110 FERC ¶ 61,372
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Horizon Pipeline Company, L.L.C. Docket No. RP02-153-006

ORDER ON COMPLIANCE FILING

(Issued March 28, 2005)

1. This order addresses the filing by Horizon Pipeline Company, L.L.C. (Horizon) to comply with the Commission's December 19, 2003 Order (the December 19 Order) in this proceeding.[1] In that order, the Commission rejected Horizon's proposed tariff provision that would permit Horizon and its shippers, by mutual agreement, to establish the discounts applicable at both primary and secondary points. Consistent with the Commission's order on remand in *Williston Basin Interstate Pipeline Co. (Williston Remand),*[2] the Commission will permit Horizon to revise the provision of its tariff concerning a shipper's ability to retain its primary point discount when a secondary point is used, as discussed below. This order is in the public interest because it preserves the benefits of pipeline selective discounting for captive customers.

2. In orders on the Order No. 637 compliance filings by Colorado Interstate Gas Company and Granite State Gas Transmission, Inc., the Commission refined its discount policy to require that where a firm shipper has a discounted rate, if it, or its replacement shipper uses a secondary point at which similarly situated shippers are receiving discounts, the pipeline must allow the firm shipper to receive the higher of its contract discount rate

[1] 105 FERC **&** 61,304 (2003).

[2] 110 FERC ¶ 61,210 (2005).

or the discount rate at the secondary point.[3] Horizon proposed in a December 23, 2002 filing to comply with the Commission's *CIG/Granite State* discount policy by adding a new section 7.14(g)(2) to its tariff, setting forth the procedures for a shipper to request that its primary point discount rate be applied at a secondary point. Horizon's proposed section 7.14 (g)(2) included the following language :

> … if the Agreement of the shipper requesting the discount (or related discount agreement) specifies the discount rate to be paid and related rate provisions at that secondary point, then the Agreement (or related discount agreement) shall control.

3. On June 4, 2003,[4] the Commission held that Horizon's proposed section 7.14 (g) (2) was not consistent with the *CIG/Granite State* policy because it would permit the pipeline to grant a discount at a primary point, but provide in the contract that a higher rate would apply at all secondary points. The Commission accordingly accepted Horizon's proposed tariff sheets implementing the *CIG/Granite State* policy subject to the condition that Horizon remove this language from section 7.14 (g)(2). Horizon sought rehearing, arguing that a pipeline and its customers should be able to agree by contract to the discounted rates that would apply at secondary points. On December 19, 2003, the Commission denied rehearing, but granted clarification in part. The clarification was that if the pipeline and the shipper included in their contract a discounted rate for a secondary point, the portable discount policy would only apply if the secondary point discounted rate is higher than the discounted rate at the primary point under that contract.

4. Horizon filed on January 26, 2004 to comply with the December 19 Order, but Horizon also sought judicial review of the December 19 order. In *Williston Basin Interstate Pipeline Co. v. FERC,*[5] the United States Court of Appeals for the District of Columbia Circuit held that the Commission had not adequately justified its *CIG/Granite State* policy. Among other things, the court was concerned that the new policy could undercut the ability of pipelines to use selective discounts to maximize revenue from customers with competitive alternatives by making it more difficult for the pipeline to limit discounts solely to those customers. After the court's decision, the Commission

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[3] *Colorado Interstate Gas Company*, 95 FERC ¶ 61,321 (2001); *Granite State Gas Transmission, Inc.*, 96 FERC ¶ 61,273 (2001), reh'g denied, 98 FERC ¶ 61, 019 (2002).

[4] 103 FERC ¶ 61,281(2003).

[5] 358 F.3d 45 (D.C. Cir. 2004).

requested, and was granted, voluntary remand of Horizon's appeal. In its order responding to the court's remand in *Williston*, the Commission concluded that it could not satisfy its burden under section 5 of the Natural Gas Act to require pipelines to modify their tariffs to incorporate the *CIG/Granite State* discount policy. The order stated that the Commission was returning to its prior policy, as set forth in *El Paso Natural Gas Co.* (*El Paso*), [6] which permitted pipelines to negotiate with shippers the discounts applicable at both primary and secondary points. The Commission added that it was taking a more comprehensive review of its discount policy in Docket No.RM05-2-000, where it would take a broader look at the discount policy.

5. Although Horizon's January 26, 2004 filing complies with the December 19 Order, Commission policy no longer requires Horizon to comply with that order. Accordingly, we reject Horizon's January 26, 2004 filing. Horizon may, within 15 days of the date of this order, file to revise section 7.14 (g) of its tariff implementing the *CIG/Granite State* policy, consistent with the Commission's current policy, as set forth in the *Williston Remand.*

The Commission orders:

(A) Horizon's January 26, 2004 compliance filing is rejected.

(B) Within 15 days of the date of this order, Horizon may file revised tariff discount provisions consistent with the above discussion.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.

[6] 62 FERC ¶ 61,311 (1993).