139 FERC ¶ 61,141
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Columbia Gas Transmission, LLC Docket No. RP12-605-000

ORDER ACCEPTING TARIFF RECORDS AND GRANTING WAIVER

(Issued May 22, 2012)

1. On April 13, 2012, pursuant to section 4 of the Natural Gas Act (NGA), Columbia Gas Transmission, LLC (Columbia) filed revised tariff records to implement a new surcharge to recover the costs of certain operational purchases and sales required to ensure a sufficient amount of flowing supply into Columbia's system in northern Ohio.[1] As discussed below, we accept the proposed tariff records to be effective June 1, 2012 and grant waiver of the Commission's regulations as applicable to the volumes purchased and sold under the surcharge.

I. Description of Columbia's Filing

2. Columbia states that an influx of Marcellus shale gas on its system has resulted in a significant price discrepancy between the price of gas at the TCO Pool[2] and at Columbia's northern Ohio receipt points, where Columbia interconnects with ANR Pipeline Company (ANR) and Panhandle Pipeline Company (Panhandle). Columbia states that this pricing discrepancy has caused receipts into its system in northern Ohio to have dropped to precipitously low levels, which jeopardizes Columbia's ability to both serve its markets in that area and fill its Ohio storage fields.

3. Accordingly, in 2011, Columbia arranged for third party transportation service to transport gas from where it was located on the southern part of Columbia's system to where it was needed in northern Ohio. Columbia states that the Commission accepted

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[1] *See* Appendix.

[2] The TCO Pool is the main pooling point on Columbia's system.

these costs for inclusion in its Periodic Transportation Costs Rate Adjustment (TCRA) filing.[3]

4. Since Columbia's TCRA filing, Columbia states it has held several meetings with customers to discuss these issues and possible solutions. Upon consideration of these discussions, Columbia states that it proposes to purchase gas at receipt points in northern Ohio in quantities needed to fill Columbia's operational needs and to sell equivalent volumes at other areas of Columbia's system to maintain system balance.

5. To implement this solution, which Columbia states is a lower cost alternative than its previously utilized third party transportation solution, Columbia proposes a new Operational Transaction Rate Adjustment (OTRA) mechanism to recover the costs of any operational transactions required to ensure sufficient flowing supply into northern Ohio storage fields. Columbia proposes that this OTRA filing will be made on a semi-annual basis and will be submitted no later than April 1 and November 1 of each year. Columbia emphasizes that the OTRA mechanism is an interim solution and that it will only be in existence through March 31, 2014. Columbia anticipates that its proposal will result in total cost savings to customers of $3.2 million, when compared to the costs incurred over the same five month period last year using third party transportation. Columbia also maintains that it remains committed to working with its customers to develop long-term, low cost solutions to its northern Ohio supply problems and asserts that it is possible that changes in market conditions or an influx of new supply from the Utica shale could obviate the need for this surcharge.

6. According to Columbia, it will only enter into operational purchases to the extent necessary to maintain sufficient flowing supply in northern Ohio and only if such purchases and sales will result in a lower cost per Dth than other operational solutions, such as third party transportation service. Columbia estimates that it would accrue an oversupply system imbalance of approximately 36.5 Bcf over the course of a year if it does not sell gas in equivalent volumes to its purchases.[4] Columbia states that it will comply with the Commission's approved posting and bidding requirements for buying and selling gas currently set forth in General Terms and Conditions (GTC) section 49, of Columbia's tariff which will ensure that all operational transactions are entered into in a fair and transparent manner. Columbia states that using its operational transaction authority is more favorable to its shippers than attempting to use operational flow orders (OFOs) to require shippers to deliver gas to receipt points in northern Ohio.

7. Columbia states it currently has authority pursuant to GTC section 49.1 to enter into operational purchases and sales as necessary and that the purchases and sales

[3] *Columbia Gas Transmission, LLC,* 138 FERC ¶ 61,044 (2012).

[4] Columbia Transmittal Letter at p. 5.

contemplated under the OTRA mechanism qualify under this existing authority because these purchases and sales are necessary to Columbia's storage fields, as well as its firm service obligations.

8. Columbia states that its initial OTRA rate includes projected costs of $1,881,600 and is based on a non-binding Request for Proposals (RFP) posted on its EBB from March 19 to April 9, 2012. Columbia asserts that it received bids and offers for its RFP from 14 separate counterparties. Columbia estimates a total cost per Dth per day of $0.14, and maintains that this reflects the differential between the purchase price at northern Ohio receipt points and the sale price at the TCO pool. Columbia states that when its proposal is accepted it will permit all parties that responded to the RFP an opportunity to "refresh" their bids and offers and any difference in cost between the estimate of $0.14 and the actual transacted cost will be trued up in Columbia's next OTRA filing on November 1, 2012.

9. Columbia requests that the Commission find that its proposal as described above does not constitute an "unbundled sales service" subject to section 284.286 of the Commission's regulations.[5] Columbia argues that its proposed transactions are sales incidental to the operation of Columbia's system. Columbia asserts that the Commission has permitted pipelines to buy and sell gas for operational reasons without triggering the independent functioning requirement of the standards of conduct and argues that the purchases and sales it proposes are required in order to maintain the operational integrity of Columbia's system and thus should not trigger the independent functioning requirement of the Standards of Conduct.

10. However, Columbia states that if the Commission concludes that its proposal does trigger the independent functioning requirement of the Commission's regulations, Columbia requests that the Commission grant a limited waiver of this regulation to allow Columbia to perform the operational transactions required by its proposal. Columbia argues that it is impossible to organize its unbundled sales and transportation operating employees to function independently of each other, because Columbia's transmission function employees must be closely involved in the analysis of any bids or offers for these purchases and sales to make sure that they meet the operational needs of the system. Accordingly, Columbia requests that should the Commission find the operational transactions constitute an "unbundled sales service," a waiver of section 284.286 is warranted to allow Columbia to facilitate these transactions.

11. Columbia also requests that the Commission find that the operational transactions contemplated under the OTRA mechanism do not implicate the Commission's prohibition against buy/sell transactions. Columbia argues that the Commission has

[5] 18 C.F.R. § 284.286 (2011).

explained that the purpose of the buy/sell prohibition is to prevent barriers to an open and transparent capacity release market. Columbia asserts that its proposed transactions are unrelated to these policy concerns because the operational transactions contemplated here do not pose any barriers to open access transportation and there is no capacity release transaction that could be effectuated as an alternative to the purchases and sales Columbia intends to make.

II. Public Notice and Interventions

12. Public notice of Columbia's filing was issued on April 17, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[6] Pursuant to Rule 214,[7] 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. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

13. Exelon states that it supports Columbia's filing as a proactive approach to meeting customer needs in a cost effective manner. Washington Gas states that it also supports, for this limited period, the proposed purchase and sale plan because it has the potential to substantially reduce costs to consumers. Washington Gas requests that Columbia be directed to share with its shippers the final costs of the program within 15 days of the date that the initial RFP bids are refreshed and that any sales and purchases under the program also be reportable within 15 days of the receipt of final bids in order to judge on a more timely basis if this initiative will reduce costs for customers compared to other alternatives.

14. Indicated Shippers states that they do not oppose the proposed new mechanism as an interim solution to what may be a long-term problem and request that the Commission grant the limited request for waiver of the standards of conduct rather than finding that the purchase and sales functions are not subject to the standards of conduct.[8]

15. Indicated Shippers also support Columbia's request that the Commission find the buy/sell prohibition is inapplicable to OTRA transactions. Indicated Shippers state because Columbia's operational sales and purchases to obtain adequate quantities in the

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[6] 18 C.F.R. § 154.210 (2011).

[7] 18 C.F.R. § 385.214 (2011).

[8] Indicated Shippers joining in these comments are BP Energy Company and BP America Production Company; ConocoPhillips Company; Delta Energy, LLC; Hess Corporation; Interstate Gas Supply, Inc.; and Noble Energy, Inc.

northern Ohio area will not involve release or assignment of firm capacity, these transactions do not implicate the buy/sell prohibition.

III. <u>Discussion</u>

16. The Commission accepts Columbia's OTRA mechanism as proposed. Columbia states that based on current market conditions this proposal will result in lower costs for its customers than rerouting gas supplies from the southwest part of its system to northern Ohio on other pipelines or requiring customers to deliver gas to northern Ohio receipt points through the use of Operational Flow Orders (OFOs). The Commission finds that the proposal provides a cost-effective mechanism, developed with input and support from its customers, for addressing the reduced receipts into Columbia's system in northern Ohio. This finding, coupled with the fact that the proposal is an interim mechanism that will only be in effect through March 31, 2014, permits the Commission to find that this proposal is a just and reasonable solution to an operational problem on Columbia's system.

17. Moreover, for good cause shown, the Commission will grant Columbia a limited waiver of the Standards of Conduct with regards to the independent functioning requirement of section 284.286 as it relates to purchases and sales associated with maintaining sufficient supply in northern Ohio under the OTRA mechanism. Under the Standards of Conduct, a transmission provider's transmission function employees are required to function independently of its marketing function employees.[9] Marketing function employees include those who are making sales for resale in interstate commerce, unless they are making incidental purchases or sales of natural gas to operate interstate transmission facilities.[10] The Commission has previously authorized pipelines to make purchases and sales of gas that were incidental to the operation of pipeline transmission facilities or necessary to maintain the operational integrity of the pipeline system, and therefore, not *per se* sales and marketing functions,[11] Columbia argues that the purchases and sales associated with maintaining sufficient supply in northern Ohio are incidental purchases or sales and should not trigger the independent functioning requirements of the Standards of Conduct. Columbia acknowledges that the reduced flows into northern Ohio are the result of changed competitive circumstances (influx of Marcellus shale) and that it could impose OFOs to require customers to deliver gas to the northern Ohio

[9] 18 C.F.R. § 358.5 (2011).

[10] 18 C.F.R. § 358.3(c)(2) and § 358.3(c)(2)(ii) (2011).

[11] Columbia Transmittal Letter at pp. 4-5. *See also Transcontinental Gas Pipe Line Co., LLC*, 128 FERC ¶ 61,111, at P 21 (2009), *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,264, at P 9 (2007) and *Colorado Interstate Gas Co.*, 107 FERC ¶ 61,312, at P 16 (2004).

storage facility.[12] Columbia claims that the proposed purchases and sales of approximately 100,000 Dth/day are the most cost-effective way to reduce the impact to its customers while still maintaining sufficient supply flowing into northern Ohio receipt points. Columbia calculated that the cost-savings associated with the purchases and sales associated with the OTRA mechanism will benefit customers by $3.2 million when compared to the costs incurred over the same five month period last year using third party transportation.[13] All shippers either support or do not oppose Columbia's proposal in the instant filing.

18. Columbia proposes that its transmission function employees who are involved in the operations of the pipeline system be involved in the proposed purchases and sales transactions associated with the OTRA mechanism.[14] Columbia argues that their involvement is necessary in any analysis of bids or offers to ensure that the OTRA mechanism functions appropriately and costs are minimized. Under its proposal, Columbia commits to conduct the proposed transactions in an open and transparent manner.

19. When the Commission created the "incidental sales" exemption to the Standards of Conduct, it relied on commitments that there would be no regular merchant service and characterized the sales as occasional or minimal/insignificant volumes.[15] Moreover, in Order No. 717, when faced with the question of characterizing exchanges of gas for the purpose of reducing transportation costs, the Commission determined that they would not be excluded from the definition of marketing functions.[16] The purpose of the daily

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[12] Columbia Transmittal Letter at p. 3.

[13] Columbia Transmittal Letter at pp. 3,8.

[14] Columbia Transmittal Letter at p. 5.

[15] *See, e.g., Panhandle Eastern Pipe Line Co.*, 62 FERC ¶ 61,288, at 62,864-5 (1993); (for minimal volumes of sales, limited waiver of requirement to comply with Standards of Conduct; if sales are significant in volume or constant in nature must comply with Standards of Conduct); *Midwestern Gas Transmission Co.*, 63 FERC ¶ 61,099, at 61,383-4 (1993) (limited waiver of Standards of Conduct to allow Midwestern to purchase gas and cash out its OBA, manage line pack, and respond to emergencies; Midwestern commitment to make sales of gas on a non-discriminatory basis); *East Tennessee Gas Pipeline Co.,* 63 FERC ¶ 61,102, at 61,578 (1993) (limited waiver of Standards of Conduct to allow East Tennessee to purchase gas and cash out its OBA, manage line pack, and respond to emergencies. East Tennessee committed to make sales of gas on a non-discriminatory basis.).

[16] Standards of Conduct for Transmission Providers, FERC Stats. & Regs. ¶ 31,280, at P 93 (2008) (Order No. 717).

purchases and sales associated with the OTRA mechanism is to reduce costs for Columbia's customers while ensuring sufficient flow into northern Ohio. The volumes proposed by Columbia, approximately 36 Bcf/year, are significant in volume and purchase and sales transactions would take place on a daily basis.

20. Nonetheless, given the unique circumstances, the limited time period and Columbia's commitments to an open and transparent process, the Commission will grant a limited waiver of the independent functioning requirement of section 284.286 to allow Columbia's transmission function employees to make the purchases and sales associated with the OTRA mechanism until March 31, 2014 (the end date for interim mechanism proposed herein). However, this limited waiver will apply only to those transmission employees engaged in activities directly related to purchases and sales for northern Ohio under the OTRA mechanism and such employees may not perform any other marketing function activities. The Commission reminds Columbia that under section 4 of the NGA, Columbia is prohibited from engaging in unduly discriminatory or preferential behavior. In addition, although section 49.1 of Columbia's tariff currently permits it to enter into operational purchases and sales transactions as necessary, according to Columbia's most recent annual report, it made no operational purchases or sales during 2011.[17] Columbia is reminded that all operational sales and purchases must be reported to the Commission annually under section 154.502 of the Commission's regulations and section 49.3 of Columbia's tariff.

21. Columbia also requests that the Commission find that the operational transactions contemplated under the OTRA mechanism do not implicate the Commission's prohibition against buy/sell transactions. In general, a buy/sell transaction is an arrangement whereby a shipper holding interstate pipeline capacity buys gas at the direction of, on behalf of, or directly from another entity, and ships such gas through its interstate pipeline capacity, and then resells an equivalent quantity of gas to the downstream entity at the delivery point.

22. The Commission prohibited such arrangements in Order No. 636 and in companion orders.[18] The Commission explained that it had adopted a nationally uniform

[17] *See, Columbia Gas Transmission, LLC*, Docket No. RP12-390, Annual Report on Operational Transactions, filed on February 21, 2012.

[18] *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. ¶ 30,939, *order on reh'g,* Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).; *El Paso Natural Gas Co.*, 59 FERC ¶ 61,031, *reh'g denied*, 60 FERC ¶ 61,117 (1992) (*El Paso*).

capacity release program in order to provide greater assurance that transfers of capacity from one shipper to another were transparent and not unduly discriminatory. The Commission found that permitting buy/sell arrangements would frustrate this goal, because such arrangements "would provide a major loophole, potentially inviting substantial circumvention of the capacity release mechanism."[19]

23. The operational transactions that Columbia will enter into as part of the OTRA mechanism do not appear to be buy/sell transactions as described above. Accordingly, the Commission finds that the proposed the operational transactions will not implicate the Commission's prohibition against buy/sell transactions.

24. Washington Gas requests that Columbia be directed to share with its shippers the final costs of the program within 15 days of the date that the initial RFP bids are refreshed and that any sales and purchases under the program be reported within 15 days of the receipt of final bids. The Commission will not so condition Columbia's proposal. In the Commission's view it is not clear whether Columbia will know the final costs of the program within the timeline proposed by Washington Gas. However, because the OTRA mechanism will be filed on a semi-annual basis and Columbia has indicated that it will evaluate the costs of other operational solutions on an ongoing basis, the Commission finds that shippers will have ample opportunity to work with Columbia over the term of the mechanism to determine its effectiveness and analyze other alternatives.

The Commission orders:

(A) The proposed tariff records listed in the Appendix are accepted effective June 1, 2012.

(B) As discussed in the body of this order the Commission grants Columbia's request for limited waiver of the independent functioning requirement, for good cause shown.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[19] *El Paso*, 59 FERC at 61,080.

APPENDIX

Columbia Gas Transmission, LLC
FERC NGA Gas Tariff
Baseline Tariffs

List of Proposed Tariff Records to Be Effective June 1, 2012

Currently Effective Rates, FTS Rates, 9.0.0
Currently Effective Rates, FTS-APX Rates, 9.0.0
Currently Effective Rates, NTS and NTS-S Rates, 9.0.0
Currently Effective Rates, ITS Rates, 9.0.0
Currently Effective Rates, GTS Rates, 9.0.0
Currently Effective Rates, OPT Rates, 9.0.0
Currently Effective Rates, TPS Rates, 9.0.0
Currently Effective Rates, SST Rates, 9.0.0
Gen. Terms & Conditions, Discounting, 1.0.0
Gen. Terms & Conditions, Operational Transactions, 1.0.0