

**Time of Request:** Thursday, February 21, 2008 15:42:40 EST

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Central Kentucky Transmission Company

Docket Nos. CP05-46-000, CP05-47-000, CP05-48-000

FEDERAL ENERGY REGULATORY COMMISSION - COMMISSION

*114 F.E.R.C. P61,170; 2006 FERC LEXIS 354*

February 17, 2006

**ACTION:**

[\*\*1] ORDER ISSUING CERTIFICATES

**JUDGES:**

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

**OPINION:**

[\*61,549]

1. On January 7, 2005, Central Kentucky Transmission Company (Central Kentucky) filed an application under section 7(c) of the Natural Gas Act requesting authorization to acquire an undivided interest in facilities currently owned and operated by its affiliate, Columbia Gas Transmission Corporation (Columbia). n1 Central Kentucky currently does not own or operate any facilities, nor is it engaged in any activity, subject to the Commission's jurisdiction under the NGA. As discussed below, Central Kentucky was formed for the purpose of acquiring an interest in the subject facilities, as contemplated in a settlement of a Columbia rate proceeding. n2

n1 Natural Gas Act (NGA), *15 U.S.C. § 717f(c)* (2000).

n2 See *Columbia Gas Transmission Corp.*, *79 FERC P 61,044* (1997).

2. Additionally, Central Kentucky requests a blanket [**\*\*2**] certificate under Part 284, subpart G, of the Commission's regulations authorizing it to provide natural gas transportation service in interstate commerce. n3 Central Kentucky also seeks a blanket construction certificate under Part 157, subpart F, of the Commission's regulations so that it may construct and operate facilities eligible for construction under automatic authority or through the prior notice provisions of that subpart. n4 The Commission is issuing the requested authorizations, subject to the conditions discussed herein. n5

n3 18 C.F.R. Part 284, subpart G (2005).

n4 18 C.F.R. Part 157, subpart F (2005).

n5 Central Kentucky also requests a categorical exclusion from the requirement to prepare an environmental assessment or environmental impact statement pursuant to Section 380 of the Commission's regulations since a portion of Columbia's ownership interest will be abandoned only by transfer to Central Kentucky and there will

be no ground disturbance associated with the transfer. The Commission agrees that Central Kentucky's proposal qualifies for a categorical exclusion. Further, the issuance of blanket certificates under Part 284 and Part 157, subpart F, do not require an environment review. *See* section 380.4 (a) (21) and (22).

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### Background And Proposal

3. Central Kentucky is a wholly-owned subsidiary of Columbia Gas of Kentucky Inc. (Columbia Kentucky), a local distribution company (LDC) and wholly-owned subsidiary of Columbia Energy [\*61,550] Group. n6 Central Kentucky states that it was created in order to implement a settlement in a Columbia rate proceeding, providing, among other things, that Columbia Kentucky could, at its option, purchase an undivided interest of up to approximately 25 percent in facilities owned by Columbia and known as the KA-1 North Facilities. n7 If Columbia Kentucky acquired the interest in the facilities directly, its exemption from regulation under the NGA as an LDC could be jeopardized. n8

n6 Columbia Energy Group is a wholly-owned subsidiary of NiSource, Inc.

n7 *Citing*, Article I (F)(d)(2) of the Stipulation and Agreement of Partial Settlement (Stipulation I) filed in Docket No. RP95-408-000, *et al* ., and approved in *Columbia*, 79 FERC P 61,044 (1997). Pursuant to this settlement, all of Columbia's shippers, including Columbia Kentucky, agreed not to oppose Columbia's retention of distance-sensitive rates on its system for the period November 11, 1996 through October 31, 2004. *Id* . at 61,199. Among other things, Columbia agreed to certain cost saving mechanisms for various customers and to Columbia Kentucky's option to acquire an interest in the capacity of Columbia's KA-1 North facilities. In addition, the parties agreed that the Commission's approval of the settlement would constitute any abandonment authority under NGA § 7(b), 15 U.S.C. § 717f(b) (2000), that Columbia would require in order to transfer the interest in the capacity to Columbia Kentucky.

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n8 15 U.S.C. § 717 (2005).

4. The subject facilities are located in Madison and Fayette Counties, Kentucky, and consist of approximately 28.6 miles of primarily 12-inch diameter pipeline, three measuring and /or regulating stations and nine mainline taps, together with rights-of-way and appurtenances. The total capacity of the facilities is about 112,000 Dth per day. Central Kentucky states that it will use its share of the capacity of the facilities, equaling approximately 28,000 Dth per day or 25 percent, to transport natural gas in interstate commerce. n9 Once the transfer is complete, Central Kentucky and Columbia Kentucky will execute a service agreement under which Central Kentucky will provide service of up to 28,000 Dth per day for Columbia Kentucky under Rate Schedule FTS. The service agreement will have an initial term through March 31, 2020, with rights of first refusal.

n9 Central Kentucky states that Columbia Kentucky will continue to hold approximately 73,000 Dth per day of firm capacity on the KA-1 North facilities, which Columbia Kentucky will utilize to serve any of its customers' requirements that cannot be served through the capacity Central Kentucky will own.

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5. Central Kentucky's interest in the KA-1 facilities will be acquired for the net depreciated book cost at the time of the sale, which is estimated to be \$243,626. Central Kentucky states that the acquisition of the KA-1 North Facilities will be financed through a combination of equity contributions and debt that consists of 45 percent debt and 55 percent equity. Columbia Kentucky will furnish the equity capital for Central Kentucky. n10

n10 Central Kentucky has also received approval from the U.S. Securities and Exchange Commission to become part of NiSource Inc.'s Money Pool, NiSource's short-term financing facility.

6. The subject facilities are currently receiving gas from Columbia Gulf Transmission Company (Columbia Gulf) at a regulator station at Bybee in Madison County, Kentucky. The facilities are then used to redeliver gas into Columbia Kentucky's facilities at delivery points located at and between the Muth Farm and Paul Miller Ford measuring and regulating stations near Lexington, Kentucky. [\*\*6] Central Kentucky does not propose any construction nor any change in the way the facilities currently operate. Central Kentucky submitted an operating agreement under which Columbia will operate the KA-1 facilities on behalf of Central Kentucky and itself.

7. Central Kentucky filed a *pro forma* FERC Gas Tariff setting forth the terms, conditions and initial rates under which it will provide open-access transportation services under Part 284 of the Commission's regulations. Central Kentucky will provide firm and interruptible services under Rate Schedules FTS and ITS, respectively, and will offer a pooling service under Rate Schedule IPP. n11 Central Kentucky maintains that its proposed tariff is in full compliance with the Commission's policies and regulations as reflected in Parts 154 and 284 of the Commission's regulations, and Order Nos. 636 and 637. Central Kentucky states that its proposed tariff is also consistent with the business practices developed by the North American Energy Standards Board (NAESB) to the extent required by the Commission's regulations. n12

n11 Central Kentucky states that no rate will be charged for service under Rate Schedule IPP; however, Central Kentucky reserves the right to file pursuant to section 4 of the NGA to implement charges to recover any and all costs of providing service under this rate schedule in the future.

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n12 Central Kentucky maintains that its tariff is consistent with Version 1.6 of the NAESB standards, *Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587-R, 102 FERC P 61,273 (2003)*. On May 9, 2005, the Commission adopted Version 1.7 of the NAESB standards, *Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587-S, 111 FERC P 61,203 (2005), e rrata, 70 Fed. Reg. (June 28, 2005)*. To assure uniform implementation of all NAESB standards, Central Kentucky is directed to update its tariff to comply with Order No. 587-S.

8. Central Kentucky proposes a maximum cost-based reservation rate for firm transportation service under Rate Schedule FTS of \$0.516 per Dth and a commodity rate of \$0.00. Central Kentucky proposes a rate for interruptible transportation service under Rate Schedule ITS of \$0.0170. n13 The ITS rate, as well as the overrun rates, are designed to be the equivalent of a 100 percent load factor derivative of the maximum FTS rate. [\*61,551] Both the ITS and overrun rates will be [\*\*8] charged based on usage. Central Kentucky states that its proposed rate structure reflects a straight fixed-variable rate design, a proposed annual cost of service of \$173,453, a pre-tax return of 12.98 percent, a 2.55 percent depreciation rate (reflecting the current depreciation rate applicable to Columbia's facilities), and

annualized demand billing determinants of 336,000 Dth (based on a design capacity of 28,000 Dth per day). Central Kentucky proposes a retainage factor of 0.781 percent for FTS and ITS services, which represents the lost and unaccounted-for component of Columbia's current transportation retainage rate. Central Kentucky states that its retainage factor will be adjusted as necessary to match the then-effective component of the Columbia retainage rate.

n13 We note that the text of the application relating to the proposed rates is not always consistent with Exhibit P of Central Kentucky's application or with the rate schedules in the *pro forma* tariff. However, based on responses to data requests, Exhibit P and Central Kentucky's FTS and ITS Rate Schedules correctly state the proposed rates.

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9. Central Kentucky indicates that its acquisition of the interest in the KA-1 North facilities is in the public interest because it was contemplated in the Columbia settlement referenced above and because the change of ownership of the interest in KA-1 North facilities will result in lower rates for Columbia Kentucky's distribution customers. Central Kentucky explains that the savings is the difference between 28,000 Dth per day of service at Columbia's current FTS rate of \$5.94 per Dth and the same level of service at Central Kentucky's proposed rate of \$0.516 per Dth. That difference is \$5.424 per Dth or \$1,822,164 annual savings to Columbia Kentucky's customers.

10. On March 1, 2005 and September 14, 2005, Commission staff issued data requests seeking additional information relating to Central Kentucky's filing. On March 22, 2005, September 26, 2005 and September 27, 2005, Central Kentucky filed its responses to the data requests.

### Interventions

11. Notice of Central Kentucky's application was published in the *Federal Register* on January 26, 2005 (70 *Fed. Reg.* 3,687). Delta Natural Gas Company, Inc., Columbia Gas of Kentucky Inc. [\*\*10], and Orange and Rockland Utilities, Inc. filed timely motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. n14 No notices of intervention or protests were filed in this proceeding.

n14 18 C.F.R. § 385.214(a)(3) (2005).

### Discussion

12. Upon the acquisition of the 25 percent undivided interest in the KA-1 North facilities, Central Kentucky proposes to use its proprietary right to 28,000 Dth per day of capacity in Columbia's KA-1 North facilities to transport natural gas in interstate commerce. Therefore, Central Kentucky's acquisition of the ownership interest in and operation of the facilities, as well as the services it will provide, are subject to the NGA and to the Commission's jurisdiction.

13. Since Central Kentucky's acquisition of the interest in the facilities was contemplated by and is consistent with the Columbia rate settlement discussed previously herein, [\*\*11] the Commission finds that Central Kentucky's proposal to acquire an undivided interest in the KA-1 North facilities is required by the public convenience and necessity, subject to the modifications and conditions described below. n15 We note that another acquisition of an interest in facilities also contemplated by the Columbia rate settlement has already been approved. n16 In addition, the customers of Columbia Kentucky will benefit from a rate decrease relative to Columbia's rates since it is subscribing to all of the capacity over which Central Kentucky will have a proprietary interest. n17

n15 The Commission notes that because Central Kentucky is a new interstate pipeline without existing customers and is not proposing to construct any facilities, the analysis under the Commission's Certificate Policy Statement is not required. See *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC P 61,227 (1999), order on clarification, 92 FERC P 61,094, order on further clarification, 92 FERC P 61,094 (2000).

n16 See *KO Transmission Company*, 83 FERC P 62,066 (1998).

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n17 We note that the subject settlement was agreed upon by 100 percent of Columbia's customers and no customer of Columbia or Columbia Kentucky filed an objection to the proposed acquisition in this proceeding.

14. Therefore, the Commission will issue a certificate of public convenience and necessity under NGA section 7(c) authorizing Central Kentucky to acquire the interest in the KA-1 North facilities. However, as outlined below, the Commission has some concerns relating to the Part 284 rates and some of the provisions in the *pro forma* tariff proposed by Central Kentucky.

**A. Rates**

15. Central Kentucky's methodology for calculating its cost of service is not consistent with Commission policy. The Commission will accept the rates set forth in Central Kentucky's *pro forma*, as well as the rate schedules for its services, subject to the modifications outlined below. In the tariff section of this order, changes to Rate Schedule IPP and specific tariff provisions are discussed. Central Kentucky is required to file tariff sheets reflecting the revisions to its rates when \*\*\*13] it files to place its tariff into effect not less than 30 days, nor more than 60 days, before service begins.

16. As outlined in its *pro forma* rate schedules, Central Kentucky proposes a maximum cost-based firm transportation charge under Rate Schedule FTS of \$0.516 per Dth and a commodity rate of \$0.00, since it has no variable costs. Central Kentucky's proposed interruptible rate under Rate Schedule ITS is \$0.0170. The cost-based rates reflect a straight fixed-variable (SFV) rate design, calculated on a twelve-month basis. The Commission finds that the rate design and billing determinants used to calculate rates are appropriate. [\*61,552] However, regarding cost of service, in its calculation of accumulated depreciation, Central Kentucky did not abide by the half-year convention principle. Under this method, to determine the appropriate annual revenue requirement, one half year's depreciation expense equates to the average of the monthly accumulation of depreciation over the 12-month test period. Using the half-year convention, Central Kentucky's rates would reflect a \$19,672 increase in accumulated depreciation, resulting in accumulated depreciation of \$465,432. The \*\*\*14] increased accumulated depreciation reduces net rate base and the resulting return and income tax allowances. The adjusted annual cost of service is \$170,900. n18 Recalculation of Central Kentucky's proposed FTS and ITS rates to reflect the adjustment to accumulated depreciation would result in a maximum cost-based FTS reservation charge of \$0.509, with a daily rate of \$0.0167 per Dth, and an ITS rate and FTS and ITS overrun rates of \$0.0167 per Dth.

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COS Component	Proposed COS	Adjustment	Adjusted COS
O&M	\$83,125	\$0	\$83,125
Depreciation	39343	0	39,343

COS Component	Proposed COS	Adjustment	Adjusted COS
Taxes other than income taxes	3,044	0	3,044
Return and Associated Taxes	47,941	-2,553	45,388
Total COS	\$173,453	\$-2,553	\$170,900

17. In addition, Central Kentucky does not propose to allocate costs to interruptible service. The Commission's policy regarding new interruptible services requires either a one hundred percent credit of the interruptible revenues, net of variable costs, to firm and interruptible [\*\*15] customers, or an allocation of costs and volumes to the services. n19 If Central Kentucky chooses to allocate costs to interruptible service, it must allocate an appropriate level of the estimated cost of service to its interruptible service, recalculate its rates, and file documentation demonstrating the recalculation. In the alternative, Central Kentucky must revise its tariff to provide for a mechanism to credit one hundred percent of the ITS revenues, net of variable costs, to its firm and interruptible cost-based recourse rate shippers. Central Kentucky should reflect its choice and the appropriate tariff revisions when it files to place its rates and tariff into effect.

n19 See e.g., *Independence Pipeline Co.*, 89 FERC P 61,283 (1999); *Maritimes & Northeast Pipeline L.L.C.*, 80 FERC P 61,136 at 61,475, order on reh'g, 81 FERC P 61,166 at 61,725-26 (1997).

18. Central Kentucky proposes a retainage factor of 0.781 percent for FTS and ITS service, which [\*\*16] is the same as the "lost and unaccounted-for" component of Columbia's current transportation retainage rate. Central Kentucky states that its retainage factor will be adjusted as necessary to match the then-effective component of the Columbia retainage rate. However, Central Kentucky provides no explanation of the methodology used to calculate this retainage rate, except that it is equivalent to Columbia's rate. Further, Central Kentucky has no compression on its system, and it has made no attempt to document lost and unaccounted for gas attributable to the KA-1 line. The Commission finds that the lost and accounted for retainage rate will initially be set at 0.0 percent. n20

n20 Section 32 of the GT&C of the tariff addresses retainage for lost and unaccounted-for gas. If Central Kentucky chooses to propose a fuel tracker with a true-mechanism, or chooses to provide support for using Columbia's retainage rate it may file a proposal under NGA section 4. If it does, such an application should address how its proposal conforms with the Commission's fuel, lost and unaccounted for gas policy expressed in *ANR Pipeline Company*, 110 FERC P 61,069 (2005).

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## **B. Tariff Issues**

19. While Central Kentucky's *pro forma* tariff generally complies with the Commission's requirements under Parts 284 and 154, Central Kentucky will need to make the specific modifications to Rate Schedule IPP and the General Terms & Conditions (GT&C) of the tariff discussed below. Central Kentucky should file revised tariff sheets when it files to place its tariff into effect before service begins.

### **1. Rate Schedule IPP**

20. Regarding Central Kentucky's proposed Interruptible Paper Pool (IPP) service, section 3(c) of Rate Schedule IPP

states that shippers may have only one currently effective IPP service agreement. Section 4(a) sets forth the procedure for a shipper to nominate volumes to be delivered into its pool and to nominate volumes out of its pool. Section 4(b) permits pool to pool transfers at its pooling point. In response to a data request, Central Kentucky explains that shippers are not permitted to transfer gas from pool to pool under a single service agreement because the gas transfer is between two IPP shippers and involves only their pools. Thus, it appears that a shipper can only be involved in one transfer from its **[\*\*18]** pool or transfer into its pool at any given time. Central Kentucky states this restriction is necessary in order for it to accommodate title tracking service on its system. Central Kentucky also explains that shippers may not nominate into other Shippers' IPP pools and that its procedure requires each shipper to nominate in or out of its own pool. However, Central Kentucky states, in response to the data request, that shippers can access other **[\*61,553]** shipper's pools and nominate from those pools into its own single pool.

21. These provisions are confusing and also raise some concerns because the Commission's regulations provide that tariff provisions may not inhibit the development of market centers. n21 Although Central Kentucky's rate schedule refers to its intent to accommodate title tracking of gas as it is transferred into or out of a pool, it is uncertain whether the provisions of the rate schedule would permit a third-party to provide title tracking services at the pooling point, when requested, as required by the NAESB standards. n22 Further, a pipeline may not restrict how often a package of gas may transferred in such third-party transfers, a shipper's right to **[\*\*19]** sell their gas to different customers every day, or a shipper's ability to sell any given package of gas numerous times at a market center or pooling point. n23 Central Kentucky should revise the language in Rate Schedule IPP to clarify how its IPP service will work and to assure that unrestricted title transfers by "any party, including shippers, poolers, or third party account administrators," can occur. n24

n21 *18 C.F.R. § 284.7(b)(3) (2005)*.

n22 *See Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-O, FERC Stats. & Regs., P 61,129 at 30,181 (May 1, 2002), *order on reh'g and clarification, Standards for Business Practices of Interstate Natural Gas Pipelines*, 100 FERC P 61,105 at P 3-10 (2002).

n23 *See also, Equitrans, L.P., 112 FERC P 61,152 at P 40-43 (2005)*.

n24 *Id.* at P 43.

## **2. Section 1: Definitions**

22. Section 1.21 of the GT&C states that the Master List of **[\*\*20]** Interconnections (MLI) shall mean the list of interconnections, *i.e.*, receipt and delivery points with third parties, eligible for transportation services provided by Central Kentucky. Section 2(e) of Rate Schedule FTS and section 2(d) of Rate Schedule ITS also refer to service at points contained in the MLI. However, Central Kentucky has clarified that there will only be one receipt point and one delivery point on its system at this time. Central Kentucky should modify the language in section 1 of its tariff and in Rate Schedules FTS and ITS to make this fact clear.

## **3. Section 3: Requests for Service**

23. Section 3.7 of the tariff states that Central Kentucky may reject any request for service from a customer that fails to meet the creditworthiness criteria set forth therein. Section 3.9(c) provides the criteria that Central Kentucky will apply to re-evaluate a shipper's creditworthiness after a negative determination. The Commission has required pipelines to include in their tariffs a provision requiring the pipeline to inform a shipper in writing, if the shipper so requests, of the reasons why that shipper was deemed non-creditworthy. n25 Central Kentucky should **[\*\*21]** revise its tariff to provide for written notice at a customer's request. The revised language must provide for a detailed written notification to the

shipper, within 10 days of the transporter's deeming a shipper non-creditworthy, that explains the specific facts relied upon in making the determination that the shipper is non-creditworthy. The revision should also include a shipper's recourse for challenging such a determination. n26

n25 See *Tennessee Gas Pipeline Co.*, 103 FERC P 61,275 at P 45 (2003).

n26 See *Natural Gas Pipeline Co. of America*, 106 FERC P 61,175 at P 80 (2004).

24. The Commission recently addressed the issue of creditworthiness in its Policy Statement on Creditworthiness. n27 In that policy, the Commission required a pipeline to provide its shippers with the opportunity to earn interest on collateral either by paying the interest itself, or giving the shipper the option to designate an interest-bearing escrow account from which the pipeline may [\*\*22] obtain payments for services provided, when necessary. Section 3.9(b)(1) of Central Kentucky's GT&C provides for adequate assurance of payment if a shipper fails to establish creditworthiness. Central Kentucky states in response to a data request that it will modify section 3.9(b)(1) to provide that any deposit held by transporter shall accrue simple interest at the Federal Funds Rate and, upon request by shipper, the transporter will remit the balance of such interest to a shipper within thirty days, provided, however, that the transporter shall not be required to remit interest to a shipper more often than every thirty days. Likewise, Central Kentucky indicates that it will revise section 3.9(c) to include language to denote a timeline within which a transporter must respond to a shipper's request for re-evaluation of a shipper's creditworthiness, after an initial determination that negative credit problems exist. Central Kentucky should make these revisions.

n27 *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs. P 31,191 at P 10 (2005).

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#### **4. Section 6: Nominating, Scheduling, and Monitoring**

25. Section 6.2(e) of the GT&C of the *pro forma* tariff sets forth two intraday nomination cycles within which customers may adjust their nominations to anticipated actual volumes on a daily basis. We note that section 6.2(g) states that there is no limitation to the number of intraday nominations a customer may make during any one nomination cycle. Section 6.6(b) permits the pipeline to monitor daily, weekly, or monthly tenders by, and deliveries of gas to, customers and impose flow control measures or make other adjustments to shippers' scheduled daily delivery and/or daily receipt quantities to ensure a concurrent balance between receipts and deliveries on its system. In a response to a data request, Central Kentucky clarifies [\*61,554] that the latter provision is not intended to diminish any opportunity for a customer to make intraday nominations, but is only meant to reserve the pipeline's right to make adjustments to scheduled quantities if necessary. To avoid any ambiguity in the tariff regarding these provisions, Central Kentucky is directed to include language in section 6.6(b) explicitly indicating [\*\*24] that the types of adjustments provided for in that section are not meant to diminish the shippers' rights to intraday nominations as set forth in section 6.2(g).

26. Section 6.4 of the GT&C provides that, except for reasons of force majeure, a shipper shall notify the pipeline at least 24 hours in advance of any anticipated material change in the daily quantity of gas that a customer desires to deliver to the pipeline. As noted, section 6.2(e) of the GT&C permits intraday nominations and sets out nomination cycles for non-intraday nominations, which normally occur on the day before gas is to flow, and intraday nominations, which may occur on the gas day, i.e., the day the gas would flow. Under this standard, a customer using the intraday nomination provisions would not be able to give the pipeline 24 hours notice of a change in such an intraday nomination. Central Kentucky must modify section 6.4 so that it is clear that the 24-hour notice period does not apply to

intraday nominations.

27. Section 6.5 of the GT&C states that the provisions of an individual rate schedule will control if those provisions set forth nomination or scheduling requirements inconsistent with the [\*\*25] tariff and that a customer must comply with both the provisions of a rate schedule and the tariff when a rate schedule requires something in addition to, but not inconsistent with, the requirements set forth in the tariff. The Commission's current policy is that the terms and conditions of service can not be negotiated and that generally service agreements for the same service should include the same terms and condition. n28

n28 *See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Service of Natural Gas Pipelines*, 74 FERC P 61,076 at 61,241 and 61,242, *reh'g and clarification denied*, 75 FERC P 61,024, *reh'g denied*, 75 FERC P 61,066 (1996) (Alternative Rate Policy Statement); *petition for review denied*, *Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. LEXIS 20697 (D.C. Cir. July 20, 1998). *Modification of Negotiated Rate Policy*, 104 FERC P 61,134 (2003), *order on reh'g*, 114 FERC P 61,042 (2006). *See also*, *San Patricio Pipeline, LLC*, 112 FERC P 61,101 at P 73 (2005).

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28. The pro forma service agreements included in the tariff may provide blanks wherein items such as the receipt and delivery points, term and rate, where there is a discount, which terms may vary from agreement to agreement. n29 Further, pursuant to section 154.112(b) of the Commission rules and regulations, if a service agreement deviates materially from the form of service agreement in the tariff, that service agreement must be filed with the Commission and referenced in Volume 1 of the pipeline's tariff. n30 For these reasons, Central Kentucky is required to either delete section 6.5 of the GT&C or revise the language to clarify the type of variations in service agreements that it contemplates in this section.

n29 *See 18 C.F.R. § 154.110* (2005).

n30 *18 C.F.R. § 154.112(b)* (2005).

## 5. Section 8: Meter Allocations

29. Section 8.3(e) of Central Kentucky's tariff states that it has the discretion to make retroactive adjustments, [\*\*27] without its shippers' consent, to a pre-determined allocation agreement (PDA) in order to correct errors. The Commission finds that this section would be consistent with the current NAESB Standards, assuming Central Kentucky intends to apply the definitions relating to prior period adjustments and to dispute resolution provided for and defined in those standards. To the extent Central Kentucky intends to interpret this tariff language differently, it must either justify its interpretation or modify the language to assure consistency with the NAESB Standards when it files to place its tariff into effect.

## 6. Section 14: Release and Assignment of Capacity Rights

30. Section 14.3(f) of Central Kentucky's tariff provides that bids for released capacity for a term of one year or more, including capacity subscribed under negotiated rate agreements, may not exceed the maximum tariff rate nor be less than the minimum rates permitted by the Commission for the released services. This section accurately reflects the Commission's policy regarding maximum and minimum rates for long-term capacity releases; however, Central Kentucky must also set forth the rate to be used for capacity [\*\*28] release transactions that are for less than one year.

In response to a data request, Central Kentucky clarifies that the currently effective maximum and minimum rates (recourse rates) would also apply to short-term transactions. Central Kentucky is directed to revise its tariff in this respect and also add language reflecting whether these bids may be adjusted to reflect either a daily or monthly rate, as well as one for any other period.

### **7. Sections 15 and 16: Force Majeure; Interruptions of Service**

31. The Commission requires that pipelines provide full reservation charge credits for all scheduled gas not delivered to shippers due to a non-force majeure event and partial reservation charge credits in instances of force majeure. n31 Central Kentucky's *pro forma* tariff defines force majeure in section 15 of its tariff and discusses service interruptions due to force majeure and other reasons in section 16. Section 16 also sets [\*61,555] out the order in which service interruptions will occur when service is curtailed and also provides a mechanism for a shipper to request exemption from such a service interruption if it would cause irreparable harm to life or [\*\*29] property. However, neither section 15 nor section 16 provides for reservation or partial reservation charge credits for reductions in service because of either non-force majeure or force majeure events, respectively. Accordingly, Central Kentucky should revise its tariff to provide for reservation charge credits for reductions in service consistent with Commission policy.

n31 See *Tennessee Gas Pipeline Co., Opinion No. 406*, 76 FERC P 61,022 at 61,085-89 (1996); *order on reh'g, Opinion No. 406-A*, 80 FERC P 61,070 (1997).

### **8. Section 17: Operational Flow Orders**

32. Section 17.1 outlines the circumstances under which the pipeline can issue an Operational Flow Order (OFO). Section 17.1(e) sets out the method by which the pipeline will notify shippers that an OFO is being issued. Section 17.1(f) lists actions the pipeline may take prior to issuing an OFO in order to remedy any situation which may have an adverse operational effect on the pipeline and also provides [\*\*30] for notice of circumstances that might lead to the issuance of an OFO. This latter section cross-references the 24 hours notice requirement for the issuance of OFOs set out in section 17.1(c). Thus, it appears that the pipeline will apply the 24-hour notice provision to remedial actions as well as to OFOs, when possible. It is not clear, however, whether the notice procedures in section 17.1(e) also apply to remedial actions in section 17.1(f).

33. Further, section 17.1(d) discusses notice of circumstances that might lead to the issuance of an OFO as does section 17.1(f) addressing remedial actions. These two sections appear to be redundant. Central Kentucky should revise section 17 so that it is clear whether the notice requirements, including time frames and methods of notice, for the issuance of OFOs also apply to notice of remedial actions prior to the issuance of an OFO or to notice of circumstances which may lead to the issuance of an OFO.

34. Among the remedial actions outlined in section 17 that the pipeline may take prior to or in lieu of issuing an OFO or through the issuance of an OFO is the imposition of flow controls on one or more shippers. Two other sections [\*\*31] of the tariff also reference flow controls as an action the pipeline may impose on its shippers. Specifically, section 6.6(a) indicates that the pipeline may monitor gas tenders and deliveries by shippers on an hourly, daily, weekly or monthly basis to establish whether the pipeline's receipts and deliveries are in concurrent balance and that it may impose flow controls pursuant to section 9.3 of the tariff to maintain the system in balance. Section 9 addresses operational conditions on the pipeline and section 9.3 specifically states that the pipeline may require shippers to be "precisely" in balance with respect to its receipts and deliveries at any given time and may impose flow control if necessary.

35. Neither section 6.6(a) nor section 9.3 sets out how the pipeline will notify shippers in the event that flow controls are to be imposed pursuant to those sections. Moreover, it is unclear whether the circumstances under which flow control may be imposed on shippers in section 6.6(a) and section 9.3 are the same as those in section 17, where such

control may also be imposed. Central Kentucky should review these sections of its tariff and eliminate any that are redundant or clarify [\*\*32] how they differ. Also, to the extent the provisions in section 6.6(a) or section 9.3 do not duplicate section 17, Central Kentucky should establish notice provisions in those sections.

### 9. Section 20: Discount Policy

36. Section 154.109(c) of the Commission's regulations provides that a pipeline's tariff must contain a statement of the order in which the pipeline will discount its rates and charges. The Commission's policy on the order of discounting is set forth in *Natural Gas Pipeline Company of America (Natural)*. n32 Central Kentucky does not include an order of discounts as required by the *Natural* policy, therefore, Central Kentucky must include such a provision or request a waiver of this requirement, justifying why it cannot comply with the order of discount policy.

n32 See *Natural Gas Pipeline Company of America*, 69 FERC P 61,029 (1995), *reh'g denied*, 70 FERC P 61,317 (1995).

37. On another issue, section 20.4 of the tariff states that [\*\*33] Central Kentucky's policy on permitting shippers or replacement shippers with a discount to retain that discount when they choose service to segmented or secondary points is consistent with the Commission's policy outlined in recent cases. n33 However, since Central Kentucky filed its *pro forma* tariff in this proceeding, the Commission revised its policy on this issue, n34 reestablishing its earlier policy on retention of discounts as secondary points embraced in *El Paso Natural Gas Company (El Paso)*. n35 The El Paso approach gives pipelines the option of limiting shippers and replacement shippers with discounts to service at primary points in service agreements and provides that a releasing shipper that releases capacity to alternative points as less [\*\*61,556] than the maximum rate is responsible for the difference between the discounted rate paid by the replacement shipper and the maximum rate. Accordingly, Central Kentucky should review section 20.4 of its tariff and revise it as necessary to conform to the Commission's policy on retention of discounts at secondary points articulated in El Paso.

n33 See *Granite State Gas Transmission, Inc.*, 96 FERC P 61,273 (2001) (expanding a new policy on retention of discounts adopted by the Commission in *Colorado Interstate Gas Co.*, 95 FERC P 61,321 (2001), providing that shippers and replacement shippers may retain their discount at secondary points if other similarly situated shippers also receive discounts at those points).

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n34 See *Williston Basin Interstate Pipeline Co.*, 110 FERC P 61,210 (2005) (in response to a remand from the U.S. Court of Appeals for the DC Cir., the Commission found that it could not at this time demonstrate that the benefits of allowing shippers to retain discounts at secondary points under certain circumstances outweighs the disadvantage of discouraging selective discounting to increase throughput).

n35 *El Paso Natural Gas Company*, 62 FERC P 61,311 at 62,990-91; *order on reh'g*, 62 FERC P 61,265 (1993).

### 10. Section 27: Construction of Facilities

38. Section 27.2 concerns the method of payment by a shipper if Central Kentucky and its co-owner Columbia agree to construct lateral lines or other transmission facilities at a shipper's request. Although section 27.2 states that the shipper must pay a facility charge and lists the components of such a charge, it is not clear whether the shipper will be expected

to pay a surcharge for a particular period of time, whether an upfront contribution to construction costs may be [\*\*35] made, or whether the shipper will pay an incremental rate, including the costs of the new facilities, for service over a lateral or other facility that was constructed primarily to serve that shipper. n36 There is also no explanation of how the costs of lateral lines or other transmission facilities will be accounted for. Central Kentucky should revise this section of its tariff to specify whether construction costs will be collected monthly, bi-annually, yearly, or up front. In this regard, the Commission notes that if Central Kentucky files an application under section 7(c) of the NGA to construct new facilities, the Commission will apply the standards of its Certificate Policy Statement n37 to the proposal to determine whether a rolled-in or incremental rate is appropriate for the project, unless Central Kentucky demonstrates that the costs of construction undertaken for a shipper or discrete group of shippers will be paid for by some other means, such as a surcharge or upfront contribution.

n36 In section 27.2., Central Kentucky refers to the "amount paid for natural gas." Since Central Kentucky does not intend to sell gas to its shippers, the words "transportation service" or something similar should be added to that section.

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n37 *Certification of New Interstate Natural Gas Pipeline Facilities ( Certificate Policy Statement)*, 88 FERC P 61,227 (1999), *Order Clarifying Statement of Policy*, 90 FERC P 61,128 (2000), *Order Further Clarifying Statement of Policy*, 92 FERC P 61,094 (2000).

## 11. Section 33: Compliance with Section 284.12 of the

### Commission's Regulations

39. Section 284.12 of the Commission's regulations provides that all interstate pipelines transporting gas under subparts B or G of Part 284 must comply with the business practice and communication standards promulgated by the North American Energy Standards Board (NAESB). As noted, Central Kentucky maintains that its *pro forma* tariff is consistent with Version 1.6 of the NAESB Standards, as adopted by the Commission in Order No. 587-R. n38 Section 33 of the *pro forma* tariff also cross-references Version 1.6. However, on May 9, 2005, the Commission adopted Version 1.7 of the NAESB standards in Order No. 587-S. n39 In order to assure uniform implementation of all NAESB standards, [\*\*37] Central Kentucky is directed to update its tariff to comply with Order No. 587-S.

n38 *Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587-R, 102 FERC P 61,273 (2003)*.

n39 *Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587-S, 70 Fed. Reg. 28204 (May 17, 2005), 111 FERC P 61,203 (2005), e rrata, 70 Fed. Reg. (June 28, 2005)* .

## 12. Section 35: Negotiated Rates

40. We note that while Central Kentucky did not request authorization to charge negotiated rates in its application, its *pro forma* tariff in Section 35 sets out the procedures and policies that Central Kentucky will apply if it agrees to negotiate rates with a shipper. Specifically, section 35 provides that when Central Kentucky negotiates rates with a shipper it will file with the Commission a tariff sheet setting forth (1) the name of the shipper; (2) the negotiated rate; (3) the rate schedule under which the shipper [\*\*38] will take service; (3) the receipt and delivery points; (4) the contract volumes; and (5) where applicable, the formula for the negotiated rate. Section 35 also states that the filed tariff

sheet will contain a statement that the negotiated rate service agreement does not deviate in material aspect from the Form of Agreement in the tariff for the applicable rate schedule. We find that the provisions of section 35 are consistent with the Commission's Alternate Rate Policy Statement and subsequent modifications of it. n40

n40 *See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC P 61,076, *reh'g and clarification denied*, 75 FERC P 61,024, *reh'g denied*, 75 FERC P 61,066 (1996) (Alternative Rate Policy Statement); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. LEXIS 20697 (D.C. Cir. July 20, 1998). *Modification of Negotiated Rate Policy*, 104 FERC P 61,134 (2003), *order on reh'g*, 114 FERC P 61,042 (2006).

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### 13. Structure of the Tariff

41. A review of Central Kentucky's *pro forma* tariff indicates that there are several sections that contain language from and/or references to other sections of the tariff which create ambiguities. We have highlighted some of those instances in this order. The Commission has an interest in ensuring that tariffs clearly, completely and unambiguously identify services, rates and terms and conditions and it is the pipeline's responsibility to propose a tariff that achieves these objectives. Central Kentucky should keep these objectives in mind when it reviews its *pro forma* tariff and revise, as well as reorganize, its tariff sections to provide clarity and to avoid redundant provisions. [\*61,557]

#### C. Operating Agreement

42. Central Kentucky submitted an operating agreement under which Columbia will operate the portion of the KA-1 facilities that Central Kentucky will acquire. A review of the agreement indicates that Columbia will be continue to operate the facilities after the acquisition in a manner *consistent* with Columbia's and Central Kentucky's tariffs and the requirements of the NGA. The Commission advises [\*\*40] Central Kentucky that any provision of the Operating Agreement or Columbia's tariff that does not apply to service rendered by Central Kentucky on its facilities is not applicable to either Central Kentucky or its customers. According, Central Kentucky has demonstrated that its facilities will be properly operated as an interstate pipeline.

#### D. Blanket Certificate Pursuant To Part 157 ,

##### Subpart F

43. In addition to authority to acquire the undivided interest in the KA-1 facilities and authority to provide services under a Part 284, subpart G blanket certificate, Central Kentucky seeks a blanket certificate under Part 157, subpart F. Pursuant to this blanket certificate, pipelines may construct and operate certain eligible facilities without filing a case-specific application for a certificate under NGA section 7(c). A pipeline holding a blanket construction certificate may construct and operate eligible facilities without notifying the Commission in advance or with prior notification, depending on the cost of the facilities. A pipeline must be an interstate pipeline and must state that it will comply with all of the terms, conditions and procedures in [\*\*41] Part 157, subpart F. Central Kentucky will become an interstate pipeline once it acquires and operates the facilities at issue here and it has stated in its application that it will comply with the Provisions of Part 157, subpart F. Therefore, we will issue a blanket construction certificate to Central Kentucky.

#### Conclusion

44. For all of the reasons set forth above, the Commission will issue to Central Kentucky, subject to the conditions

discussed in this order, (1) a certificate of public convenience and necessity, authorizing Central Kentucky to acquire an undivided interest in Columbia's KA-1 pipeline and to operate its portion of the facilities, as described above; (2) a blanket certificate under part 284, subpart G, authorizing Central Kentucky to provide open-access transportation over the capacity it will acquire in the KA-1 pipeline; and (3) a blanket construction certificate under Part 157, subpart F, authorizing Central Kentucky to construct and operate facilities pursuant to the terms and conditions of that section of the Commission's regulations. n41

n41 As noted, this order does not address the environmental impacts of Central Kentucky's proposal to acquire the interest in the subject facilities and Columbia's abandonment of that interest because there is no construction associated with the proposal. *See supra.* note 5.

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45. At a hearing held on February 16, 2006 the Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Central Kentucky Transmission Company authorizing it to acquire, own, operate, and maintain natural gas facilities, as described and conditioned herein, and as more fully described in the application.

(B) A blanket certificate under Part 284 of the Commission's regulations is issued to Central Kentucky, authorizing it to provide open-access transportation on its portion of the KA-1 facilities.

(C) A blanket certificate under Part 157, subpart F, of the Commission's regulations is issued to Central Kentucky authorizing it to construct and operate eligible facilities, as defined in and under the terms and conditions of that section.

(D) The certificate issued in Paragraph (A) above is conditioned on Central Kentucky's compliance with the NGA and relevant portions of the Commission's regulations, [\*\*43] in particular Part 154 and section 157.20 (a), (b), (d), (e) and (f).

(E) The certificate issued in Paragraph (B) above is conditioned on Central Kentucky's compliance with the NGA and relevant portions of the Commission's regulations, in particular, Parts 154 and 284.

(F) The certificate issued in Paragraph (C) above is conditioned on Central Kentucky's compliance with the NGA and relevant portions of the Commission's regulations, in particular with Part 154 and Part 157, subpart F, Part 154.

(E) The facilities acquired by Central Kentucky shall be placed into service within one year from the date of this order.

(F) Central Kentucky shall revise its tariff as discussed herein and is directed to make a filing to place its rates and tariff into effect not more than 60 days, but not less than 30 days, of the date service begins over the acquired facilities and shall include in that filing a redlined version of the tariff delineating the changes made in compliance with this order.

By the Commission.

**Legal Topics:**

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