107 FERC ¶ 61,079
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gulf Transmission Company | Docket No. RP04-226-000

ORDER ACCEPTING TARIFF SHEET SUBEJCT TO MODIFICATIONS

(Issued April 22, 2004)

1. On March 23, 2004, Columbia Gulf Transmission Company (Columbia Gulf) filed a tariff sheet,[1] to revise its right of first refusal (ROFR) provisions to explicitly delineate when a shipper must exercise its ROFR rights when no bids are received for a shipper's capacity. Columbia Gulf proposes an April 22, 2004 effective date. The tariff sheet is accepted for filing subject to modifications as set forth below. This order benefits consumers by ensuring that Columbia Gulf's tariff is consistent with Commission policy.

Proposal

2. Columbia Gulf proposes to revise its ROFR provisions at section 4 of the General Terms and Conditions (GT&C) of its tariff to more explicitly describe the procedure to be followed when the pipeline has received no acceptable third party bids for a shipper's capacity. Columbia Gulf argues that while its tariff is clear as to the time within which a ROFR shipper must match bids submitted by a third party pursuant to a posting of that capacity under the ROFR procedures, the tariff is less definitive on what happens if no bids are received.

3. To correct this ambiguity, the proposed tariff language requires Columbia Gulf to advise a ROFR shipper within two business days after the close of the auction period for third party bids if there have been no acceptable bids on the shipper's capacity. This is the same notification period when bids have been received. Further, Columbia Gulf

[1] Seventh Revised Sheet No. 145 to FERC Gas Tariff, Second Revised Volume No. 1.

states that consistent with the Commission's order in Northern Border,[2] the proposed tariff language provides that a ROFR shipper will have 20 days following Columbia Gulf's notification that no bids have been received to exercise its alternative right to bid the Recourse Rate and specify the term by which the shipper will take the capacity, or to attempt to agree on a discounted rate and term with Columbia Gulf. If the existing shipper fails to take one of these actions within the 20-day period, the shipper's ROFR rights terminate and Columbia Gulf may post the capacity as generally available. Columbia Gulf has accordingly revised section 4.1(c)(6) of the GT&C to clarify that ROFR does not apply in a situation where the ROFR auction has been completed and the subject capacity has been posted as generally available, since by definition the ROFR process was concluded when the auction process ended and the shipper completed the notification/bidding process.

Interventions, Protests and Answer

4. Public notice of Columbia Gulf's filing was issued on March 26, 2004. Interventions and protests were due as provided in § 154.210 of the Commission's Regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214), all timely filed motions to intervene and the 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 this proceeding or place additional burdens on existing parties. Protests were filed by The East Ohio Gas Company d/b/a Dominion East Ohio, and Hope Gas, Inc. d/b/a Dominion Hope (collectively Dominion LDCs), Orange and Rockland Utilities, Inc. (Orange and Rockland), Virginia Natural Gas, Inc. (VNG) and Washington Gas Light Company (Washington Gas) (collectively protesters). Columbia Gulf filed an answer to the protests on April 13, 2004 in which it agreed to clarify certain provisions of its tariff.[3] The issues raised by the protesters and Columbia Gulf's answer are discussed below.

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[2] Pan-Alberta (U.S.) Inc. v. Northern Border Pipeline Co., 101 FERC ¶ 61,249 (2002), order on compliance filing, Northern Border Pipeline Co., 102 FERC ¶ 61,158 (2003) (Northern Border). See also Algonquin Gas Transmission Co., 102 FERC ¶ 61,264 (2002), order on clarification and reh'g, 103 FERC ¶ 61,235 (2003); Texas Eastern Transmission LP., 102 FERC ¶ 61,262 (2002), order on clarification and reh'g, 103 FERC ¶ 61,234 (2003).

[3] While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, the Commission will accept the answer to allow a better understanding of the issues. See 18 C.F.R. § 385.213(a)(2) (2003).

Discussion

5. The Commission accepts Columbia Gulf's proposed tariff language, subject to Columbia Gulf making certain revisions agreed to in its answer.

Time Period for Shippers When No Bids are Received

6. Dominion LDCs, supported by VNG and Orange and Rockland, contend that the 20-day time period for exercising ROFR rights when there are no bids is inadequate. They contend that the time period should be extended to 60 days or 90 days. Dominion LDCs argue that none of the orders cited by Columbia Gulf established the precedent of providing shippers with only a 20-day period to respond when no bids are received. Dominion LDCs contend that the shortest time period for a response when no third party bid is received is the 20 business day period approved in Northern Border. Columbia Gulf in its answer states that it is willing to modify its proposal to provide for 20 business days for a shipper to determine whether to continue service in the no-bid situation, consistent with Northern Border.

7. The Commission has previously found that pipelines must establish reasonable minimum posting and matching periods for bids received during the ROFR process.[4] The Commission finds Columbia Gulf's proposal in its answer to provide shippers with a 20 business day period to reach agreement when no third party bids exist to be just and reasonable and consistent with the Commission's finding in Northern Border. Under the ROFR process set forth in Columbia Gulf's tariff, the shipper must notify Columbia Gulf of its desire to retain its capacity six months before its current contract expires. If the shipper exercises the ROFR, Columbia Gulf will post the capacity on its Electronic Bulletin Board (EBB) up to five months prior to termination of the agreement for bids from third party shippers. If no bids are received, Columbia Gulf will notify the shipper within 2 days and then the shipper will have 20 business days to negotiate a new level of service. In addition, as explained by Columbia Gulf in its answer, Columbia Gulf and the shipper can mutually agree, on a not unduly discriminatory basis, to extend the 20 business day time period to facilitate negotiations. Therefore, the protesters' request to require Columbia Gulf to provide a longer period of time than the 20 business day time period agreed to by Columbia Gulf in its answer is denied. The Commission accepts Columbia Gulf's proposal, subject to its making the revision agreed to in its answer.

[4] See, e.g., Viking Gas Transmission Company, 87 FERC ¶ 61,280 at 61,133 (1999) and Koch Gateway Pipeline Company, 75 FERC ¶ 61,026 at 61,081 (1996).

Time Period When Bids are Received

8. The Dominion LDCs, supported by Orange and Rockland and VNG, object to an existing tariff provision concerning the time period within which the existing shipper must decide whether to match a third party bid.[5] The existing tariff gives the shipper 15 days for this purpose. Protesters contend that this period is much shorter than the bid-matching periods of other pipelines, which is generally 30 days.[6] The Dominion LDCs contend that the Commission should require Columbia Gulf to revise its currently effective 15-day time period for matching bids and provide shippers with at least 30 days to decide, in the case where bids have been received.

9. This tariff provision at section 4.1(c)(4) of the GT&C was approved by the Commission in Columbia Gulf's restructuring proceeding by order issued September 29, 1993[7] and parties did not object to this issue or file for rehearing of that order. The 15-day time is also consistent with other pipeline tariff provisions.[8] Accordingly, the protesters have not met their burden under NGA section 5 of showing that the existing provision is unjust and unreasonable, and therefore, the Commission rejects this protest.

Written Confirmation

10. Washington Gas contends in its protest that Columbia Gulf should only be permitted to terminate a shipper's ROFR after the shipper provides a written acknowledgment of Columbia Gulf's notification of the intent to terminate a shipper's

[5] See, section 4.1(c)(4) of the GT&C on Sheet No. 145.

[6] Citing, ANR Pipeline Company, 30 days, General Terms and Conditions ("GT&C") § 22.3(a); National Fuel Gas Supply Corporation, 30 days, GT&C § 11.5; Panhandle Eastern Pipe Line Company, LLC GT&C § 7.2(b)(iv), 30 days; Tennessee Gas Pipeline Company, GT&C § 10.4.2(c), 25 days; Texas Gas Transmission, LLC, GT&C § 32.5(b), 30 days; and Texas Eastern Transmission, LP, GT&C § 3.13(B)(7), 30 days.

[7] 64 FERC ¶ 61,365 (1993).

[8] See, Northern Natural Gas Co., 106 FERC ¶ 61,195 at P 21-24 (2004) and Pine Needle LNG Co., LLC, 103 FERC ¶ 61,309 at P 7-8 (2003).

ROFR. Columbia Gulf in its answer indicated that the Commission has never required written notice and that such a notice would be directly contrary to Commission policy.[9] Columbia Gulf also contends in its answer that the North American Energy Standards Board, which provides operating standards for use by all natural gas pipelines, does not require that pipelines withhold actions (for example, issuance of critical notices) pending receipt of a written acknowledgment from affected shippers that they received the critical notice.

11. We find that Columbia Gulf's proposal, along with notification on its EBB, provides an adequate safeguard for the shipper and prompt notification. Therefore, we deny Washington Gas' request for written notification.

ROFR for Reduced Service

12. Dominion LDCs request that the Commission modify Columbia Gulf's proposed GT&C section 4, to clarify that in a situation where no bids are received, a shipper who elects to continue service may do so with respect to just a portion of its service rights and shall retain its ROFR for the portion continued. Dominion LDCs contends that such changes are necessary to ensure that Columbia Gulf's tariff is consistent with the regulatory right of firm shippers to elect to reduce maximum daily quantities at contract termination, while electing to retain a volumetric portion of its capacity, along with associated ROFR rights.[10]

13. Columbia Gulf in its answer agrees with the Dominion LDCs that certain clarifications to its tariff would be appropriate. Columbia Gulf agrees with the Dominion LDCs that the tariff should make clear that, in a no-bid situation, a shipper that elects to continue service may do so for only a volumetric portion (but not geographic portion) of the capacity and retain its ROFR with respect to that portion. Columbia Gulf is willing to clarify its tariff on this issue incorporating the revised tariff language suggested by Dominion LDCs.

14. The Commission agrees that Columbia Gulf's tariff should be revised in the manner agreed to by Columbia Gulf to clarify that a shipper may elect to continue service with respect to a portion of its service rights and retain its ROFR in a situation where no

[9] Citing, Northern Border.

[10] Citing, Texas Eastern Transmission, LP, 101 FERC ¶ 61,215 (2002), at P 21, order on compliance filing, 102 FERC ¶ 61,262 at P 29 (2003).

bids are received. Such revised tariff language is consistent with the Commission ruling that shippers are to be permitted volumetric reductions of contractual demand under ROFR provisions.[11] The current language in section 4 does not expressly state that Shippers have this right. Therefore, the Commission accepts Columbia Gulf's filing, subject to its revising its tariff language as proposed in its April 13, 2004 answer.

Time to Execute New Service Agreement

15. Washington Gas argues in its protest that Columbia Gulf is not providing a reasonable time to execute a new service agreement. Washington Gas contends that Columbia Gulf could provide executable contracts on each of the 15-day or 20-day time periods near the end of the period and thereby leave the shipper with only a couple of days remaining in the time window to execute the new service agreement. Washington Gas states that this may be too aggressive when considering the internal routing procedures for contract review and approval.

16. In its answer, Columbia Gulf addresses Washington Gas' concern by clarifying that a shipper that either agrees to pay the recourse rate and specifies the term of service, or reaches agreement with Columbia Gulf on a discounted rate and term of service, will have until the termination of the existing contract to execute a new service agreement. Columbia Gulf indicates that it is willing to add revised tariff language to section 4.1(c)(4) to clarify this point. Accordingly, the Commission directs Columbia Gulf to file revised tariff language clarifying this issue as proposed in its April 13, 2004 answer.

Conclusion

17. The Commission will accept the tariff sheet listed in footnote No. 1, effective April 22, 2004, subject to Columbia Gulf filing revised tariff sheets reflecting the modifications consistent with its April 13, 2004 answer to the protests.

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[11] "The regulatory right of first refusal includes the right of the existing shipper to elect to retain a volumetric portion of its capacity subject to the right of first refusal, and permit the pipeline's pregranted abandonment to apply to the remainder of the service. Therefore, the Commission clarifies that a customer with a contract that qualifies for a regulatory right of first refusal may exercise that regulatory right for a volumetric portion of the capacity." Order No. 637, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000, ¶ 31,091 at 31,341.

<u>The Commission orders</u>

The Commission accepts the tariff sheet listed in footnote No. 1, effective April 22, 2004, subject to Columbia Gulf filing a revised tariff sheet within 15 days of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.