gas should be precluded from recovering the subject lease costs. As it stated, Columbia Gas agreed to not seek recovery of the Columbia Gulf lease costs through the TCRA for a limited, but defined time period, namely "the *primary term* of the existing Modernization

⁵¹ See *e.g.*, Reply Comments of Indicated Shippers at 7.

⁵² Reply Comments of Indicated Shippers at 7.

⁵³ Section 36.1.a of the GT&C of Columbia Gas's tariff ("This Section provides for the recovery of costs incurred for the transmission and compression of gas ... which shall be defined as including amounts paid to upstream pipelines for contracts retained as a result of Transporter's Order No. 636 restructuring, or utilized in Transporter's post-restructuring operations").

settlement.⁵⁴ The primary term of the Modernization I Settlement ended on January 31, 2019, before Columbia Gas filed to recover the subject costs in its Annual TCRA Filing. The Modernization II Settlement itself does not mention the subject lease costs. Accordingly, Columbia Gas has met its obligation under its lease proposal to refrain from filing to collect the subject costs through the primary term of the Modernization I Settlement. The Modernization II Settlement does not seek to continue the prohibition of the collection of such costs by Columbia Gas and fails to even discuss such costs. If the parties to the settlement proceeding intended to continue to forestall the collection of the subject lease costs by Columbia Gas they could have negotiated such a provision in the Modernization II Settlement. The Modernization II Settlement approved by the Commission contains no provisions that delay or prohibit the collection of the subject costs through the TCRA mechanism.⁵⁵

41. The argument that Columbia Gas is precluded from seeking the lease costs through the TCRA because of its statement that it retained the right to seek recovery of future lease costs in a general rate case after the primary term of the lease expires also fails.⁵⁶ First, Columbia Gas's retention of a right to seek future cost recovery does not create an obligation or commitment with respect to the current lease costs. The plain language at issue states that Columbia Gas retains the right to seek "recovery of future lease costs in its first Section 4 general rate proceeding *following expiration of the*

⁵⁴ Columbia Lease Order, 145 FERC ¶ 61,028 at PP 10,16, 21. In its Lease application in Docket No. CP13-480-000, Columbia stated that:

In as much as leasing capacity on Columbia Gulf's system enables Columbia to continue providing reliable service to its customers served directly and indirectly from Columbia Gulf's system, and eliminates the need to construct duplicative facilities to maintain service to these customers, the Commission would typically grant recovery of the lease costs through Columbia's TCRA. However, Columbia will not seek to recover the costs of the Lease Capacity from its customers through the primary term of the existing Modernization settlement. Columbia retains the right, however, to seek recovery of future lease costs in its first Section 4 general rate proceeding following expiration of the primary term of the Capacity Lease. Columbia Lease Application at 9.

⁵⁵ Order Approving Modernization II Settlement, 154 FERC ¶ 61,208.

⁵⁶ See Indicated Shippers Comments at 11; Cities Comments at 12.

*primary term of the Capacity Lease.”*⁵⁷ Therefore we find that the language refers to future lease costs incurred under a new capacity lease term by Columbia Gas after the primary term of the capacity lease, which ends in 2024, and does not control the collection of the current capacity lease costs which are at issue in the instant proceeding.

42. Therefore, we affirm the Commission’s prior ruling, accept the tariff records on the dates referenced in the Appendix, and remove the refund obligation.

The Commission orders:

(A) Columbia Gas’s tariff records filed in Docket No. RP19-763-000 are accepted effective April 1, 2019, and are no longer subject to Commission review.

(B) Columbia Gas’s tariff records filed in Docket No. RP19-1191-000 are accepted effective June 1, 2019, and are no longer subject to Commission review.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵⁷ *Id.* Lease Application at 9 (emphasis added)

Appendix

Columbia Gas Transmission, LLC
FERC NGA Gas Tariff
Baseline Tariffs

Tariff records accepted effective April 1, 2019:

[Currently Effective Rates, FTS Rates, 55.0.0](#)
[Currently Effective Rates, FTS-APX Rates, 41.0.0](#)
[Currently Effective Rates, NTS and NTS-S Rates, 55.0.0](#)
[Currently Effective Rates, ITS Rates, 54.0.0](#)
[Currently Effective Rates, GTS Rates, 54.0.0](#)
[Currently Effective Rates, OPT Rates, 55.0.0](#)
[Currently Effective Rates, TPS Rates, 55.0.0](#)
[Currently Effective Rates, SST Rates, 55.0.0](#)
[Currently Effective Rates, FTS-GC Rates, 21.0.0](#)
[Currently Effective Rates, FTS-ESE Rates, 16.0.0](#)
[Currently Effective Rates, NTS-ESE Rates, 16.0.0](#)
[Currently Effective Rates, FTS-LXP Rates, 7.0.0](#)
[Currently Effective Rates, FTS-WBX Rates, 3.0.0](#)
[Currently Effective Rates, FTS-MXP Rates, 3.0.0](#)

Tariff records accepted effective June 1, 2019:

[Currently Effective Rates, FTS Rates, 57.0.0](#)
[Currently Effective Rates, FTS-APX Rates, 43.0.0](#)
[Currently Effective Rates, NTS and NTS-S Rates, 57.0.0](#)
[Currently Effective Rates, ITS Rates, 56.0.0](#)
[Currently Effective Rates, GTS Rates, 56.0.0](#)
[Currently Effective Rates, OPT Rates, 57.0.0](#)
[Currently Effective Rates, TPS Rates, 57.0.0](#)
[Currently Effective Rates, SST Rates, 57.0.0](#)
[Currently Effective Rates, FTS-GC Rates, 23.0.0](#)
[Currently Effective Rates, FTS-ESE Rates, 18.0.0](#)
[Currently Effective Rates, NTS-ESE Rates, 18.0.0](#)
[Currently Effective Rates, FTS-LXP Rates, 9.0.0](#)
[Currently Effective Rates, FTS-WBX Rates, 5.0.0](#)
[Currently Effective Rates, FTS-MXP Rates, 5.0.0](#)