

121 FERC ¶ 61,217
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 29, 2007

In Reply Refer To:
TransColorado Gas Transmission Company
Docket No. RP97-255-077

TransColorado Gas Transmission Company
370 Van Gordon Street
P.O. Box 281304
Lakewood, CO 80228

Attention: Robert F. Harrington, Vice President
Regulatory Affairs

Reference: Non-Conforming Service Agreements

Dear Mr. Harrington:

1. On October 31, 2007, TransColorado Gas Transmission Company (TransColorado) filed revised tariff sheets¹ and two related non-conforming service agreements with EnCana Marketing USA Inc. (Encana). The non-conforming provisions in the two service agreements include gas quality specification waivers as well as Maximum Daily Quantity (MDQ) reduction and rate conversion deviations. Waiver of the Commission's 30-day notice requirement is granted and the revised tariff sheets listed in footnote No. 1 are accepted effective November 1, 2007, as proposed, subject to the conditions discussed below.

2. On August 1, 2004, TransColorado and Encana entered into a negotiated firm service agreement with a term of ten years for southbound transportation out of the Piceance Basin from the Logan Wash receipt point to the Blanco area delivery point for up to 125,000 Dth/day. TransColorado explains that since this agreement became effective there have been significant changes to the development of gas reserves and processing plants in and around TransColorado's system. These include new gas supplies and infrastructure resulting from the construction of the Rockies Express Pipeline. Added capacity of up to 1,500,000 Dth/day will become available when the Rockies Express facilities are in full service. TransColorado states that it is in the process

¹ Sixteenth Revised Sheet No. 21 and Sixth Revised Sheet No. 22 to FERC Gas Tariff, First Revised Volume No. 1.

of implementing the Blanco-Meeker expansion project which will result in an additional 250,000 Dth/day of natural gas northward out of the San Juan region to Meeker effective December 31, 2007.² As a result of the significant changes described above, Encana requested a change to move its primary receipt point from Logan Wash north to the interconnect with Rockies Express Pipeline at the Love Ranch/Meeker point.

TransColorado states that it was unable to move Encana's total contract quantity of 125,000 Dth/day to Love Ranch/Meeker. However, TransColorado was willing to move 100,000 Dth/day north to Love Ranch/Meeker if Encana was willing to move 25,000 Dth/day of its primary receipt capacity south to the Paradox Basin near a mid-point on TransColorado's system. Encana agreed to the proposal and as a result the existing agreement was split into two agreements. In order to provide assurances to Encana that the two newly proposed service agreements would continue to operate at an acceptable level equivalent to the old agreement, non-conforming provisions were included as described below.

3. Agreement No. 552458 reflects primary receipt point capacity of 100,000 Dth/day from Love Ranch/Meeker. Pursuant to this agreement, Encana has a one time right to reduce its MDQ up to 100,000 Dth/day subject to notice requirements and subject to any necessary regulatory approvals. TransColorado states that if the requested reduction is not effectuated through the capacity release procedures of its tariff, then the parties shall pursue alternative methods for MDQ reduction including turn back of capacity, direct assignment to a third party, or an agreed upon capacity reduction. TransColorado asserts that all of these alternative methods would be subject to any necessary Commission approval. TransColorado states that if a capacity reduction cannot be effectuated, Encana's rate structure will be changed from straight fixed variable to volumetric. TransColorado contends that the non-conforming MDQ reduction provision is not unduly discriminatory since it either follows the capacity release provisions in its tariff, or in the alternative, requires it to seek Commission approval if necessary. TransColorado contends that its commitment to negotiate in good faith so that any change in rate structure would place Encana in a position economically similar to the position it would have been in if it had been able to reduce its MDQ is rate related and therefore is a permissible negotiated rate provision.³

4. Agreement No. 552449 reflects primary receipt point capacity of 25,000 Dth/day from the Paradox Basin at Naturita Creek. TransColorado states that it has two interconnecting receipt points out of the Paradox Basin, Naturita Creek and Quinn Draw. TransColorado states that historically gas supplies received from the Paradox Basin may not meet all of the pipelines' gas quality specifications currently included in its tariff. TransColorado herein proposes to accept gas supplies from the Paradox Basin provided

² See *TransColorado Gas Transmission Co.*, 119 FERC ¶ 61,069 (2007).

³ See *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076 at 61,242 (1996). See also FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,091, at 31,344 (2000).

the gas can be blended to meet downstream pipeline gas quality requirements. As a result, TransColorado states it will post on its Electronic Bulletin Board (EBB) the appropriate gas quality specification waivers expressed in the Encana Agreement. The waiver will be available to all shippers tendering gas at Paradox Basin receipt points. Specifically, these waivers raise the inert substances gas quality specification from 3 percent to 5 percent but retain the 2 percent limit on carbon dioxide for gas delivered at the Quinn Draw and Naturita Creek receipt points. However, TransColorado states that it reserves the right to reduce or curtail these receipt points in the event of curtailment or interruption by downstream interconnected point operators due to gas quality standards. TransColorado states that the waivers are not unduly discriminatory since the waivers are available to all shippers that choose to use the receipt points covered by the waiver.

5. The above agreement also contains a non-conforming provision providing Encana with the right to reduce its MDQ up to 25,000 Dth/day subject to certain notice requirements or upon a request by a third party that requires mainline capacity held by Encana. In addition, this agreement includes a non-conforming provision providing Encana's negotiated rate to be converted from a monthly reservation rate to a daily reservation rate in the event that TransColorado modifies or terminates its gas quality waiver. TransColorado states that the negotiated change in rate design is related to the rate to be charged and therefore is a permissible negotiated rate provision.⁴ TransColorado claims that given the higher nitrogen content of Encana's production in the Paradox Basin, it was necessary to provide Encana with limited volumetric reduction assurances. TransColorado contends that the above provisions reflect the unique circumstances of Encana and therefore are not unduly discriminatory to other shippers.⁵

6. The filing was noticed on November 2, 2007, with comments due on or before November 13, 2007. No comments were filed. Notices of interventions and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2007)). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

7. The Commission finds the non-conforming provision pertaining to MDQ reduction in Agreement No. 552458 is not unduly discriminatory in nature. The Commission finds that this non-conforming provision is subject to any necessary Commission approval and therefore does not provide Encana with any advantage over any other shipper on TransColorado's system. TransColorado first plans to follow the capacity release provisions in its tariff, and, failing that, TransColorado would seek Commission approval for revised tariff provisions that would allow it to use alternative methods to effectuate such a reduction (*i.e.* turn back of capacity, direct assignment to a third party, or an agreed upon capacity reduction) and thus it would become available to

⁴ *Id.* See also *Gulf South Pipeline Co.*, 94 FERC ¶ 61,397 at 62,489 (2001); and *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318 P 1 (2002).

⁵ See *Colorado Interstate Gas Co. (CIG)*, 105 FERC ¶ 61,124 P 26 (2003).

all shippers. The Commission finds the non-conforming provision in Agreement No. 552449 pertaining to conversion of a monthly rate to a daily rate is a permissible negotiated rate related provision.

8. TransColorado proposes to provide waiver to Encana, and to all shippers using the Paradox Basin receipt points, pertaining to certain gas quality specifications. The negotiated rate agreement with Encana includes a waiver that can be exercised at any time throughout the ten year contract term and is available at receipt points out of the Paradox Basin. TransColorado proposes to post this waiver provision on its EBB. The Commission has required pipelines to include such a non-conforming provision in the pipeline's generally applicable tariff to ensure all shippers are afforded such rights.⁶ Therefore, consistent with *CIG*, the Commission will require TransColorado to either remove the gas quality waiver provision from non-conforming Agreement No. 552449, or file revised tariff sheets that specify waiver of certain gas quality standards for the Paradox Basin receipt points.

9. The Commission finds the non-conforming provision pertaining to MDQ reduction in Agreement No. 552449 is unduly discriminatory in nature because it does not require any necessary Commission approval when effectuating an MDQ reduction as is required by related Agreement No. 552458. The Commission has clarified its policy as to the inclusion of MDQ adjustment provisions in negotiated rate contracts. The Commission has found contract provisions allowing for the adjustment of MDQs to be unacceptable since they present a significant potential for discrimination among shippers.⁷ Because a shipper's right to reduce its MDQ before the expiration of the agreement is a valuable right, since it could enable the shipper to avoid significant liability for future reservation charges, such a valuable right may only be conferred in a non-discriminatory manner.⁸ The Commission has required pipelines that include such a non-conforming provision in a negotiated agreement to either remove the unduly discriminatory provision or include the provision in the pipeline's generally applicable tariff to ensure all shippers are afforded such rights.⁹

10. TransColorado states that it was necessary to provide Encana with limited volumetric reduction assurances given the higher nitrogen content of Encana's production in the Paradox Basin. TransColorado cites to *CIG*, supra n.5, as support for the principle that a unique circumstance may permit a non-conforming MDQ reduction provision.¹⁰

⁶ See *CIG*, 105 FERC ¶ 61,124 P 11 (2003).

⁷ See *ANR Pipeline Co. (ANR)*, 97 FERC ¶ 61,252 at 62,116 (2001).

⁸ *Id.* See also *CIG*, 105 FERC ¶ 61,124 P 11 (2003).

⁹ *Id.*

¹⁰ See *CIG*, 105 FERC ¶ 61,124 P 26 (2003).

However, the Commission finds that *CIG* does not support inclusion of the proposed MDQ reduction provision here. In *CIG*, the Commission accepted a flexible production-related provision where the pipeline assigned leases or wells underlying production related to the agreement. The Commission finds TransColorado's non-conforming MDQ reduction provision is not similar to the production related provision in *CIG* since there is no assignment of leases or wells. Moreover, in *CIG* the Commission confirmed the general rule that a shipper's right to reduce its contract demand before the expiration of its agreement is a valuable right since it can enable the shipper to avoid significant liability for future reservation charges and must be granted in a not unduly discriminatory manner. Thus, the Commission directed *CIG* to place a clause permitting MDQ adjustment provisions in its generally applicable tariff and reflect such a change in its *pro forma* service agreement, or alternatively, to file to remove the MDQ reduction provision that it had granted to specific customers.¹¹

11. Therefore, consistent with Commission policy as set forth in *ANR* and *CIG* cited above, the Commission will require TransColorado to either remove the MDQ reduction provision from non-conforming Agreement No. 552449, or file revised tariff sheets that permit MDQ adjustment in its generally applicable tariff. Alternatively, TransColorado may file to revise Agreement No. 552449 by including a provision requiring any necessary Commission approval when effectuating an MDQ reduction, as is currently provided in related Agreement No. 552458.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹¹ *Id.* P 11.