

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

In re Columbia Gulf Transmission Company

Docket No. IN07-25-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued May 21, 2007)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Columbia Gulf Transmission Company (Columbia Gulf). This Order resolves a formal investigation pursuant to section 1b.5 of the Commission's regulations, 18 C.F.R. §1b.5 (2006), directed by the Commission on July 20, 2006,¹ into the issue of whether Columbia Gulf's actions have violated and/or are continuing to violate the Commission's orders in Docket Nos. RP04-215-000, *et. al.* The Agreement requires Columbia Gulf to pay a civil penalty of \$2 million. We approve the Agreement as appropriate under the circumstances and in the public interest.

Background

2. Columbia Gulf and Tennessee Gas Pipeline Company (Tennessee) are joint owners of the Blue Water Project (BWP) in Louisiana and, since 1972, have operated the Blue Water Project under the terms of the Blue Water Project Operating Agreement (BWOA). Under the BWOA, Columbia Gulf operates the western portion of the BWP, including the terminus facilities at the Egan, Louisiana complex. On October 6, 2003, Tennessee served notice to Columbia Gulf of Tennessee's intent to install a receipt interconnection at the Egan complex. Columbia Gulf declined to permit the interconnection, and Tennessee filed a complaint on March 12, 2004, asking the

¹ *Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 116 FERC ¶ 61,065 (2006) (July 20, 2006 Order).

Commission to direct Columbia Gulf to allow installation of a receipt interconnection at Egan.²

3. Following a hearing, an Administrative Law Judge (ALJ) ruled that Tennessee's interconnection should be allowed.³ The Commission affirmed the ALJ's decision on July 25, 2005, and directed Columbia Gulf "to allow the construction and operation of the receipt point requested at Egan, Louisiana, by Tennessee, as soon as operationally possible."⁴ Columbia Gulf sought rehearing, clarification and a stay of the Commission's order. On November 22, 2005, the Commission denied Columbia Gulf's request for rehearing and stay in its entirety.⁵ Regarding Columbia Gulf's request for clarification that it, and not Tennessee, would operate the new receipt meter at Egan, however, the Commission noted that either Columbia Gulf or Tennessee can select a new receipt point location on the BWP without restriction, that Tennessee had selected a location outside of the Egan complex operated by Columbia Gulf, and stated that the Commission "confirms that the July 25 Order, which construes the Operating Agreement as allowing the remedy sought by Tennessee, made no modifications to the Operating Agreement." *Id.* at P 54.

4. Although Columbia Gulf recognized that Tennessee was permitted to construct the interconnection facilities, Columbia Gulf interpreted the Commission's November 22, 2005 Order as granting the clarification on the question of which company would operate the interconnection. Thereafter, through a series of letters with Tennessee beginning in January 2006, Columbia Gulf senior management told Tennessee that Columbia Gulf would both *construct* and operate all of the facilities in Tennessee's proposed interconnection and that Tennessee would have to enter into a separate interconnection agreement. On March 31, 2006, Tennessee filed a request for a declaratory order, asserting that it is entitled to construct and operate the interconnection, that Columbia

² Docket No. RP04-215-000.

³ *Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 110 FERC ¶ 63,041 (2005).

⁴ *Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 112 FERC ¶ 61,118 at Ordering Paragraph (A) (2005) (July 25, 2005 Order).

⁵ *Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 113 FERC ¶ 61,200 (2005) (November 22, 2005 Order).

Gulf must provide taps for Tennessee's interconnection facilities, and that no separate interconnection agreement can be required.⁶

5. On July 20, 2006, the Commission granted Tennessee's request for a Declaratory Order, finding that Tennessee was entitled both to construct and to operate the new receipt interconnection, and explicitly directing Columbia Gulf to permit the taps requested by Tennessee to be installed no later than ten days after upstream metering facilities have been constructed by Tennessee.⁷ The Commission also initiated the investigation that is the subject of this docket. *Id.* at P 31 and Ordering Paragraph (C). Following this order, the interconnection was constructed and, on October 1, 2006, placed into service. The interconnection, which has been named Acadia, has been in service since that date. Columbia Gulf operates the western portion of the BWP, including the Egan complex, and Tennessee operates the Acadia interconnection.

6. On August 21, 2006, Columbia Gulf sought clarification and rehearing of the July 20, 2006 Order, challenging the Commission's conclusion that Tennessee could operate the interconnection. The Commission denied rehearing,⁸ and Columbia Gulf sought review.⁹

Alleged Violation

7. Enforcement alleges that Columbia Gulf failed to comply with the Commission's direction by creating unwarranted obstacles to Tennessee's interconnection plans and by not meaningfully working with Tennessee to allow the interconnection after the Commission had directed Columbia Gulf to allow the new interconnection as soon as operationally possible. Specifically, Enforcement alleges that Columbia Gulf violated the Commission's November 22, 2005 Order by insisting that Columbia Gulf would design and construct the interconnection, and that Tennessee had to sign a separate interconnection agreement to that effect. The Commission had ruled that Tennessee was allowed to construct the interconnection at a location of its choosing, and Tennessee had

⁶ Docket No. RP06-297-000.

⁷ *Tennessee v. Columbia Gulf*, *supra*, 116 FERC ¶ 61,065 at Ordering Paragraph (A).

⁸ *Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 117 FERC ¶ 61,147 (2006).

⁹ *Columbia Gulf Transmission Company v. Federal Energy Regulatory Commission*, D.C. Cir. No. 06-1425 (filed December 29, 2006).

designed the facilities and had selected a location outside of Columbia Gulf's Egan complex. Columbia Gulf did not seek clarification of the Commission's determination that Tennessee could construct the interconnection.

8. Enforcement further alleges that Columbia Gulf's conduct resulted in a substantial delay until October 2006 in placing the interconnection into service. Enforcement alleges that Columbia Gulf's actions unreasonably delayed an interconnection that had been authorized and which Columbia Gulf had been directed to allow, and thus undermined the Commission's open-access program.

Stipulation and Agreement

9. Enforcement and Columbia Gulf have entered into the attached Agreement to resolve the formal investigation that the Commission initiated in its July 20, 2006 Order. The Agreement, *inter alia*, requires Columbia Gulf to pay a \$2 million civil penalty to the United States Treasury within ten days of this Order.

10. Columbia Gulf neither admits nor denies Enforcement's allegations or that any action or inaction by Columbia Gulf in connection with the Acadia interconnection constitutes a violation of law or of the Commission's statutes, regulations, orders, and/or policies. Columbia Gulf states that it has entered into the Agreement to avoid extended litigation and in the interest of resolving any dispute between Enforcement and Columbia Gulf without further proceedings.

Determination of the Appropriate Penalty

11. The Commission may impose civil penalties of up to \$1 million per day per violation pursuant to section 22(a) of the Natural Gas Act (NGA), as amended by the Energy Policy Act of 2005.¹⁰ The violation in this case occurred after August 8, 2005, the effective date of the Commission's NGA civil penalty authority.

12. In approving the Agreement and the \$2 million civil penalty, we considered the factors set forth in our Policy Statement on Enforcement.¹¹ With respect to the seriousness of the offense, we considered all factors, including that the Commission's

¹⁰ Energy Policy Act of 2005, Pub. L. No. 109-58, § 314 (b)(1)(B) (2005). Under NGA section 22(a), 15 U.S.C. §§ 717t-1(a), the Commission can assess a penalty "of not more than \$1,000,000 per day per violation for as long as the violation continues."

¹¹ *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 (2006).

requirement that an open-access pipeline permit a qualifying interconnection is integral to the success of open-access transportation and to maximizing the value of the nation's natural gas pipeline network, both long-standing components of the regulation and operation of the interstate natural gas pipeline system.¹²

13. The Commission relies on entities subject to its jurisdiction complying with its orders. To do otherwise would interfere with the application of regulatory requirements and the operation of the interstate natural gas pipeline system. The Commission therefore considered harm to the orderly administration of the Natural Gas Act in weighing the seriousness of the violation. We also considered the direct participation of Columbia Gulf senior management in delaying an interconnection that had been authorized.

14. The Commission also considered whether there were factors present warranting credit for internal compliance, self-reporting, or cooperation. The first two categories are not applicable here. Columbia Gulf cooperated in the investigation and did take action after the Commission issued the July 20, 2006 Order to permit the interconnection, but the latter occurred only after the Commission specifically directed Columbia Gulf to install the necessary taps.

15. In light of the facts and circumstances, we conclude that the penalty and conditions specified in the Agreement provide a fair and equitable resolution of this matter and are in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Kimberly D. Bose.
Secretary,

¹² *Panhandle Eastern Pipe Line Company*, 91 FERC ¶ 61,037 at 61,140-141 (2000).