UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Norstar Operating, LLC Docket No. RP06-231-000

v.

Columbia Gas Transmission
Corporation

ORDER ON COMPLAINT

(Issued April 21, 2006)

1. This order addresses a complaint filed by Norstar Operating, LLC (Norstar) against Columbia Gas Transmission Corporation (Columbia) in which Norstar alleges that Columbia violated its tariff and the Natural Gas Act (NGA) by refusing to accept deliveries of natural gas based upon a gas quality specification not set forth in Columbia's tariff. Norstar further alleges that Columbia's refusal to accept natural gas deliveries based on a gas quality specification not set forth in Columbia's tariff is an unjust and unreasonable practice, and is unduly discriminatory. The Commission finds that Columbia's tariff gives it too much discretion to change its gas quality standards, and accordingly, pursuant to NGA section 5 the Commission requires Columbia to modify its tariff, as discussed below. Specifically, the Commission finds section 25.5(e) of the General Terms and Conditions (GT&C) of Columbia's tariff is unjust and unreasonable and requires Columbia to revise this section.

Background

2. Norstar operates a new well in Ohio, known as Metzger #1-26. The well was drilled and completed in November and December 2005, as an oil well with an estimated casinghead gas production of approximately 100 Mcf/d to 2,000 Mcf/d and estimated oil production of 20-200 bbl/d. Norstar states that in order to produce the oil, the natural gas must be produced and marketed. Norstar states that Columbia is the only interstate pipeline in the area proximate to the well for purposes of interconnecting to the interstate pipeline grid.

3. Norstar states that it requested an interconnect with Columbia on or about January 4, 2006. Norstar asserts that gas from the Metzger #1-26 well meets each of the gas quality standards set forth in section 25 of the GT&C of Columbia's tariff. Nevertheless, Norstar states that Columbia rejected the gas on the ground that it did not satisfy a 4% nitrogen limitation set forth in Columbia's standard "meter set agreement" (MSA). Norstar submits that Columbia's standard MSA is not filed with the Commission and is not part of Columbia's tariff.

4. Norstar submits that it is fully prepared to pay the cost of the meter and pipeline connection for the Metzger #1-26 well. Norstar states that it will lay the gathering line to the meter at Norstar's cost and obtain all necessary rights of way.

Norstar's Complaint

5. On February 22, 2006, Norstar filed a complaint against Columbia alleging that by refusing to accept delivery of casinghead gas from the Metzger #1-26 well on the ground that the gas failed to meet a gas quality specification not set forth in Columbia's tariff on file with the Commission, Columbia has violated both its tariff and the NGA. Norstar states that section 25 of Columbia's GT&C contains gas quality specifications with respect to heating value, hydrogen sulfide content, and sulfur content but does not set forth any standard respecting maximum nitrogen content or total inerts. Norstar asserts that it is undisputed that Columbia's tariff on file with the Commission does not contain a gas quality standard applicable to nitrogen content which would justify Columbia's rejection of Norstar's gas based upon the nitrogen composition of the gas. Norstar also believes that it is undisputed that Columbia has rejected Norstar's gas and refused to accept receipt of Norstar's gas based upon Columbia's contention that the nitrogen level of Norstar's gas was too high. Norstar contends that these undisputed facts constitute a *prima facie* showing that Columbia's actions constitute a *per se* violation of both the NGA and Columbia's tariff on file with the Commission.

6. Norstar requests that the Commission issue an order to Columbia directing the company to cease and desist from imposing gas quality specifications not set forth in Columbia's tariff and ordering Columbia to interconnect without further delay its jurisdictional interstate pipeline with the Metzger #1-26 well and accept receipt of gas from the Metzger #1-26 well meeting the gas quality specifications set forth in Columbia's tariff.

Notice

7. Public notice of Norstar's filing was issued on Febraury 27, 2006, providing for motions to intervene, comments and answers to be filed by March 9, 2006. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted.

Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

Columbia's Answer

8. On March 9, 2006, Columbia filed an answer to Norstar's complaint asserting that the Commission should dismiss and deny the complaint in its entirety because (1) neither the NGA nor Columbia's tariff obligates Columbia to construct receipt points in these circumstances, and (2) Columbia's tariff clearly permits Columbia to take the actions described in the complaint.

9. Columbia asserts that Norstar does not allege that either the NGA or Columbia's tariff mandates that Columbia construct facilities permitting the interconnection of the Metzger Well. Instead, Norstar seems to assert that Columbia must interconnect with and accept gas from the Metzger Well because Columbia's tariff does not contain express specifications regarding allowable nitrogen content. According to the complaint, the fact that Columbia's tariff is silent regarding nitrogen content means that the Metzger Well gas meets the gas quality provisions in Columbia's tariff, and therefore, Columbia must interconnect the Metzger Well. Columbia asserts that this reasoning is legally flawed. Columbia states that its tariff contains provisions that directly and unambiguously address Columbia's obligation to construct or install facilities of any kind on its pipeline. Section 9.5 of the GT&C states "Notwithstanding any other provision in this tariff, Transporter shall not be required to pay for or to construct or to install facilities of any kind, including, but not limited to meters and measuring stations." Columbia states that Norstar's request is for the installation of a tap, meter and appurtenant facilities. Columbia asserts that section 9.5 clearly states that Columbia is not required to install these facilities on its pipeline.

10. Columbia asserts that its tariff permits it to reject gas that fails to meet quality specifications. Columbia states that the complaint makes much of the fact that Columbia's tariff does not contain a specific limitation on the nitrogen content of natural gas. Columbia submits that while Norstar is correct that Columbia's tariff is silent with respect to acceptable levels of nitrogen, Norstar erroneously ignores a provision of Columbia's tariff that unambiguously permits Columbia to refuse to accept gas of questionable quality. Columbia states that section 25.5(e) of the tariff states:

> Transporter may refuse to accept gas or may impose additional gas quality specifications and restrictions if Transporter, in its reasonable judgment, determines that harm to Transporter's facilities or operations could reasonably be expected to occur if it receives gas that fails to meet such additional specifications and restrictions. Transporter reserves the right to refuse to execute any agreement which does not contain the gas quality specifications and restrictions deemed reasonable and necessary by

> Transporter, and Transporter reserves the right to refuse to accept or continue to accept gas that fails to meet such additional specifications and restrictions. Such additional specifications and restrictions may be imposed to limit the concentrations of elements or compounds that Transporter determines, in its reasonable judgment, may be corrosive or toxic in nature, may represent an environmental hazard, may interfere with the merchantability of the gas, or may cause injury to or interference with proper operation of the lines, regulators, meters and other equipment of Transporter.

Columbia asserts that section 25.5(e) clearly permits Columbia to include gas quality specifications, in addition to those listed in the tariff, in agreements with shippers, producers, or other parties if those restrictions are necessary to prevent injury to Columbia or gas merchantability.

11. Columbia submits that it has, for many years, used the authority provided in section 25.5(e) to include gas quality specifications in its interconnection agreements. Moreover, Columbia asserts that it has consistently imposed, through its standard interconnection agreement, a 4% nitrogen content limitation on gas delivered to its interstate facilities. Columbia asserts that gas with a nitrogen content as high as that produced by the Metzger Well (9%) may have deleterious effect on the merchantability of the gas in Columbia's system. In his affidavit at ¶ 12, Columbia's witness states that "[s]everal Columbia delivery points are located along the pipeline to which the proposed meter is to be connected and thus this high nitrogen gas could be delivered to market." Columbia contends that nitrogen decreases the heating capability of natural gas, and, therefore, its merchantability. Columbia argues that the complaint fails to address these merchantability concerns. Columbia states that its tariff provides it with the necessary leeway to ensure reliable operations. In addition, Columbia states that the 4% nitrogen and inert compound limitation reflected in the MSA is in line with the nitrogen specifications imposed by many other interstate pipelines. Columbia states that Equitrans, Inc., Iroquois Gas Transmission, LP, National Fuel Gas Supply Corporation, and Tennessee Gas Pipeline Company impose 4% limits on inert gases, including nitrogen.[1] Columbia states that an additional eight pipelines impose nitrogen limits of 4% or less. Finally, Columbia states that the interim guideline established by the Natural Gas Council Interchangeability Work Group also recommended a 4% limitation on inert gas content.

[1] These requirements are included in each of the pipeline's respective tariffs.

12. Columbia contends that to the extent the Commission finds section 25.5(e) to be overly broad or vague, any compliance filing to modify the gas quality provisions of Columbia's tariff must be effective only on a prospective basis. Columbia asserts that, in the meantime, section 25.5(e) should remain in effect, and Columbia should be permitted to continue to impose necessary gas quality specifications through its MSAs in order to permit Columbia to protect its system and customers.[2]

13. On March 20, 2006, Columbia filed an additional answer requesting that the Commission decline to expand the scope of this proceeding to address industry-wide standards related to gas quality and interchangeability.

Comments

14. Several parties filed comments on the complaint. The NiSource Distribution Companies (NiSource) assert that Norstar argues that the Commission should focus solely on whether or not the 4% nitrogen limitation is explicitly set forth in Columbia's tariff, and ignore whether such a requirement is effectively incorporated within the existing, broader gas quality language contained in the tariff, and whether or not requiring Columbia to take gas with excessive levels of nitrogen would harm the facilities of the pipeline or its downstream customers. NiSource urges the Commission to reject that approach. NiSource asserts that the Commission should not, under any circumstances, require a pipeline to accept natural gas which fails to meet reasonable quality standards and is likely to harm or adversely affect the facilities of either the pipeline or its downstream customers.

15. Walter Oil & Gas Corporation (Walter) urges the Commission to state in any order issued in this proceeding that an interstate pipeline, such as Columbia, must set forth all terms and conditions of service in its FERC Gas Tariff, and that any attempt to enforce provisions not so set forth is a violation of both the NGA and the Commission's regulations.

16. Indicated Shippers assert that Columbia should not refuse to accept gas based on quality specifications not contained in its tariff, unless it constitutes an immediate and critical operational risk to its system integrity. Indicated Shippers state that, as a general

[2] Citing, *Indicated Shippers v. Columbia Gulf Transmission Co.*, 106 FERC ¶ 61,040 at P 38-39 (2004). Columbia further notes that the language at issue in Columbia Gulf's tariff was nearly identical to the language found in section 25.5(e) of Columbia's existing tariff. It should be further noted that the Commission concluded that such tariff language was overly broad and vague and required the pipelines to make tariff compliance filings setting forth their gas quality standards in more detail.

matter, section 4 of the NGA requires that all terms and conditions of service imposed by interstate pipelines must be set forth in those pipelines' respective tariffs. Indicated Shippers state that, if Norstar's allegation is correct that Columbia has refused to accept gas based on a nitrogen standard that is not provided in its tariff, Columbia's actions are contrary to the NGA and Commission policy.

17. The Independent Petroleum Association of America (IPAA) asserts that Norstar's complaint demonstrates that the undesired outcome of discouraging gas supplies into the interstate system can occur, even without Commission action. IPAA asserts that the lack of clear, unambiguous tariff language, consistent with side metering agreements, apparently is preventing the transportation of Norstar's natural gas. IPAA states that this gas is casinghead gas associated with Norstar's oil well. IPAA states that the lack of transportation on Columbia's system prevents production of oil as well as natural gas. IPAA contends that this is an outcome that, from a public policy perspective, should be avoided, with a prompt resolution by the Commission. IPAA states that it has advocated adoption of a rulemaking by the Commission to address gas quality and interchangeability issues on an industry-wide basis. IPAA does not support a one-size-fits-all approach in defining standards that may vary by region and/or pipeline. IPAA asserts that this complaint again points to the need for broad Commission action. IPAA urges the Commission to undertake a rulemaking to establish procedures for pipelines and their customers to develop standards appropriate for that pipeline, its historic gas supplies, and markets.

Discussion

18. In this complaint proceeding, Norstar alleges that Columbia has violated its tariff and the NGA by refusing to accept gas by applying a 4% limitation on nitrogen content based on a gas quality specification not contained in its tariff. Columbia, on the other hand, asserts that it has discretion in section 25.5 (e) of its tariff to impose additional gas quality specifications other than those enumerated in its tariff and that such additional standards have been reflected in its meter set agreements.[3]

[3] Section 25.5 of Columbia's tariff specifies a heating value of no less than 967. Section 25.5 states that it shall be commercially free from particulates or solid or liquid matter which may interfere with the merchantability of the gas or interfere with equipment. Section 25.5 also specifies no more than 0.25 grains of hydrogen sulfide per 100 cubic feet of gas and no more than 20 grains of total sulfur per 100 cubic feet. There is no nitrogen limitation specified in the tariff.

19. As Columbia recognizes, section 25.5(e) of its tariff is nearly identical to Columbia Gulf's tariff provision concerning gas quality in section 25.2(a) of its GT&C. In *Indicated Shippers v. Columbia Gulf Transmission Co.*, 106 FERC ¶ 61,040 (2004), the Commission addressed a complaint that Columbia Gulf had improperly imposed a 1050 Btu per cubic foot maximum limit on gas entering its system by means of a critical notice posted on its web site that had been in effect for over three years. The complaint alleged that Columbia Gulf was improperly using critical notices to establish a permanent quality standard, and that NGA section 4 required any permanent standards to be included in Columbia Gulf's tariff. The Commission held that section 25.2(a) of Columbia Gulf's GT&C authorized it to impose additional gas quality standards not set forth in its tariff, and therefore, the issue of the critical notice limiting Btu content did not violate Columbia Gulf's tariff. However, the Commission found that section 25.2(a) was too broad and too vague and gave the pipeline too much discretion. Accordingly, the Commission found the tariff provision to be unjust and unreasonable and ordered Columbia to file a new section under NGA section 5. Consistent with the discussion in *Indicated Shippers v. Columbia Gulf*, the Commission finds that the 4% nitrogen specification that Columbia requires in its standard MSAs does not violate its tariff. Similar to Columbia Gulf, Columbia has the authority in section 25.5(e) to impose additional gas quality specifications and to reflect such specifications in its executed meter set agreements. Therefore, the Commission will not require Columbia to cease and desist immediately from enforcing gas quality standards through its meter set agreements.

20. The Commission recognizes that gas quality standards in a tariff must provide, among other things, sufficient flexibility for the pipeline to act in a timely manner to protect its operational integrity and minimize equipment damage. However, as in *Indicated Shippers v. Columbia Gulf*, the Commission is concerned that section 25.5(e) gives Columbia "too much discretion to vary gas quality standards with inadequate notice and explanation to customers."[4] Section 25.5(e) "is too broad and too vague and gives the pipeline too much discretion to change its gas quality standards without adequate protections for its shippers."[5] Accordingly, the Commission finds under section 5 of the NGA that section 25.5(e) of Columbia's tariff is unjust and unreasonable. In addition, by this order, the Commission initiates a proceeding under section 5 of the NGA to determine the just and reasonable tariff provision to replace section 25.5(e). Accordingly, the Commission directs Columbia to file a revised section that is consistent with this discussion. However, until Columbia files a new section that the Commission

[4] *See Indicated Shippers v. Columbia Gulf*, 106 FERC ¶ 61,040 at P 35.

[5] *Id.* at P 36.

finds just and reasonable under section 5 of the NGA, its current section 25.5(e) will remain in effect.

21. The Commission finds that Columbia must not use the flexibility afforded it under its tariff to impose what are, in effect, permanent gas quality standards without including those standards in its tariff. If Columbia believes it is necessary to impose a 4% nitrogen content limitation to gas delivered to its interstate facilities on a permanent basis, it must propose to include this limit in its tariff, just as the other pipelines it cites include that provision in their tariffs. To the extent it desires flexibility to vary the standard in particular circumstances, then it should include in its tariff a specific mechanism for doing so. The Commission encourages Columbia to explore ways in which it may be able to accept gas that is above the 4% nitrogen limitation that is consistent with its operational integrity in order to facilitate the entry of more gas on to the interstate pipeline system. If it can do so, Columbia should provide detailed procedures of how such a variance from the 4% nitrogen limitation can occur.

22. In its compliance filing, Columbia must fully explain the need for any restriction on nitrogen content which it includes in its revised tariff language, as well as the need for any other revised gas quality provisions it proposes. Columbia must also include with its compliance filing engineering and technical data supporting its proposed revised gas quality specifications. Similarly, Norstar and any other parties who file protests or comments challenging Columbia's proposal must also fully explain the reasons for their positions and provide engineering and technical data supporting those positions.

23. For the reasons discussed above, the Commission denies Norstar's complaint. The Commission denies Norstar's request to issue an order to Columbia directing the company to cease and desist from imposing gas quality specifications not set forth in Columbia's tariff. The Commission also denies Norstar's request to order Columbia to interconnect without further delay its jurisdictional interstate pipeline with the Metzger #1-26 well and accept receipt of gas from the Metzger #1-26 well meeting the gas quality specifications set forth in Columbia's tariff.

24. In the compliance filing phase of this proceeding Norstar will have the opportunity to comment on whether the new tariff language filed by Columbia meets the Commission's intent of providing Columbia with an adequate amount of discretion to impose reasonable gas quality specifications while also providing adequate protections for shippers to challenge such specifications.

The Commission orders:

(A) Norstar's February 22, 2006 Complaint is denied.

(B) Pursuant to section 5 of the NGA, Columbia is directed to make a compliance filing within 30 days of the date of this order to revise section 25.5(e) of its tariff consistent with the discussion in this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.