

138 FERC ¶ 61,209
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 22, 2012

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP12-388-000

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

Attention: Jim Downs, Vice President
Rates and Regulatory Affairs

Reference: Letter Order on Pre-Arranged Sales of Capacity

Dear Mr. Downs:

1. On February 21, 2012, Columbia Gas Transmission, LLC (Columbia) filed a revised tariff record¹ to amend section 4.2 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Proposed section 4.2 sets forth the conditions under which Columbia may enter into pre-arranged sales of capacity. Columbia states that all pre-arranged deals will be subject to the bidding requirements provided for in its currently effective tariff. For the reasons discussed below, a waiver of the Commission's 30-day notice requirement is granted and the tendered tariff record is accepted effective March 21, 2012, subject to condition.²

¹ Columbia Gas Transmission, LLC, FERC NGA Gas Tariff, Baseline Tariffs, [Gen. Terms & Conditions, Auctions of Available Firm Service, 3.0.0.](#)

² In instances where there is a discrepancy in requested effective dates as listed in the metadata in the electronic tariff filing and in a company's transmittal letter, the Commission resolves in favor of the metadata. Here, the metadata from Columbia's electronic filing provides for an effective date of March 21, 2012. See *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 6 (2010).

2. Columbia proposes new tariff language in section 4.2 of its tariff to allow the company to enter into pre-arranged deals for service with shippers. This authority, Columbia asserts, will give it more flexibility in marketing its capacity and shippers more certainty that the capacity they need will be available, subject to the requirements of bidding as provided for in its tariff. Columbia states that longstanding Commission policy permits shippers to enter into pre-arranged agreements with the pipeline to purchase capacity, and that such authority furthers the Commission's goals of allocating capacity to the party that values it the highest.³ Columbia explicitly provides that all pre-arranged agreements will be entered into on a not unduly discriminatory basis.

3. Columbia states that pre-arranged agreements will be binding on shippers pursuant to the requirements contained in its tariff. However, as soon as a pre-arranged deal is entered into, but before capacity is actually awarded or reserved, Columbia states it will post the deal on its website as part of an open season bidding process to permit other parties an opportunity to bid on the capacity. According to Columbia, bids will be evaluated on a net present value (NPV) basis, taking into account the time value of the delay in revenue under a bid for firm service to commence in the future. If Columbia receives a bid that exceeds the NPV of the pre-arranged agreement, Columbia will notify the shipper with the pre-arranged agreement. The proposed tariff provides that the pre-arranged shipper will have one day to match the highest NPV bid. If the pre-arranged shipper matches the highest NPV bid, the pre-arranged shipper will be awarded the capacity, and if the pre-arranged shipper does not match the highest bid, the capacity will be awarded to the shipper providing the highest NPV bid.

4. Public notice of Columbia's filing was issued on February 22, 2012, with interventions, comments and protests due as provided under section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely filed motions to intervene and any unopposed motions to intervene out of time filed before the issuance date of this order are granted. On March 5, 2012, Stand Energy Corporation, Indicated Shippers⁶ and Washington Gas Light (WGL) filed comments in the proceeding, and Orange and Rockland Utilities, Inc. (Orange and Rockland) filed a protest.

³ Columbia cites *Southern Natural Gas Co.*, 99 FERC ¶ 61,130, at 61,551 (2002) (*Southern*).

⁴ 18 C.F.R. § 154.210 (2011).

⁵ 18 C.F.R. § 385.214 (2011).

⁶ Indicated Shippers consists of Chevron U.S.A. Inc.; ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation; Hess Corporation; Interstate Gas Supply, Inc.; and Noble Energy, Inc.

Contentions of the Parties

5. On the same day, Columbia filed comments (March 5 Comments), which we will treat as an answer, in response to the communications it had with the parties about their concerns before they filed their comments and protest. In addition, on March 12, 2012, Columbia filed an answer. While the Commission's regulations prohibit answers such as those submitted by Columbia, the Commission will accept them in this case because they provide additional record information that clarify the issues and will assist the Commission in its decision-making process.⁷ The protest, comments, and Columbia's answers are set forth below.

6. Indicated Shippers do not oppose the implementation of the new tariff language, but assert that the Commission should require two modifications. First, Indicated Shippers argue that Columbia's proposal to enter into pre-arranged deals should clearly state that capacity will be awarded to the pre-arranged bidder if that shipper elects to match competing bids during an auction. Second, Indicated Shippers argue that the new tariff language should explicitly cap the bidding at the recourse rate. Additionally, Indicated Shippers note there are several instances in which the internal subparagraph references in section 4.2 must be revised due to the insertion of the proposed tariff language, which affects the lettering of the current subparagraphs. In its March 5 comments, Columbia states that it intends to make several changes to its proposed tariff that will address the above concerns. Specifically, Columbia proposes to: (a) state explicitly that a pre-arranged shipper will only have to match bids as high as the recourse rate; (b) clarify that Columbia is subject to the pre-arranged provisions with respect to awarding capacity pro rata; and (c) correct the internal references to subsections in section 4. Columbia states that it will file new tariff language once the Commission rules in the instant proceeding.

7. Orange and Rockland assert that Columbia's tariff language unjustly shoulders the pre-arranged shipper with a potential liability to purchase the capacity at any point in the future. In circumstances when a high bidder in an auction defaults in its obligation to execute a service agreement, Orange and Rockland note that Columbia's tariff language requires the pre-arranged customer to purchase the auctioned capacity, without regard to the amount of time that has elapsed after the auction. Orange and Rockland argue that this is entirely unreasonable and would constitute a potential trap for shippers with pre-arranged deals.

8. In its answer, Columbia argues that Orange and Rockland's concerns are unfounded and ignore similar provisions in Columbia's tariff which allow Columbia to award capacity to another shipper in the event a higher bidder fails to execute an

⁷ 18 C.F.R. § 213(a)(2) (2011).

agreement. Specifically, Columbia states that section 4.2(f), which Orange and Rockland cites, expressly states that if a higher bidder in a traditional auction fails to execute a service agreement within 15 days, or such later date established by Columbia, “Transporter will award the capacity to the next acceptable bidder.” As Columbia explained in its March 5 Comments, given that all bids are binding, the “next acceptable bidder” would be required to execute a service agreement consistent with the terms of its bid. Columbia states that it is reasonable to apply similar conditions to auctions resulting from prearranged deals. However, Columbia states that, as explained in its March 5 Comments, it is proposing to limit its right to come back to the prearranged shipper to five business days after the close of the auction on the prearranged deal; thus, there will be no “indefinite” waiting period. Second, Columbia proposes to add language stating that Columbia may, in its reasonable discretion, waive this right if it believes it will be able to remarket the capacity. Columbia believes this is a reasonable compromise that will respect the binding nature of bids but provide Columbia and its shippers more flexibility when there will not be an adverse impact as a result of a higher bidder’s failure to execute a service agreement.

9. Stand Energy states that it supports giving Columbia the authority to enter into pre-arranged sales of capacity. Specifically, Stand Energy supports the changes Columbia proposed to section 4.2 in its March 5 Comments limiting the period during which a pre-arranged shipper may be required to buy capacity if the alternate high bidder fails to execute a service agreement to five days. Stand Energy asserts that it would be unreasonable to require a pre-arranged shipper to wait indefinitely for an alternate high bidder to execute a service agreement.

10. WGL asserts that Columbia has not provided adequate detail on when and how capacity that is subject to a pre-arranged deal will be posted on Columbia’s electronic bulletin board (EBB). WGL argues that the proposed language in section 4.2 is vague enough that Columbia could simply post the pre-arranged deal for less than an hour and then contend that it satisfied the literal requirement of the tariff provisions. WGL proposes that section 4.2 be drafted to state that Columbia will post any pre-arranged agreement on its EBB for five business days prior to finalizing any award of capacity.

11. Columbia agrees that the proposed language in section 4.2 does not clearly delineate the posting timeframes. Accordingly, Columbia proposes to modify section 4.1(a) to state that “Transporter will post any Prearranged Agreements on its EBB for bidding prior to finalizing any award of capacity consistent with the timeframes set forth in section 4.1(b), below.” Columbia explains that, generally, section 4.1(b) sets out the

posting periods for auctions. Columbia believes that posting in accordance with these guidelines should address WGL's concern.⁸

12. WGL asserts that Columbia has not provided adequate time for shippers with pre-arranged deals to consider whether or not they will match a higher bid. WGL asserts that three business days is a more reasonable response time than one day, which is currently proposed in the tariff language. In its answer, Columbia argues that shortened matching periods for prearranged auctions are reasonable and consistent with time frames approved on other pipelines.⁹ Columbia states that, for example, in Tennessee Gas Pipeline Company (*Tennessee*), the Commission approved a 48-hour matching period explaining:

At bottom, 48 hours is sufficient time for a pre-arranged deal shipper to determine whether or not to match a higher NPV bid. When the pre-arranged deal shipper reaches an agreement with Tennessee, it recognizes that there is a possibility that another bidder may submit a higher NPV. Management of the pre-arranged shipper should anticipate this possibility and promptly develop a process for expediting the decision making process with respect to matching a higher NPV. In this regard, the Commission sees no basis to construe the 48-hour time frame as meaning two business days since this could extend the time to match to as long as five days if a holiday weekend is involved.¹⁰

Columbia argues that the Commission should find here, as it did in *Tennessee*, that prearranged shippers should have processes in place with respect to expediting bid-matching decisions.

⁸ The Commission notes that section 4.1(b) does not have any posting periods; however, section 4.2(b) does. The Commission presumes that Columbia intended to refer to the EBB posting procedures in section 4.2(b). Section 4.2(b) provides that the posting periods for available firm capacity will be: (1) five business days for capacity that is available for a 12-month or longer term; (2) three business days for capacity that is available for at least five but less than twelve months; and (3) one hour ending at 10:00 am (E.T.) for capacity that is available for a term of less than five months.

⁹ Columbia Answer at 4 (*citing Columbia Gulf Transmission Co.*, 135 FERC ¶ 61,106, at P 138 (2011) (approving prearranged transaction provision with a one-day matching period)).

¹⁰ *Id.* (*citing Tennessee Gas Pipeline Co.*, 94 FERC ¶ 61,315, at 62,185 (2001)).

Commission Decision

13. The Commission accepts Columbia's proposed tariff that will allow for pre-arranged sales of capacity, to be effective March 21, 2012, subject to conditions. As the Commission has stated previously, pre-arranged sales of capacity, conducted properly, further the Commission's goal of efficiently allocating capacity to the party that values it the highest.¹¹ Giving Columbia the authority to enter into pre-arranged deals will give Columbia more flexibility in marketing its capacity, as well as shippers more certainty that the capacity they need will be available. The Commission finds that shippers are adequately protected through Columbia's tariff language requiring that all capacity subject to pre-arranged deals be posted and made available for sale through Columbia's auction procedures. Finally, Columbia expressly provides that all pre-arranged agreements will be entered into on a not unduly discriminatory basis.

14. The Commission conditions its acceptance of the proposed tariff on Columbia amending its tariff language as it has agreed in its March 5 Comments and its answer. Therefore, Columbia must file revised tariff language stating that the agreement of pre-arranged shippers will remain binding no more than five business days following the close of an auction. Additionally, in its compliance filing, Columbia is required to state explicitly that a pre-arranged shipper will only have to match bids as high as the recourse rate and clarify that capacity will be awarded to the pre-arranged bidder if that shipper elects to match competing bids during an auction. Columbia must also file in its compliance filing the modification proposed in its answer to section 4.1(a) to explicitly state that "Transporter will post any Prearranged Agreements on its EBB for bidding prior to finalizing any award of capacity consistent with the timeframes set forth in section 4.2(b), below." Columbia must also correct internal references to subsections in section 4 of the tariff to make the section consistent, which Columbia indicated it is willing to do in its compliance filing.

15. The Commission rejects WGL's proposal to increase the bid matching time period from one day to three days for a pre-arranged shipper to decide to match a high bid from another shipper. One day is an acceptable amount of time in which pre-arranged shippers may decide to match a higher bid. In light of the bidding periods provided in section 4.2(b) in Columbia's tariff, which range from one hour for firm capacity available for less than five months to five business days for capacity available for one year or more to allow shippers to decide to bid on capacity in the first instance, a one day deadline is sufficient for pre-arranged shippers to decide to match a bid. This finding is consistent with Commission precedent.¹²

¹¹*Southern*, 99 FERC at 61,551.

¹²*Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,292 at 62,007 (2000).

16. For these reasons, the Commission waives its 30-day notice requirement and accepts the tariff sheets listed in footnote 1 of this order to be effective March 21, 2012, subject to the conditions discussed above. Columbia is directed to file revised tariff language within thirty days of the date this order issues.

By direction of the Commission.

Kimberly D. Bose,
Secretary.