120 FERC ¶ 61,289
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 28, 2007

In Reply Refer To:
Columbia Gas Transmission Corporation
Docket No. RP07-655-000

Columbia Gas Transmission Corporation
5151 San Felipe, Suite 2500
Houston, TX 77056

Attention: James R. Downs,
Director of Regulatory Affairs

Reference: Extension of Service Agreement

Dear Mr. Downs:

1. On August 31, 2007, Columbia Gas Transmission Corporation (Columbia Gas) filed revised tariff sheets[1] that would add section 4.1(b)(2) to its General Terms & Conditions (GT&C) permitting a shipper and Columbia Gas to mutually agree to extend the customer's service on Columbia Gas' system through the renegotiation of the customer's existing service agreement prior to expiration of the agreement and prior to the initiation of the right of first refusal (ROFR) procedure pursuant to GT&C section 4.1(c). Additionally, Columbia Gas proposes to revise GT&C section 4.1(c)(1)(c) and section 4.2(d) to remove the requirement that a shipper holding capacity subject to a ROFR need only match a competing bid up to a term of five years in order to retain the capacity. Columbia Gas requests an effective date of October 1, 2007. As discussed below, we find the proposal to be consistent with Commission policy and precedent, and therefore accept the revised tariff sheets to be effective October 1, 2007.

2. Columbia Gas proposes new GT&C section 4.1(b)(2), under which, Columbia Gas and a shipper "may mutually agree to renegotiate the terms of such agreement in exchange for Shipper's agreement to extend the use of at least part of its existing service under a restructured Service Agreement." The proposed language further provides that such restructuring will be on a case-by-case basis, in a not unduly discriminatory manner.

[1] Tenth Revised Sheet No. 280, First Revised Sheet No. 280A. Thirteenth Revised Sheet No. 281 and Seventh Revised Sheet No. 283 to FERC Gas Tariff, Second Revised Volume No. 1.

The agreement to extend must be reached prior to initiation of any applicable ROFR procedures. If Columbia Gas and the shipper reach a mutual agreement to an arrangement, the ROFR requirements of the tariff will not apply.

3. Columbia Gas also proposes to revise GT&C sections 4.1(c)(1)(c) and 4.2(d) so that an existing customer seeking to renew an expiring contract through a ROFR will be required to match the highest acceptable bid for capacity, including term, in order to retain the capacity. The current provisions provide that such a customer would only have to match a term up to five years.

4. Public notice of the filing was issued on September 4, 2007. Interventions and protests were due on or before September 12, 2007. Pursuant to Rule 214, (18 C.F.R. § 385.214 (2007)), 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. BP Energy Company and BP America Production Company (BP) filed a protest, and Hess Corporation (Hess) filed comments requesting clarification. On September 17, 2006, Columbia Gas filed an answer to BP and Hess. On September 18, 2007, Independent Oil & Gas Association of West Virginia (IOGA) filed an untimely protest. On September 19, 2007, Hess filed an answer to Columbia Gas' answer. The IOGA protest is accepted, and the issues raised in the protests and comments are discussed below. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Columbia Gas' answer because it has provided information that assisted us in our decision-making process. We will not accept Hess' answer as it has not assisted us in our decision-making process.

5. Hess asserts that there are discrepancies between Columbia Gas' description of its proposal and the proposed tariff revisions. Hess notes that the transmittal letter states that "[t]he renegotiation process may include the extension, amendment, early termination or substitution of the customer's existing service agreement," yet, according to Hess, the tariff revisions refer only to term and quantity. Hess requests that the Commission direct Columbia Gas to revise its proposed tariff language to set forth in full terms what may be negotiated as part of a contract extension.

6. Hess also asserts that the terms "substitution" and "amendment" could be interpreted to include new, previously unsubscribed capacity, but are not defined in Columbia Gas' tariff. Hess states that Columbia Gas' proposal does not indicate if unsubscribed capacity may be included in an extension agreement, or if early termination can be negotiated. Hess states that if unsubscribed capacity may be included in an extension agreement, the tariff should spell this out in sufficient detail to provide notice to shippers that they may request additional capacity in connection with a contract extension. Hess notes that any capacity to be added to an existing contract through an extension should have been posted as available prior to being added, and this should be clarified in the tariff. IOGA states that Columbia Gas' proposal to negotiate extensions

without posting and bidding provides the pipeline with an unreasonable level of discretion in such renegotiations, providing no competitive check. IOGA states that a term cap could serve as a recourse term in the event Columbia Gas and the shipper renegotiate prior to the exercise of ROFR. IOGA states that a shipper should have the protection of a recourse term to prevent Columbia Gas from exercising market power.

7. Additionally, Hess states that Columbia Gas should be required to explain how it envisions including early termination provisions in extension contracts. Hess notes that the transmittal letter refers to early termination as something which might be negotiated in a contract extension, but notes that the proposed tariff language does not expressly provide for it. Hess cites to the Commission's concern that early termination provisions could raise issues of discrimination among customers,[2] and that "early termination provisions present too much potential for undue discrimination unless they are offered in the pipeline's tariff pursuant to generally applicable conditions."[3]

8. Further, Hess states that the Commission should require Columbia Gas to file any amended contract that contains a "material deviation" from the *pro forma* service agreement, pursuant to 18 C.F.R. §§154.1(d) and 154.112(b).

9. In response, Columbia Gas asserts that Hess' request that Columbia Gas revise its tariff language to address purported discrepancies between the tariff language and the transmittal letter should be denied as unnecessary and erroneous. Columbia states that its transmittal letter is entirely accurate when it states that "the renegotiation process may include the extension, amendment, early termination or substitution of a customer's existing service agreement" in exchange for an extension of all or part of a customer's existing service. Columbia Gas asserts that proposed GT&C section 4.1(b)(2) fully captures this by stating that "Transporter and Shipper may mutually agree to renegotiate the terms of such agreement … in exchange for Shipper's agreement to extend all or part of its existing service agreement." Columbia Gas states that it is self-evident that when renegotiating the terms of an existing service agreement, the parties could also reach agreement to either extend, amend, terminate early, or substitute a service agreement for another. However, Columbia Gas states, such terms would be renegotiated only in exchange for an extension of all or part of the existing service under the newly restructured arrangement. Columbia Gas states that it will handle such negotiations in a non-discriminatory manner. Further, Columbia Gas states that the tariff language approved in Tennessee[4] is virtually identical to the language filed by Columbia Gas, and Tennessee explained in its transmittal letter that a contract "re-negotiation may include

[2] *Tennessee Gas Pipeline Co.,* 97 FERC ¶ 61,225 (2001) at pp. 62,028-62,029.

[3] *Id.* at pp. 62,029-62,030.

[4] *Tennessee Gas Pipeline Co*., 119 FERC ¶ 61,126 (2007).

the extension, amendment and/or early termination/substitution of the customer's existing service agreement(s), provided that the customer is agreeing to extend the use of at least part of its existing service under the resulting restructured arrangement."[5]

10. Columbia Gas also responds that there is no basis for Hess' request that acceptance of the filing be conditioned on Columbia Gas filing any renegotiated service agreements that materially deviate from the *pro forma* service agreement, as Columbia Gas is already required to file non-conforming contracts in accordance with section 154.1(d) of the Commission's Regulations. Similarly, Columbia Gas states that it is already required to post all capacity that is available for service pursuant to GT&C section 4.2 of its Tariff and Commission established policy, therefore, there is no basis for Hess' concern that "any capacity to be added to an existing contract through an extension should have to be posted as available prior to being added to an extended contract."

11. The Commission has approved tariff provisions permitting a pipeline and a shipper to mutually agree to an extension of the term of a service agreement before expiration of the agreement and before posting the capacity under the pipeline's ROFR provisions.[6] While Commission policy is to enable those who value capacity the most to obtain it,[7] the Commission assumes that the pipeline will generally seek the highest possible rate from those to whom it sells capacity, since that is in the pipeline's economic interest. Therefore, the Commission has allowed pipelines some degree of flexibility in how they market their capacity in order to accomplish that goal.[8]

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[5] *Tennessee Gas Pipeline Co.*, Docket No. RP07-369-000, Transmittal Letter, at 2 (April 9, 2007).

[6] *See Tennessee Gas Pipeline Company*, 119 FERC ¶ 61,126 (2007); *Northern Natural Gas Company*, 118 FERC ¶ 61,053 (2007); *ANR Pipeline Company*, 116 FERC ¶ 61,201 (2006); and *Texas Eastern Transmission LP*, 112 FERC ¶ 61,235 (2005).

[7] Order No. 636-A, FERC Stats. & Regs., Regulation Preambles January 1991-June 1996 ¶ 30,950 at 30,630 ("when a contract has expired, it is most efficient, within regulatory constraints, for the capacity to go to the person who values it the most, as evidenced by its willingness to bid the highest price for the longest reasonable term.") *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order on Remand*, 101 FERC ¶ 61,127 at P 20 (2002), *order on reh'g*, 106 FERC ¶ 61,088 at P 17 (2004).

[8] *See Northern Natural Gas Co.*, 111 FERC ¶ 61,379 at P 38-39 (2005), holding that a pipeline can extend the contract of an existing shipper with a ROFR without posting the capacity for third party bids, and *Gulf South Pipeline Co.*, 119 FERC ¶ 61,032 at P 11 (2007).

12. The Commission agrees with Hess that Columbia Gas is required to file any amended contract that contains a "material deviation". However, as Columbia Gas points out, it is already required to file non-conforming contracts, including those with early termination provisions, in accordance with section 154.1(d) of the Commission's Regulations. In addition, Columbia Gas is required, pursuant to the terms of its tariff and the Commission's regulations, to post available capacity on its electronic bulletin board. Therefore, we find that no additional modification of Columbia Gas' tariff is necessary to assure that Columbia posts additional capacity to be added to an existing contract prior to it being added.

13. The Commission agrees with Columbia Gas that there is not a discrepancy between its transmittal letter and the proposed tariff provision. As Columbia Gas points out, the tariff language specifically states that "the terms of such agreement" may be renegotiated. The tariff language does not limit the parties to renegotiation of only the terms related to quantity and duration, and there is no need to specify in the tariff all the terms that could be considered in the renegotiation. Further, as noted by Columbia Gas, its proposed language is consistent with that previously accepted by the Commission for similar tariff revisions.

14. BP protests Columbia Gas' proposed elimination of the five-year matching cap for existing long-term recourse rate contracts entered into when Columbia Gas' tariff provided for the cap. BP does not protest elimination of the cap on a prospective basis. BP notes that while the Order on Remand in Docket No. RM98-10-011[9] found the five-year matching cap unnecessary to protect shippers from pipeline market power, it did not require pipelines to remove those provisions from their tariffs. BP requests that the Commission direct Columbia Gas to grandfather the five-year matching cap for existing contracts eligible for the ROFR. Alternatively, BP requests that the Commission direct Columbia to clarify that the five-year matching cap applies to any ROFR process that had been initiated as of October 1, 2007, the proposed effective date of the instant filing. Hess requests that if the Commission allows Columbia Gas to eliminate the five-year matching cap under its ROFR process, that Columbia Gas be directed to continue to apply the five-year matching cap to any ROFR process that had been initiated as of October 2007, the proposed effective date.

15. IOGA also protests the elimination of the five-year matching cap for ROFR rights, stating that it is concerned that competing shippers will bid to take capacity for unrealistically long terms in order to foreclose matching by existing shippers. IOGA notes that on Columbia Gas' system, a producer bid a term through 2099, and if this were the case in a ROFR auction, the existing shipper likely would not have been able to

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[9] *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127 (2002), *order on reh'g and clarification*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom*., *American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

match the excessive term of this bid and its ROFR rights would be rendered meaningless. IOGA asserts that elimination of the five-year cap will continue the trend toward concentration of interstate pipeline capacity in the hands of a limited number of large shippers, and urges Columbia Gas to reconsider its proposal and put a longer term cap in effect that places a reasonable limit on the contract term.

16. Columbia Gas states that BP's request to perpetuate the five-year matching cap for existing contracts would prevent capacity from going to the shipper who values it most, and is therefore contrary to established law and policy on the issue of term-matching caps. Columbia Gas notes each of its *pro forma* Service Agreements provides service in accordance with the provisions of its Tariff… "as the same may be amended or superseded in accordance with the rules and regulations of the Commission." Columbia Gas states that BP's theory that a shipper should be entitled to rely on the GT&C of a pipeline's tariff as they existed at the time the shipper executed a service agreement is unfounded. Columbia Gas states that its Service Agreements notify shippers that the GT&C are subject to change. Finally, Columbia Gas notes that the Commission has not imposed the type of grandfathering condition proposed by BP in any other case in which the elimination of the five-year matching cap was approved.

17. However, Columbia Gas states that it will use an August 31, 2007 cut-off date for applying the five-year ROFR matching cap, because shippers were placed on notice on that day that the five-year ROFR term matching cap was being eliminated. Therefore, Columbia Gas states that any service agreement with a ROFR for which Columbia Gas initiated the ROFR process prior to August 31, 2007, is eligible for the five-year ROFR term-matching cap as part of its contract renewal process.

18. The Commission finds that Columbia Gas' proposal to remove the five-year matching cap is reasonable for the reasons stated by Columbia Gas in its filing and its answer. The Commission views IOGA's protest as a general attack on the established Commission policy for removing the term cap limit. In its Order On Remand,[10] affirmed by the D.C. Circuit,[11] the Commission found that a term cap is not necessary to protect existing long-term shippers from the pipeline's exercise of market power. The Commission concluded that its existing regulatory controls are sufficient to constrain pipelines from withholding capacity to pressure shippers into longer contracts than they desire, without the need for any term-matching cap. IOGA presents no new arguments that would cause us to revise that policy in this order.

[10] 101 FERC ¶ 61,127 (2002).

[11] *American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

19. Therefore, the Commission accepts Columbia Gas' proposed tariff revisions effective October 1, 2007.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.