

132 FERC ¶ 61,147
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 18, 2010

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP10-987-000

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

Attention: James R. Downs
Vice President of Rates and Regulatory Affairs

Reference: FTS Service Agreement No. 78653 and Tariff Records

Dear Mr. Downs:

1. On July 21, 2010, Columbia Gas Transmission, LLC (Columbia Gas) filed a firm transportation service agreement (FTS Agreement No. 78653) dated May 15, 2004 between itself and UGI Utilities, Inc. (UGI), a local distribution company providing retail natural gas service to residential, commercial and industrial customers in eastern Pennsylvania.¹ Columbia Gas requests that a Predetermined Allocation Agreement (PDA Agreement) attached to FTS Agreement No. 78653 be accepted as a permissible non-conforming agreement. The filing also includes proposed revised tariff records adding the service agreement to the list of non-conforming contracts in Columbia Gas's tariff.² For the reasons set forth below, FTS Agreement No. 78653 is accepted as a permissible non-conforming service agreement, and the related revised tariff records

¹ Columbia Gas states that it is filing this agreement pursuant to an on-going review of its currently effective service agreements to identify any that may include non-conforming provisions.

² Service Agreement Forms, Non-Conforming Service Agreements, 3.0.0 to Baseline Tariffs, FERC Tariff, Fourth Revised Volume No. 1.

identified in footnote no. 2 are also accepted. Both acceptances are to be effective August 23, 2010, as requested, subject to condition as discussed further.

2. Columbia Gas asserts that the PDA Agreement is the only non-conforming aspect of FTS Agreement No. 78653. According to Columbia Gas, the PDA agreement expresses its commitment to maintain a comparable level of flexibility between its current service to UGI and the service it provided to UGI prior to Columbia Gas's restructuring under Order No. 636.³ Columbia Gas explains that as a merchant pipeline prior to restructuring, it made deliveries at certain UGI city gates connected to Texas Eastern Transmission LP (Texas Eastern) using upstream capacity that it held on Texas Eastern. Further, Columbia Gas states that, prior to restructuring, it delivered gas to UGI city gates directly connected to its own system downstream of the Eagle and Pennsburg interconnections with Texas Eastern, now identified as UGI's receipt points in FTS Agreement No. 78653, that Columbia Gas delivered to those interconnections via its upstream capacity on Texas Eastern.

3. Moreover, Columbia Gas asserts that by adjusting the flow of gas from Texas Eastern at Eagle and Pennsburg during the gas day, it was able to shift supplies between the northern and southern portions of UGI's service territory if the actual load requirements within those areas changed during the day from what UGI had initially estimated. According to Columbia Gas, using upstream capacity on Texas Eastern in combination with its own capacity gave it the flexibility to balance deliveries throughout the gas day among UGI city gates.

4. Columbia Gas states that under Order No. 636, UGI was required to take assignment of the upstream capacity on Texas Eastern that Columbia Gas previously held to perform its service obligations to UGI. According to Columbia Gas, this complicated UGI's ability to coordinate deliveries from both pipelines in order to respond, if necessary, to intraday load requirement changes within its service territory. However, Columbia Gas states that after restructuring, it endeavored to continue the pre-restructuring service flexibility it historically provided to UGI by coordinating with Texas Eastern to adjust receipts at Eagle and Pennsburg when requested by UGI. Columbia Gas asserts the non-conforming provisions of the PDA agreement memorialize this goal by establishing procedures that permit UGI to nominate and Columbia Gas to schedule adjustments in the flow rate of UGI receipts from Texas Eastern at Eagle and Pennsburg after the close of the Intraday 2 nomination cycle, for subsequent delivery to UGI during the remainder of the gas day. Columbia Gas notes that without such

³ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,939 at 30,424-35 (1992).

provisions, its tariff would not permit UGI to nominate changes in flow after the close of the Intraday 2 cycle.⁴

5. Columbia Gas states that in the past year, UGI has exercised the right to nominate after the Intraday 2 nomination cycle on nineteen days. Columbia Gas argues that this pattern of use over the past year shows that UGI only exercises its nomination right under the PDA Agreement when it is absolutely needed to shift gas between the Eagle and Pennsburg interconnections. Columbia Gas further maintains that this right enables UGI to replicate its pre-restructuring service during times when customer demand does not materialize as anticipated via the Texas Eastern system, or when the UGI customer load served by Columbia Gas requires additional supply. Columbia Gas notes that UGI has firm storage rights that can be used if needed to support such requested scheduling change.

6. Finally, Columbia Gas points out that if the Commission denied, as an impermissible material deviation, UGI's ability to nominate after the Intraday 2 cycle, then UGI would have to contract for storage service on Texas Eastern to store excess supplies, and would also need, but be unable to obtain, additional storage service from Columbia Gas to serve additional UGI market deliveries. Columbia Gas explains that it does not have unsubscribed transmission or storage, and that both types of capacity would need to be constructed to accommodate post Intraday 2 requests for deliveries.

7. Public notice of the filing was issued on July 22, 2010. Interventions and protests were due on or before August 2, 2010, as provided in section 154.210 of the Commission's regulations.⁵ Pursuant to Rule 214,⁶ all timely filed motions to intervene and any motion 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. No party filed a protest or adverse comments. UGI filed comments in support of the filing and in support of the assertions and arguments of Columbia Gas.

⁴ Under the gas standards of the North American Energy Service Board (NAESB) adopted by the Commission, pipelines must provide a minimum of two opportunities during each gas day for shippers to nominate changes in previously scheduled and flowing volumes. Thus, shippers may nominate during the Intraday 1 cycle by 10 a.m. for flow changes beginning at 5 p.m., and during the Intraday 2 cycle by 5 p.m. for flow changes beginning at 9 p.m. that remain in effect until the end of the gas day (9 a.m. the next morning). Columbia Gas has included these minimum standards in its tariff.

⁵ 18 C.F.R. § 154.210 (2010).

⁶ 18 C.F.R. § 385.214 (2010).

8. The Commission accepts FTS Agreement No. 78653 with its attached PDA Agreement as a permissible non-conforming service agreement. Briefly, the PDA Agreement establishes UGI's limited right, within its contract demand, to nominate changes in the hourly flow rate of receipts at Eagle and Pennsburg after the Intraday 2 nomination cycle "as UGI receives updated measurement and temperature information." Such changes in gas flow must first be submitted and agreed to by the Gas Control Departments of both Columbia Gas and Texas Eastern based on system operations.

9. In *Columbia Gas*,⁷ we determined that a special provision allowing a customer to deviate from the tariff's general terms and conditions regarding hourly flows, changes the terms and conditions of service, and is a material deviation. Similarly here, UGI's right to make flow-related nominations under the PDA Agreement during a period not otherwise permitted by Columbia Gas's tariff constitutes a material deviation from its FTS *pro forma* service agreement, which states in Section 1 that the service provided is accordance with the tariff's General Terms & Conditions. However, as Columbia Gas explains, the PDA Agreement is intended to replicate flexibility it historically provided to UGI before restructuring under Order No. 636. The need for this flexibility arises from unique operational circumstances related to the fact Columbia Gas and Texas Eastern serve different parts of UGI's system creating a need to coordinate flows from the two pipelines to UGI. Absent the PDA Agreement, UGI would need additional storage service on Columbia Gas which is not currently available, as well as additional storage service on Texas Eastern.

10. Moreover, in *Columbia Gas*, we noted that the contracts being reviewed had been ongoing for some time and had been relied on by the parties. Similarly here, FTS Agreement No. 78653 memorializes the cooperation that has been relied on since the early 1990s by two pipelines and a shipper to provide the shipper with operational flexibility comparable to its pre-Order No. 636 service. This cooperation is a reasonable operational alternative, in circumstances where the shipper traditionally has received deliveries from two pipelines to meet its daily load requirements, to requiring UGI to subscribe to and/or finance additional, unnecessary construction.

11. In these circumstances, the Commission finds that the PDA Agreement can be accepted as not unduly discriminatory.⁸ Therefore, we accept FTS Agreement No. 78653 as a permissible non-conforming service agreement, and also accept the related tariff records identified in footnote no. 2, both acceptances to be effective August 23, 2010, as requested, subject to condition.

⁷ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia Gas*).

⁸ *See id.* at 62,004; *Texas Eastern Transmission LP*, 129 FERC ¶ 61,068 (2009).

12. Columbia Gas's filing is not in compliance with the Commission's regulations and Order No. 714 with regard to what constitutes a tariff filing. First, section 154.112(b) of the Commission's regulations requires in part that "contracts that deviate in any material aspect from the form of service agreement must be filed. Such non-conforming agreements must be referenced in the open access transmission tariff."⁹ Second, Order No. 714 requires regulated entities to include any new tariffs or rate schedules in its electronic tariff once its baseline filing was established.¹⁰ For this purpose, contracts are considered part of the electronic tariff.¹¹ In the instant filing, Columbia Gas has filed a revised tariff record to its *Baseline Tariffs* which lists the agreement with UGI as non-conforming. Columbia Gas should have also filed the entire agreement with UGI as tariff record to be included in its *Baseline Tariffs*. Including non-conforming agreements in a pipeline's tariff will allow for greater transparency and the ability to search one database for all tariff-related concerns. Therefore, we condition acceptance on Columbia Gas filing its agreement with UGI along with any transactions related to the agreement as a tariff record to its *Baseline Tariffs* within 15 days of the date of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ 18 C.F.R. § 154.112(b).

¹⁰ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 93 (2008).

¹¹ *See* section 154.4(a) of the Commission's regulations, requiring that all filings pursuant to NGA section 4, including "tariffs, rate schedules, service agreements, and contracts" be made electronically.