

130 FERC ¶ 61,256
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 30, 2010

In Reply Refer To:
CenterPoint Energy Gas Transmission Company,
Docket Nos. RP10-468-000, RP10-469-000,
RP10-470-000, and RP10-471-000

CenterPoint Energy Gas Transmission Company
P.O. Box 21734
Shreveport, Louisiana 71151

Attn: Lawrence O. Thomas
Senior Director

Reference: Amended Negotiated Rate Agreements

Ladies and Gentlemen:

1. On March 1, 2010, CenterPoint Energy Gas Transmission Company (CenterPoint) filed a number of amended negotiated rate agreements between CenterPoint and certain of its shippers,¹ to be effective March 1, 2010. As explained below, the Commission rejects the amended negotiated rate agreements filed in the above-referenced dockets without prejudice to CenterPoint filing revised agreements with the Commission.
2. CenterPoint explains that because of continuing differentials between CenterPoint's Line CP operating pressure and increased operating pressures on the Columbia Gulf Transmission Company (Columbia Gulf) system, CenterPoint's Line CP firm shippers cannot rely on consistent deliveries into Columbia Gulf at the Columbia Gulf CP Delivery Point. CenterPoint states that it plans to install new compression facilities to address the pressure issues at the Columbia Gulf CP Delivery Point.² CenterPoint states that to provide interim relief, it offered to allow its Line CP

¹ The shippers are EOG Resources, Inc.; Macquarie Energy LLC; CenterPoint Energy Services, Inc.; Cross Timbers Energy Services, Inc.; Laclede Energy Resources, Inc.; Marabou Midstream Services, LP; Petrohawk Energy Corporation (shippers).

² CenterPoint filed a prior notice application to authorize this project in Docket No. CP10-47-000.

shippers with primary delivery point capacity at the Columbia Gulf CP point to shift their capacity on a temporary basis to substitute primary delivery points.³ CenterPoint explains that the shippers that selected a temporary primary delivery point will revert back to the Columbia Gulf CP point following the completion and placing in-service of the new compression facilities.

3. In addition, CenterPoint states the shippers also agreed to amend section 4(a)(ii) of their respective service agreements to allow for a rate adjustment during Line CP scheduled maintenance and to provide a new mechanism during scheduled maintenance or other periods of operational constraint to permit the negotiated rate shipper to use, on a temporary basis, substitute receipt and/or delivery points that would otherwise be ineligible for the specified negotiated rates. According to CenterPoint, if it permits the temporary use of an alternate delivery point pursuant to section 4(a)(ii), CenterPoint will communicate the request via e-mail, in writing or internet website posting. CenterPoint maintains it will comply with the transactional posting requirements applicable to any temporary amendments by fully disclosing to the market all of the temporary changes for the affected shippers. CenterPoint states it will not execute any formal amendments to the shippers' existing service agreements when changing the primary delivery points pursuant to section 4(a)(ii). CenterPoint requests the Commission find that, given these circumstances, it is unnecessary for it to execute and to file an amended negotiated rate agreement to implement the temporary changes permitted by section 4(a)(ii).

4. Public notice of the filing issued on March 8, 2010 with interventions and protests due by March 15, 2010. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2009)), all timely 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 this proceeding or place additional burdens on existing parties. No protests or comments were filed.

5. The Commission rejects the amended negotiated rate agreements filed in the above-referenced dockets because the agreements contain impermissible material deviations. If a pipeline and a shipper enter into a contract that materially deviates from

³ In Docket No. RP10-374-000, CenterPoint requested waiver of section 5.4(a)(iv) of its General Terms and Conditions to allow it to temporarily substitute a shipper's primary delivery points at the Columbia Gulf CP Delivery Point to other delivery points until it resolves the pressure issues at the Columbia Gulf CP Delivery Point. CenterPoint also requested waiver of the Commission's regulations requiring pipelines to file non-conforming agreements. On March 3, 2010, the Commission granted the requested waivers. *See CenterPoint Energy Gas Transmission Company*, 130 FERC ¶ 61,157 (2010) (March 3, 2010 Order).

the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.⁴ In *Columbia Gas Transmission Corporation*,⁵ the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (2) affects the substantive rights of the parties. A material deviation may be permissible if the Commission finds that such deviation does not constitute a substantial risk of undue discrimination.⁶ Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission permits the contract containing the material deviation, the Commission's regulations require the pipeline to file tariff sheets that reference the materially deviating contract in its tariff.⁷

6. In Docket No. RP10-374-000, the Commission granted waivers to permit shippers currently with a primary delivery point at the Columbia Gulf CP Delivery Point to change temporarily to a different primary delivery point while CenterPoint addresses pressure issues at the Columbia Gulf CP Delivery Point. As the Commission determined in Docket No. RP10-374-000, such a provision is a reasonable accommodation of shipper needs.⁸ To the extent the provisions of the filed agreements allow temporary delivery points until the current pressure issues at the Columbia Gulf CP Delivery Point are resolved consistent with the waivers in Docket No. RP10-374-000, the Commission finds such material deviations from the *pro forma* service agreement are permissible material deviations.⁹

⁴ 18 C.F.R. § 154.1(d) (2009).

⁵ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

⁶ *Columbia*, 97 FERC ¶ 61,221 at 62,004.

⁷ 18 C.F.R. § 154.112(b) (2009).

⁸ *See* March 3, 2010 Order, 130 FERC ¶ 61,157.

⁹ The March 3, 2010 Order "waive[d] the regulations which would otherwise obligate CenterPoint to file as non-conforming these service agreements due to the material deviations relating to the temporary primary delivery points." March 3, 2010 Order, 130 FERC ¶ 61,157, at P 8 n.5.

7. However, some of the shippers' agreements do not clearly specify that the temporary delivery points are in fact temporary.¹⁰ CenterPoint must modify these agreements where such temporary points exist¹¹ to clearly identify that the points will serve as primary delivery points only until the pressure issues at the Columbia Gulf CP Delivery Point have been addressed following the "in-service" date of the new compression facilities. CenterPoint, in its waiver request in RP10-347-000, estimated completing installation of the facilities in November 2010.

8. Moreover, the Commission finds that section 4(a)(ii) of the agreements contains impermissible material deviations. In proposed section 4(a)(ii), CenterPoint proposes a non-conforming provision to shift temporarily a shipper's primary delivery points in the event of "scheduled maintenance or other operational circumstances." The ability to shift to a temporary primary delivery point during system maintenance or other operational circumstances is a valuable right. CenterPoint provides no justification for these provisions in section 4(a)(ii) or an explanation why this proposed provision does not present a significant potential for undue discrimination. The terms proposed in section 4(a)(ii) differ from the waivers the Commission granted in the March 3, 2010 Order in Docket No. RP10-374-000 because the terms of the provision proposed here:

(1) continue until the end of each agreement, beyond the time period of the current pressure impasse at the Columbia Gulf CP Delivery Point; (2) fail to identify in an amended agreement the specific temporary delivery point(s) to be used until the shipper returns to its primary delivery point; and (3) potentially apply to primary delivery points other than the Columbia Gulf CP Delivery Point. The Commission therefore finds this non-conforming language in section 4(a)(ii) to be an impermissible material deviation.

9. Accordingly, the Commission rejects these amended negotiated rate agreements without prejudice to CenterPoint filing revised agreements with the Commission. CenterPoint must renegotiate new agreements without the impermissible material deviations contained in section 4(a)(ii) which result in different treatment among shippers in the event of scheduled maintenance or other operational circumstances that restrict

¹⁰ For example, in the service agreements filed in Docket No. RP10-470-000, the new primary delivery points are identified, but these agreements do not specify whether these points are temporary or not. *See, e.g.*, TSA No. 1004855 filed in Docket No. RP10-470-000, at p. 1 (adding the ANR CP as a primary delivery point without specifying that it is temporary until the Columbia Gulf CP Delivery Point becomes available after the in-service date of the new compression facilities).

¹¹ The Commission recognizes that certain shippers have elected to relocate permanently all or a portion of their primary delivery point capacity to points other than the Columbia Gulf CP Delivery Point.

delivery point availability. Alternatively, CenterPoint must file revised tariff sheets to provide the provisions in section 4(a)(ii) to all similarly situated shippers.

10. CenterPoint is directed to make a compliance filing within 30 days consistent with the findings in this letter order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.