

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Columbia Gulf Transmission Company

Docket No. RP96- 389-083

ORDER ON COMPLIANCE FILING

(Issued April 20, 2004)

1. On April 15, 2003, Columbia Gulf Transmission Company (Columbia Gulf) filed revised tariff sheets¹ to comply with the March 26, 2003 Commission Letter Order in Docket No. RP96-389-076. The March 26, 2003 Letter Order conditionally accepted for filing Columbia Gulf's firm transportation service agreement, as amended, with Stone Energy Corporation (Stone) effective December 15, 2001, and Columbia Gulf's proposed tariff sheet listing the Stone agreement as a non-conforming agreement, effective December 15, 2002.² For the reasons discussed below, the Commission conditionally accepts Columbia Gulf's filing, which contains an amendment to the service agreement with Stone and revised tariff sheets, as in compliance with the March 26, 2003 Order. The service agreement amendment is accepted effective December 15, 2001, and the revised tariff sheets are accepted, effective December 15, 2002, subject to the conditions discussed below. This order benefits the public by ensuring that Columbia Gulf's tariff offers to all shippers similarly situated to Stone the same terms and conditions of service included in the transportation agreement between Columbia Gulf and Stone.

¹ Fifth Revised Sheet No. 46, Third Revised Sheet Nos. 47 and 318 to FERC Gas Tariff, Second Revised Volume No. 1.

² 102 FERC ¶ 61,320 (2003).

Background

2. On February 24, 2003, Columbia Gulf filed with the Commission a firm transportation service agreement between Columbia Gulf and Stone along with a revised tariff sheet listing the agreement as non-conforming. The agreement with Stone (Service Agreement No. 71557) provides for 20,000 Dth/d of firm service under Columbia Gulf's Rate Schedule FTS-2 for a three-year term ending December 31, 2004. The agreement provides that Stone will commit production reserves in return for discounted transportation by Columbia Gulf for a three year period at a \$1.363 per Dth reservation charge and a \$ 0.0002 per Dth commodity charge. The agreement also provides that Stone may request an adjustment to the Maximum Daily Quantity (MDQ) level upon completion of the first and second contract years to allow for declining production, and that Columbia Gulf will grant such request. Finally, the agreement provides that, during the three-year commitment, Columbia Gulf will provide primary point service in excess of Stone's transportation demand, up to 75,000 Dth per day, subject to availability, for a discounted rate of \$0.045 per Dth. The February 24, 2003 filing was protested.

3. On March 26, 2003, the Commission issued a letter order accepting the firm transportation service agreement between Columbia Gulf and Stone, subject to conditions. The Commission observed that Columbia Gulf's existing tariff does not provide any firm shippers with the right to adjust transportation demands at predetermined intervals and stated that this right is an essential part of the Stone Agreement. The Commission found that the ability to adjust firm contract demand in response to declining production is a valuable right that, if available to Stone, should also be available to other similarly situated shippers on Columbia Gulf's system. Therefore, the Commission directed Columbia Gulf to either remove this non-conforming provision from the Stone Agreement or, alternately, modify its tariff and pro forma service agreement to provide this right to all similarly situated shippers taking service under Columbia Gulf's firm transportation rate schedules.

4. Further, the Commission addressed a protest of a provision in the Stone agreement that states, "Throughout Stone's three (3) year commitment of production reserves located in South Pass Block 38 for transportation on Columbia Gulf's pipeline system, Columbia Gulf shall provide transportation service under the above-referenced FTS-2 Service Agreement for Stone from the primary receipt point to the primary delivery points (as set forth above) in excess of Stone's transportation demand, up to 75,000 Dth per day and subject to capacity availability on Columbia Gulf's pipeline system, for a discounted rate of \$0.045 per Dth." The protestor was concerned with how this provision interacts with Columbia Gulf's tariff provisions governing scheduling and curtailment.

5. Columbia Gulf filed an answer stating that the intent of this provision was simply to provide overrun service at whatever priority is accorded by its tariff. The Commission found that, as clarified, the subject provision provides for a discounted rate to apply to the first 75,000 Dth/d of overrun service which is a permissible discounted rate provision that does not affect the terms and conditions under which service is provided. However, since the subject contract provision was unclear, the Commission directed Columbia Gulf to file to revise the contract provision in accordance with the clarification in its answer.

Notice

6. Notice of the April 15, 2003 compliance filing was issued on April 18, 2003 providing for the filing of protests in accordance with section 154.210 of the Commission's regulations 18 C.F.R. § 154.210 (2003). Proliance Energy, LLC (Proliance) filed a protest and Indicated Shippers filed comments. On May 8, 2003, Columbia Gulf filed an answer.³ These filings are addressed below.

Compliance Filing

7. Columbia Gulf proposes to revise its tariff to permit shippers taking service under its FTS-2 Rate Schedule to annually request a permanent increase, subject to the availability of capacity, or decrease in their contract maximum daily quantity (MDQ). The shipper requesting a change in MDQ must have committed reserves for transportation by Columbia Gulf for the term of its FTS-2 service agreement with Columbia Gulf. The term of the agreement must be at least three years. The MDQ changes are limited to the primary receipt points associated with the committed reserves. Reductions in the MDQ must be mutually agreed to, based on production and reserve data provided by the shipper upon Columbia Gulf's request. Unless mutually agreed otherwise, any increase in MDQ shall be at the recourse rate.

8. In addition, in compliance with the directive to clarify the service agreement, Columbia Gulf states that it and Stone have agreed to amend their agreement. The amendment modifies the fourth full paragraph of the first amendment to their agreement to add the following sentence. "All transportation service provided by Columbia Gulf in excess of Stone's transportation demand (including the aforementioned 75,000 Dth per day) constitutes FTS-2 overrun service and shall have the priority of service and be

³ While the Commission's Rules of Practice and Procedure generally prohibit answers to protests, the Commission will accept the answer to allow a better understanding of the issues. See 18 C.F.R. §385.213(a)(2) (2003).

allocated as set forth in Columbia Gulf's tariff." The amendment is included as an attachment to the compliance filing and was executed on April 11, 2003.

Discussion

Similarly Situated Shippers

9. In its March 26, 2003 Order, the Commission stated that the ability to adjust firm contract demand in response to declining production was a valuable right that, if available to Stone should also be available to other similarly situated shippers on Columbia Gulf's system. The Commission directed Columbia Gulf to either remove the non-conforming provision from the Stone agreement, or alternatively, modify its tariff and pro forma service agreement to provide this contract reduction right to all similarly situated shippers taking service under Columbia Gulf's firm transportation rate schedules. To comply with the Commission's directives, Columbia Gulf is proposing to add section 2(g) to its FTS-2 Rate Schedule that allows a shipper to request an increase or decrease in the contract's maximum daily quantity. A shipper is eligible to request an increase or decrease in its maximum daily quantity provided the term of its FTS-2 service agreement is at least three years and the shipper has committed reserves for transportation by Columbia Gulf for the term of its agreement.

10. Proliance claims that Columbia Gulf fails to include similar provisions for all firm transportation rate schedules by only modifying the FTS-2 rate schedule. For instance, Proliance states that Columbia Gulf has not proposed to allow shippers under its FTS-1 rate schedule the ability to reduce contract quantities. Proliance contends that all firm transportation customers on the Columbia Gulf system should have the same opportunities as those customers under the FTS-2 rate schedule.

11. In its Answer, Columbia Gulf states that ProLiance, as an FTS-1 shipper is not similarly situated to Stone who is a shipper under the provisions of the FTS-2 rate schedule. It states that Stone is a producer who has dedicated its gas reserves for transportation for the term of the agreement, while Proliance is not directly contracting to transport gas it produced offshore nor has it dedicated its gas reserves for the term of the transportation agreement. Columbia Gulf states that since no production is directly connected to its FTS-1 mainline system, and it does not anticipate that any will be connected in the future, Columbia Gulf does not believe that it makes sense to apply a production area flexibility to its FTS-1 rate schedule.

12. The Commission agrees with Columbia Gulf on this issue. There is no policy requiring pipelines to permit customers to terminate or reduce their contractual obligations before the end of their contract terms.⁴ Columbia Gulf has voluntarily offered to provide contract demand reduction rights in FTS-2 rate schedule contracts with committed reserves for transportation by Columbia Gulf and a term of at least three years. ProLiance has not shown that its transportation agreements are similarly situated to Stone. Neither has ProLiance shown why all shippers transporting gas under Columbia Gulf's firm transportation rate schedules should be allowed to reduce contract quantities. Columbia Gulf may reasonably limit the ability to adjust firm demand to shippers with dedicated reserves in recognition of the fact that their need for service will decline as the production from their reserves declines. Therefore ProLiance is not similarly situated to Stone since ProLiance has not dedicated its gas reserves for transportation.

MDQ Reduction Right

13. Indicated Shippers are concerned that Columbia Gulf's proposed tariff revisions would require mutual agreement between Columbia Gulf and the shipper concerning the level of any annual MDQ reduction, while Columbia Gulf's agreement with Stone provides that Columbia Gulf shall grant Stone's request for a decrease in MDQ. Indicated Shippers request that the Commission direct Columbia Gulf to remove this disparity in reduction rights. In its answer, Columbia Gulf argues that Indicated Shippers' argument is misleading since, before granting Stone the right to MDQ reduction, Columbia Gulf and Stone mutually agreed to the expected reduction and the right to those reductions. Columbia Gulf argues that it would be unreasonable for it to accede to giving control of its capacity to its shippers as Indicated Shippers' proposal would do.

14. The Commission shares Indicated Shippers' concern. As the March 26, 2003 Order stated, the ability to adjust firm contract demand in response to declining production is a valuable right. Providing Stone a unilateral right to reduce contract demand but requiring mutual agreement to contract reduction for similarly situated shippers, is unduly discriminatory. The fact that Columbia Gulf and Stone negotiated this point prior to entering an agreement does not justify the disparity in contract reduction rights. Accordingly, we direct Columbia Gulf to either remove the unilateral aspect of Stone's right to adjust its MDQ from the Stone agreement or modify its tariff

⁴ See ANR Pipeline Company, 99 FERC ¶ 61,310 (2002).

and pro forma service agreement to provide the unilateral right to reduce contract demand to all similarly situated shippers.

Data Requirement

15. Columbia Gulf's proposed revised pro forma FTS-2 Rate Schedule provides that a shipper requesting a reduction in its MDQ shall provide Columbia Gulf a revised production profile and other reserve and deliverability data supporting the request upon Columbia Gulf's request.

16. Indicated Shippers contend that the Stone agreement contains no data requirement such as the data requirement in the proposed FTS-2 Rate Schedule. Indicated Shippers request that the Commission direct Columbia Gulf to modify the Stone agreement to include a comparable requirement or remove the data requirement from the proposed FTS-2 Rate Schedule. In its answer, Columbia Gulf asserts that the data requirement is reasonable because data is only required upon Columbia Gulf's request and will allow Columbia Gulf to assess whether the requested MDQ reduction is needed. Columbia Gulf submits that similar supporting documentation requirements have been included in other companies' tariffs and Columbia Gulf requested and received the same data from Stone when negotiating its MDQ reduction right.

17. We will not require Columbia Gulf to modify the Stone agreement or its proposed FTS-2 Rate Schedule on this point. It is reasonable for Columbia Gulf to review such data before agreeing to a request for a reduction in contract demand. Shippers only have to meet the data requirement upon Columbia Gulf's request. Furthermore, there is no disparity between the treatment received by Stone and the proposed requirement for other shippers. Columbia Gulf has stated that Stone provided such data to Columbia Gulf before the agreement between Columbia Gulf and Stone was executed. However, Columbia Gulf may not exercise its discretion to require data in an unduly discriminatory manner.

Service in Excess of MDQ

18. The Stone Agreement provides that Columbia Gulf will provide primary point service in excess of Stone's transportation demand, up to 75,000 Dth per day, subject to availability, for a discounted rate of \$0.045 per Dth. The Commission, in its March 26, 2003 Order, stated that the provision was unclear and needed to be revised to reflect the clarification Columbia Gulf provided in its Answer. The Commission put Columbia Gulf on notice that it would have to offer all similarly situated shippers the same discount it offered to Stone at the points where Stone receives a discount. In the instant filing, Columbia Gulf filed an amendment to the Stone Agreement to clarify that the

transportation service in excess of Stone's transportation demand volumes constitutes FTS-2 overrun service, which shall have the priority of service as set forth in Columbia Gulf's tariff.

19. Indicated Shippers state that the proposed revisions to Rate Schedule FTS-2 contain no overrun provisions comparable to the Stone Agreement which allows Stone to make daily overruns of up to 75,000 Dth per day. Indicated Shippers contends that Columbia Gulf should be required to permit proportional overruns under Rate Schedule FTS-2 or remove that provision from the Stone Agreement.

20. In its Answer, Columbia Gulf explains that overrun service, subject to availability, is already permitted under its tariff, citing section 6.2(f) of Columbia Gulf's General Terms and Condition. Thus, Stone has no greater or lesser rights than any other shipper requesting overrun service because all shippers, including Indicated Shippers, currently have overrun rights under Columbia Gulf's tariff. Accordingly, we will not grant Indicated Shippers' request.

21. Finally, Indicated Shippers are also concerned that the proposed tariff language only allows for increases in MDQ at the recourse rate. In its Answer, Columbia Gulf asserts that Indicated Shippers suggestion, that increases in MDQ should be at a discounted rate rather than the recourse rate, is fundamentally flawed. Columbia Gulf states that all capacity is offered at the recourse rate unless Columbia Gulf determines that it is appropriate to discount the rate. The Stone Agreement, as clarified in the second amendment, provides that overrun volumes up to 75,000 Dth will be charged a discounted rate of \$0.045 per Dth. Columbia Gulf's tariff currently affords FTS-2 shippers overrun service and also sets forth the priorities of overrun quantities. Columbia Gulf has merely granted Stone a discount on overrun charges on a limited volume of gas. Consistent with Commission policy, if a pipeline does offer a discount at a certain point, it must offer the same discount to similarly situated shippers at that same point. Accordingly, the Commission will deny Indicated Shippers' request that increases in MDQ should be at a discounted rate rather than the recourse rate. Pipelines are not required to offer discounts. Therefore, Columbia Gulf is not required to discount the capacity related to an increase in a shipper's MDQ. However, if Columbia Gulf chooses to offer a discount related to MDQ increases, it must do so on a non-discriminatory basis by offering the same discount related to an MDQ increase to similarly situated shippers at the same point.

The Commission orders:

(A) The "Second Amendment to FTS-2 Service Agreement" dated April 11, 2003 is accepted effective December 15, 2001 and Fifth Revised Sheet No. 46, Third Revised

Sheet Nos. 47 and 318 to Columbia Gulf^o FERC Gas Tariff, Second Revised Volume No. 1, are accepted effective December 15, 2002, subject to the conditions discussed in the body of this order and in Ordering Paragraph (B) below.

(B) Within 15 days of the issuance of this order, Columbia Gulf must make a compliance filing which either amends its pro forma FTS-2 Rate Schedule or revises its agreement with Stone, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.