UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Columbia Gas Transmission Corporation Docket Nos. CP01-70-001 and CP01-70-002

ORDER ON REHEARING AND CLARIFICATION AND
ACCEPTING SERVICE AGREEMENTS WITH CLARIFICATION

(Issued November 21, 2001)

On May 16, 2001, in Docket No. CP01-70-000, the Commission issued an order (Certificate Order)[1] authorizing Columbia Gas Transmission Corporation (Columbia) to perform certain facility enhancements that will allow it to provide firm transportation service to Northeast Ohio Natural Gas Corporation (Northeast Ohio) for redelivery to FirstEnergy Trading Services, Inc. (FirstEnergy Trading).[2] Pursuant to the Policy Statement, in deciding whether to authorize this proposed construction of major new pipeline facilities, the Commission balanced the public benefits against the potential adverse consequences.[3] The applicant explained that the facilities are needed to address the need for deliveries of natural gas supplies to existing and new generation markets to help meet energy requirements of the Northeast. The Commission concluded that Columbia's project can proceed without subsidies or degradation in service to its existing

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[1]Columbia Gas Transmission Corporation, 95 FERC ¶ 61,218 (2001) (Certificate Order).

[2]FirstEnergy Trading and Northeast Ohio are wholly owned subsidiaries of First Energy Corp.

[3]Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999), order clarifying statement of policy, 90 FERC ¶ 61,128 (2000), order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000).

customers and will provide public benefits that outweigh any residual adverse impacts. Accordingly, the Commission found that the construction and operation of Columbia's proposed expansion project is required by the public convenience and necessity.[4]

The Certificate Order also found, among other things, that certain contract provisions included in footnotes were material deviations from Columbia's pro forma contract and must be separately filed as non-conforming contracts. As discussed below, this order denies the requests for rehearing of the Certificate Order and accepts for filing Columbia's 159 service agreements filed pursuant to Section 154.1(d) of the regulations.

I. Background

On January 23, 2001, in Docket No. CP01-70-000, Columbia filed an application for a certificate of public convenience and necessity and abandonment authority that would authorize Columbia to perform certain enhancements which would allow it to provide firm transportation service of up to 140,000 Dth/d to FirstEnergy Trading. The filing was protested by parties including Virginia Power.[5] As part of its protest, Virginia Power asserted that Columbia must obtain from the Commission explicit approval of the minimum pressure reference in the pro forma service agreements underlying the new service to FirstEnergy Trading. Virginia Power, citing the Commission ruling in Williams, asserted that the Commission has determined that a minimum pressure commitment is a non-conforming contract term, or negotiated term and condition of service.[6] Columbia responded to Virginia Powers' assertion and stated that inclusion of such items in footnotes is consistent with Columbia's historic practice and that it has historically not treated these types of provisions as material deviations that would require the contract to be filed as a non-conforming contract under Section 154.1(d) of the regulations.[7]

On May 16, 2001, in Docket No. CP01-70-000, the Commission issued the Certificate Order which, among other things, granted certificate authority for the proposal subject to certain conditions. However, the Commission found fault with the related

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[4]95 FERC at 61,725.

[5]On October 4, 2001, Virginia Power filed a withdrawal of its February 22, 2001 protest and May 30, 2001 request for rehearing.

[6]Williams Gas Pipelines Central, Inc., 92 FERC ¶ 61,063 at 61,184 (2000) (Williams).

[7]18 CFR § 154.1 (d) (2001).

contracts. The Commission noted that the FirstEnergy Trading contracts contained minimum pressure obligations and hourly flow limitations in footnotes to Appendix A, which lists the delivery points under the contracts. Columbia was advised that the contracts were unacceptable and that if Columbia seeks to include these provisions in a service agreement they constitute material deviations and Columbia must file the non-conforming contract for Commission review. Accordingly, the Certificate Order contained the following ordering paragraph:

> (G) The Columbia contracts with FirstEnergy Trading must be revised and filed as non-conforming contracts to be consistent with Columbia's pro forma service agreement, or Columbia may make an appropriate tariff filing to change its pro forma service agreement.

On May 29, 2001, in Docket No. RP01-432-000, in response to ordering paragraph (G), Columbia filed a revised tariff sheet and two FTS Service Agreements for firm transportation service to be provided by Columbia to FirstEnergy Trading. Columbia submitted the service agreements as non-conforming service agreements pursuant to Part 154.1(d) of the Commission's Regulations and in recognition of the Certificate Order because they each included a provision that differs materially from the Form of Service Agreement contained in Columbia's tariff. On June 27, 2001, the Commission issued a letter order accepting and suspending the contracts for one day conditioned upon the Commission's acting on the requests for rehearing in this docket, and on Columbia's demonstrating that the service could not be provided under a generally applicable tariff and providing sufficient information for other shippers to evaluate the operational impact of Columbia's proposed service.[8] On July 12, 2001, Columbia filed a compliance filing to the June 27 order.

In relation to other contracts, the Certificate Order stated:

> Further, based on Columbia's answer, it appears that there may be other currently effective contracts that contain material deviations from the pro forma service agreements that have not been filed under Section 4 of the NGA, which is a violation of section 154.1(d) of the regulations. [fn.27] Columbia is directed to file within 30 days all such non-conforming contracts that are currently in effect.[9]

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[8] 95 FERC ¶ 61,438 (2001).

[9] 95 FERC at 61,731. Footnote 27 stated:

(continued...)

Accordingly, the Certificate Order also contained the following ordering paragraph:

> (I) Columbia is directed to file within 30 days of the issuance of this order all currently effective contracts in which Columbia has included, through footnotes or insertion of other language, conditions that would constitute material deviations from the pro forma service agreement that effect the service provided under its rate schedules.[10]

On June 15 2001, in Docket No. CP01-70-002, Columbia filed 159 service agreements in compliance with ordering paragraph (I) of the Certificate Order.[11]

II. Docket No. CP01-70-001

Timely requests for rehearing and/or clarification of the Certificate Order were filed by: Virginia Power Energy Marketing, Inc. and Virginia Power Services Energy Corp, Inc. (Virginia Power);[12] Cities of Charlottesville and Richmond (Cities); Columbia; ProLiance Energy, LLC (ProLiance); Honeywell International, Inc. (Honeywell); FPL Energy Marcus Hook, L.P. (FPLE Marcus Hook); and, Columbia Gas of Ohio, Inc., Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc.(Columbia Distribution Companies). Requests for rehearing and/or clarification accompanied by motions to intervene out-of-time were filed by: Public Service Electric and Gas Company (PSE&G);

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[9](...continued)
This includes but is not limited to other contracts that include hourly flow restrictions or minimum pressure obligations. To the extent that Columbia has included other conditions that affect the service provided under its rate schedules through footnotes or insertion of other language in the contracts, these also would constitute material deviations.

[10]95 FERC at 61,733.

[11]Columbia filed 159 service agreements (FTS, SST, GTS, and OPT), dating from November, 1993 through March, 2001, that "Columbia does not believe constitute non-conforming service agreements, but that through footnotes or insertion of other language contain operational language that affect the service provided." Columbia's transmittal letter at page 3.

[12]On October 4, 2001, Virginia Power filed a withdrawal of its February 22, 2001 protest and May 30, 2001 request for rehearing.

Commonwealth Atlantic Limited Partnership (Commonwealth Atlantic); North Carolina Natural Gas Corporation (NCNG); and, Baltimore Gas and Electric Company (BG&E).[13] On July 6, 2001, Process Gas Consumers Group (PGC) and United States Gypsum Company (USGC) (collectively, the Industrials) filed comments. Although the regulations anticipate that comments are filed at the same time as interventions, these comments are accepted in order to have a complete record.

A. Requests for rehearing

1. Whether Columbia's tariff permits Columbia to negotiate minimum pressure guarantees.

Section 13 of Columbia's FERC Gas Tariff, General Terms and Conditions (GTC) reads as follows:

> Transporter shall deliver gas at each delivery point to or for the account of Shipper at the pressure which shall be available from time to time in Transporter's pipeline after required measurement, flow control, or regulation; provided, that Transporter, by agreement with Shipper, may establish Transporter's maximum delivery pressure obligation at any point or points. Notwithstanding any such pressure obligation, Transporter may at any time, and from time to time, exceed the maximum pressure obligation. Transporter also may operate its facilities at less than the maximum pressure obligation when Shipper does not require the agreed-upon maximum pressure.

Columbia argues that the negotiated minimum pressure obligations placed in footnotes of its contracts was permitted under the above Section 13 of its GTC. In the Certificate Order, the Commission disagreed, finding that Section 13 deals with negotiation of maximum pressure obligations not minimum pressure obligations. The

[13] In addition, motions to intervene out-of-time were filed by FirstEnergy Services Corp. and United States Gypsum Company. The Commission finds that granting these late motions will not delay, disrupt, or otherwise prejudice this proceeding or place an additional burden on existing parties. Therefore, for good cause shown, these late-filed motions to intervene in this proceeding are granted pursuant to 18 CFR § 385.214(d) (2000).

Commission stated: "The language clearly contemplates that the minimum pressure at the delivery point is the pressure that would be available from the normal operation of Columbia's pipeline."[14]

a. Arguments of parties

All the requests for rehearing argue that the Commission erred when it concluded that Columbia does not have tariff authorization to agree to minimum pressure commitments. They argue that Section 13 of the GTC does permit Columbia to negotiate minimum pressure guarantees even though a reading of this provision, absent a full understanding of its development and application on the Columbia system, could lead to the erroneous conclusion that Section 13 does not. The parties base their arguments on consideration of the historical development of the provision, the mutual understanding of Columbia's customers, and the operational structure of the Columbia system.

Columbia points out that the draft of Section 13 in Columbia's December 30, 1992 compliance filing in Docket No. RS92-5-000, was unacceptable to the Commission because it did not appear to address minimum delivery obligations.[15] Columbia states that additional language was added to Section 13 to make clear that Columbia may operate at a lower pressure when the customer does not require the "maximum" pressure set forth in its SST contract and that Columbia also may exceed the "maximum" pressure from time to time. The Commission approved the revised provision without comment.[16]

Parties uniformly argue that the reference to "maximum delivery pressure obligation" in the tariff refers to the pressure above which Columbia is not willing, from an operational standpoint, to incur a contractual obligation to deliver at any higher pressure to the customer. They argue that shippers generally have no interest in negotiating a maximum pressure or a ceiling that cannot be exceeded. Rather, a shipper's concern is with establishing the minimum level of pressure it can count on receiving on a regular basis. The parties' understanding of the purpose of the language is to establish the pipeline's commitment to provide the amount of pressure required by the customer, in other words the "minimum" pressure that the customer expects. The parties claim that

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[14] 95 FERC at 61,729.

[15] Columbia Gas Transmission Corp., 64 FERC ¶ 61,363 at 63,569 (1993).

[16] Columbia Gas Transmission Corp., 65 FERC ¶ 61,344 at 62,762 (1994).

Columbia and its customers have always viewed the tariff's maximum pressure obligation provisions as minimum pressure commitments to the shippers. Thus, the same agreed-upon pressure is used for both purposes.

Further, parties argue that the interpretation put forth in the Certificate Order could have harmful consequences such as: turning firm service in certain circumstances into interruptible service, requiring the shipper to install its own pressure related facilities, making firm transportation service inferior to SST Service, or interfering with the safety requirements and operational needs of Columbia's shippers.

b. Commission's response

The Commission continues to find that Columbia's tariff and form of service agreement do not clearly provide for the type of minimum pressure guarantee included in the FirstEnergy Trading contract at issue here. The first sentence of Section 13 states that Columbia shall deliver gas at the pressure available in the system "provided that Transporter, by agreement with Shipper, may establish Transporter's maximum delivery pressure obligation at any point or points." (emphasis added) The plain meaning of that language is that parties may agree to the maximum pressure Columbia can be obligated to maintain. Columbia and the other rehearing applicants contend, however, that despite the plain meaning of this language, the next two sentences of Section 13 require that the language be read as permitting the parties to agree to a minimum pressure obligation. However, the fact remains that what the express language of Section 13 authorizes the parties to negotiate is Columbia's maximum delivery pressure, not its minimum delivery pressure obligation. If Columbia intends by this tariff to authorize the negotiation of minimum pressure levels which it is obligated to maintain at all times at a particular delivery point, then it should revise its tariff to clearly authorize such a minimum pressure obligation. The current tariff provision does not clearly do that. Therefore, the Commission reaffirms its determination that the minimum pressure provision in FirstEnergy Trading's contracts are not authorized by the tariff. Moreover, the FTS form of service agreement contains no blank for filling in a minimum pressure obligation.

2. Whether minimum pressure commitments and hourly flow rights in service agreements are material deviations from Columbia's pro forma service agreements.

In the Certificate Order, the Commission noted that the FirstEnergy Trading contracts contain minimum pressure obligations and hourly flow limitations in footnotes to Appendix A, which lists the delivery points under the contracts. The Commission

found that inclusion of such items in footnotes presented material deviations from the pro forma contract that would require the contract to be filed as a non-conforming contract under section 154.1(d) of the regulations.[17]

a. Arguments of parties

Columbia argues that even if its tariff and form of service agreement do not expressly permit the negotiation of minimum pressure obligations, the Commission erred when it concluded that inclusion of minimum pressure commitments and hourly flow rights in service agreements are material deviations from Columbia's pro forma service agreements that require filing with the Commission.[18] Columbia states that it justifiably relied on Order No. 582[19] as support for its assumption that pressure commitments and hourly rights provisions do not constitute material deviations that require approval by the Commission. Columbia argues that Order No. 582 accepts that these provisions are commonly the subject of negotiation between a pipeline and its customers.[20]

Cities states that in Order No. 582, the Commission already held that these types of provisions do not constitute "material deviations" from pro forma service agreements:

> The Commission also agrees that provisions such as those addressing flow rates, pressure obligations, maximum delivery obligations, receipt and delivery points, and term would not normally be expected to be "material" deviations.[21]

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[17]95 FERC at 61,279.

[18]Columbia Distribution Companies made similar arguments.

[19]Filing Requirements for Interstate Natural Gas Companies, Order No. 582, FERC Stats. & Regs., Regulations Preambles [1991-1996] ¶ 31,025 (Order No. 582) (1995), reh'g, FERC Stats. & Regs., Regulations Preambles [1991-1996] ¶ 31,034 (Order No. 582-A) (1996).

[20]Columbia cites to Tennessee gas Pipeline Co., 65 FERC ¶ 61,224, 62,907 (1993), and Northwest Pipeline Co., 85 FERC ¶ 61,032, at 61,105 (1998), where the Commission explained that it has encouraged pipelines to enter into operational balancing agreements that "specify the procedures to be used in resolving imbalances and differences in hourly flows between the parties."

[21]Order No. 582 at 31,385.

Cities points out that in Order No. 582-A, the Commission noted that:

> Columbia requested that the Commission clarify that specifically drafted provisions addressing flow rates, pressure obligations, maximum delivery obligations, term, and other "tariff contemplated" items are not "material" deviations.[22]

Columbia Distribution Companies adds that the nature of Columbia's web-like system, with its thousands of receipt and delivery points, necessitates a significant number of operational understandings, especially minimum pressures, to ensure reliable service to its local distribution company shippers. Columbia Distribution Companies argue that traditionally, Columbia has utilized contract footnotes to collect much of the operational information and the agreements that are specific to individual points, segments, and shippers. Columbia Distribution Companies argue that at no time did the LDCs view these footnotes as creating "material deviations" out of conformance with the service agreements for the associated rate schedule. In fact , Columbia Distribution Companies argue that, these are the services that Columbia Transmission provides pursuant to generally applicable tariffs and rate schedules, and thus, they do not qualify as "non-conforming" agreements.

b. Commission's response

The Commission denies the requests for rehearing on this issue. Below, we first address the issue of what constitutes a material deviation from the form of service agreement and thus must be filed as a nonconforming agreement. We then turn to the issue of what showing a pipeline must make for the Commission to approve a nonconforming agreement.

1. What constitutes a material deviation

Section 4(c) of the Natural Gas Act requires that, under such rules as the Commission may prescribe, pipelines must file not only schedules showing all rates for jurisdictional services, but also must file "all contracts which in any manner affect or relate to such rates, charges, classifications, and services." Order No. 582 adopted Sections 154.1(b) and (d) and 154.110 for the purpose of implementing this requirement. Section 154.1(b) sets forth the general requirement that pipelines must file all contracts related to their services. Section 154.1(d) provides that, for purposes of § 154.1(b), any contract that conforms to the form of service agreement set forth in the pipeline's tariff

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[22]Order No. 582-A at 31,558 n. 6.

pursuant to § 154.110 need not be filed. Section 154.110 requires that pipeline tariffs contain an unexecuted pro forma copy of each form of service agreement. The form of service agreement must:

> refer to the service to be rendered and the applicable rate schedule of the tariff; and, provide spaces for insertion of the name of the customer, effective date, expiration date, and term. Spaces may be provided for the insertion of receipt and delivery points, contract quantity and other specifics of each transaction as appropriate.

Section 154.1(d) provides that any contract which "deviates in any material aspect from the form of service agreement in the tariff" must be filed.

Since these regulations implement the filing requirements of NGA section 4, they must be interpreted in a manner that is consistent with the statute. Section 4 requires the filing of all contracts which "in any manner" affect the services the pipeline provides to its customers. Clearly, this filing requirement applies to all customer service agreements, without exception. Thus, the Commission is only able to exempt the pipeline from filing any customer service agreement, based on a finding that the section 4 filing requirement has already been satisfied by the pipeline's previous filing of the pro forma service agreement. Where a customer service agreement conforms to the pro forma service agreement (and the other provisions of the pipeline's tariff), the Commission's prior review and approval of the pro forma service agreement and the tariff have accomplished the purpose of the NGA section 4 filing requirement. Since the Commission and other interested parties have had an opportunity to determine that the form of service agreement provided for in the tariff is just and reasonable and non-discriminatory, there is no need to review subsequent conforming contracts to determine if they comply with the requirements of the NGA.

However, for this procedure to satisfy the filing requirements of NGA section 4, the customer's service agreement must truly conform to the form of service agreement. There is such conformity where a service agreement contains only the approved language of the form of service agreement, with the blank spaces described in § 154.110 for filling in such information as the name of customer, etc., completed in a manner consistent with the tariff.[23] However, where the service agreement contains a provision not in the

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[23]The Commission has allowed pipelines to include in their tariffs provisions identifying the types of permissible discounts that could be applicable to a shipper's contract, such as a discount based on a shipper's agreement to flow a specified volume.

(continued...)

approved language of the form of service agreement and that provision (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, the Commission cannot be considered to have already reviewed the service agreement when it reviewed the pro forma service agreement. In such case, the contract contains a provision affecting the substantive rights of the parties which the Commission has never seen before. Since NGA section 4 requires the filing of all contracts which affect the pipeline's service "in any manner," the statute requires the filing of such a service agreement.

Consistent with the requirements of NGA section 4, the Commission interprets the provision of § 154.1(d), requiring the filing of any contract which "deviates in any material aspect from the form of service agreement," as follows: A material deviation is any provision of a service agreement which goes beyond the filling in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties. Therefore, § 154.1 requires the filing of any service agreement which contains a material deviation of this type.

Columbia suggests that Order No. 582 permits certain deviations from the form of service agreement which go beyond filling in the spaces or blanks in the form of service agreement. Columbia asserts that such immaterial deviations include minimum pressure provisions and hourly flow provisions. The statement from Order No. 582 relied on by Columbia (quoted above) is immediately followed by the explanation that:

> Such provisions could easily be drafted into the fixed language of the pro forma service agreements or a blank space could be provided for insertion according to the agreement of the parties. Likewise, rates that fall between the maximum and minimum rates would not be considered to be material. In either case, there would be no deviation from the Commission approved pro forma service agreements contract[24]

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[23](...continued)
Once permissible conditions for discounts are listed in the tariff, then such a condition may be included in the rate portion of a customer's service agreement, without constituting material deviation or rendering the service agreement a nonconforming agreement. Transcontinental Gas Pipe Line Corp., 87 FERC ¶ 61,051 (1999). However, § 284.13(b)(1)(viii) and (2)(vi) require that such conditions applicable to any discounted transportation contract be posted on the pipeline's web site.

[24]Id., see also, Williston Basin Interstate Company, 84 FERC ¶ 61,348 at 62,519
(continued...)

This explanation reflects the Commission's belief that the listed provisions, including those addressing flow rate and pressure obligations, would not be material deviations if the form of service agreement is drafted to include provisions concerning such matters with appropriate blanks to be filled in. However, if the pipeline has not drafted its pro forma service agreement to have a blank in which a number can be filled in to address matters such as pressure obligations and hourly flows, then the addition of a footnote or other clause covering such a matter is a material deviation. Any other interpretation of Order No. 582 and §154.1 would violate NGA section 4. Matters such as minimum pressure obligations and hourly flow requirements not only affect the rights of the customer in whose service agreement such a provision might be contained, they also can affect the service provided to other customers. Allowing pipelines to include such provisions in the service agreements of customers without any review by the Commission either as part of the pro forma service agreement or the review of an individual service agreement would be contrary to the NGA section 4 requirement that pipelines file contracts affecting service "in any manner."

Our interpretation of §154.1 is buttressed by the Commission's clarification, on rehearing of Order No. 582, of what the Commission would consider to be a material deviation from the form of service agreement. Order No. 582-A provided the following clarification:

> To illustrate, a pro forma service agreement may contain blanks to be filled in, or ranges for terms of service (such as 950-1100 psi). A contract would be consistent with the tariff if, for example, it was completed by filling in the blanks or included terms that fall within the prescribed ranges. There is no need to burden the pipeline with filing contracts that conform to the pro forma agreement that has been filed and approved by the Commission as part of the tariff. Of course, where a contract conflicts with the tariff, the tariff controls until the contract is filed and accepted by the Commission. Thus, any contract which is not consistent with the pro forma service agreement must be filed with the Commission.[25]

This language clearly contemplates that filling in the blanks in a pro forma service agreement or including terms within prescribed ranges does not constitute a material

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[24](...continued)
(1998).

[25]Order No. 582-A at 31,558.

deviation.[26] However, there is no suggestion that an entirely new provision not contemplated by the form of service agreement or the tariff could be added to the form of service agreement without it constituting a material deviation.

2. Commission review of non-conforming agreements

Once a service agreement has been found to deviate materially from the Form of Service Agreement and the tariff so that it must be filed for Commission review, a further issue arises as to whether the Commission should approve the non-conforming agreement. The Commission finds that material deviations from the Form of Service Agreement fall into two general categories -- those that must be prohibited because they present a significant potential for undue discrimination among shippers and those that can be permitted without substantial risk of undue discrimination.

One category of material deviation that is generally not permitted is negotiated terms and conditions of service. The Commission determined in Order No. 637 not to provide pipelines with the authority to file for pre-approval of the right to negotiate terms and conditions of service with individual customers, because of the risk of undue discrimination among customers. In Order No. 637, the Commission stated that it generally considers negotiated terms and conditions to be related to operational conditions of transportation service.[27] Order No. 637 gave as examples of such conditions, "scheduling, imbalances, or operational obligations such as OFOs."[28] Subsequently, the Commission has held that negotiated terms and conditions of service include any provisions that result in a customer receiving a different quality of service

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[26]Where a form of service agreement does have blanks to fill in such matters as minimum pressure obligations so that such obligations can be negotiated as part of the service agreement, the agreed-upon minimum pressure obligation or other such term would constitute "special details pertaining to a transportation contract" within the meaning of § 284.13(b)(viii) (2001) and thus must be posted in the pipeline's internet web site consistent with that regulation.

[27]By contrast, Order No. 637 stated that negotiated rates, which the Commission does authorize, include non-operational matters such as "the price, the term of service, the receipt and delivery points, and the quantity." Order No. 637, III FERC Stats & Regs. ¶ 31,300 at 31,344.

[28]Id.

than that provided other customers under the pipeline's tariff[29] or that affect the quality of service received by others. An example would be where a pipeline's tariff requires all customers to maintain uniform hourly flows but the pipeline negotiates a special provision allowing one customer to deviate from the tariff's uniform hourly flow requirements. Consistent with Order No. 637, where a material deviation in a non-conforming contract constitutes a negotiated term and condition of service, the Commission would require that the pipeline modify its tariff to offer the negotiated service to all its customers or explain why it can only provide the service to this one customer.[30]

However, not every material deviation from a pro forma Form of Service Agreement entails such a risk of undue discrimination that it cannot be permitted. For example, the Commission has permitted pipelines to negotiate rates that deviate from those that are set forth in the pipeline's generally applicable rate schedules, so long as the shipper continues to have the option of choosing recourse service from the pipeline.[31] In Order No. 637, the Commission stated that permissible "negotiated rate agreements can include the price, the term of service, the receipt and delivery points, and the quantity."[32] However, as the policy statement on alternatives to traditional ratemaking emphasized, "the predicate for permitting a pipeline to charge a negotiated rate is that capacity is available at the recourse rate."[33] Therefore, as discussed further below, a key factor is determining whether to approve a material deviation agreed to as part of a negotiated rate agreement is the extent to which the option of obtaining service at the recourse rate is an adequate alternative.

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[29]See Dominion Transmission, Inc., 93 FERC ¶ 61,177 (2000).

[30]In the Certificate Order, the Commission, citing Williams, stated that "before approving contracts that change the terms and conditions of service, the Commission has also required that the pipeline must demonstrate that the service could not be performed under a generally applicable tariff." 95 FERC at 61,729.

[31]Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 61 Fed. Reg. 4633 (February 7, 1996), 74 FERC ¶ 61,076 (1996).

[32]Order No. 637, III FERC Stats & Regs. ¶ 31,300 at 31,344.

[33]74 FERC at 61,241.

In addition, there are other material deviations that may be negotiated with an individual shipper to address its unique characteristics, without affecting the quality of service received by that shipper or others. For example, the Commission recently approved a provision in a service agreement with a limited partnership that exculpated the individual partners from liability for the actions of the partnership.[34] The partnership agreement required this provision in all material contracts it entered into.

The minimum pressure provisions in the FirstEnergy Trading contracts relate to the operational conditions of transportation service on Columbia and clearly affect the quality of service to be received by FirstEnergy. Therefore, those provisions cannot be negotiated unless Columbia's tariff authorizes such negotiation with all its customers. As discussed above, Columbia's tariff does not authorize the negotiation of minimum pressure provisions; however, Columbia has stated that it intended its tariff to authorize the negotiation of minimum pressure obligations with its customers. Therefore, the FirstEnergy Trading contracts are approved on condition that Columbia revise its tariff to clearly provide for the negotiation of minimum pressure obligations, and complying with the other conditions of the June 27, 2001 letter order.

B. Requests for clarification

FPLE Marcus Hook requests that the Commission clarify that it did not disallow Columbia's minimum pressure obligation in the Certificate Order, but rather ruled that it was simply the form of Columbia's contract that was deficient. FPLE Marcus Hook seeks clarification that the Commission did not intend to reject out of hand the minimum pressure provision at issue in this proceeding. FPLE Marcus Hook states that without adequate gas pressures, the turbines cannot function and will shut down and take themselves off line. FPLE Marcus Hook states that adequate pressure is needed for the turbine's combustion process and to control the generating facility's emissions system.

Should the Commission ultimately determine that guaranteed pressure obligations and hourly flow rights in Columbia's service agreements are material deviations from the pro forma agreements, then Commonwealth Atlantic requests clarification that Columbia may remedy these deficiencies by changing its form of service agreements to include blanks for the guaranteed levels of pressure and the hourly flow right(s). Commonwealth Atlantic requests that the Commission clarify that any such changes to Columbia's pro forma agreements will satisfy the Commission's concerns and, in the interim, the non-conforming contract terms will remain in effect pending Commission approval of the pro forma agreement changes.

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[34] ANR Pipeline Co., 97 FERC ¶ 61,075 (2001).

Nearly all parties requested that, should the Commission determine that it is inappropriate to include operational provisions in footnotes or that any of the existing agreements constitute material deviations or non-conforming service agreements, any action directed not require actual changes to operations under existing contracts.[35] The Industrials and others state that it is imperative that the Commission ensure that existing delivery conditions and other arrangements are not disrupted and that all shippers continue to receive the same degree of system reliability and flexibility that they are receiving today as a result of the existing service agreements between Columbia and its customers.[36] The Industrials state that alteration of those practices could severely restrict deliveries and create situations in which LDCs are unable to accomplish redeliveries to some shippers behind the city-gate. These parties urge that the Commission not take action that would undermine the stability of operational and business relations of the Columbia system.[37]

Cities requests that, since Columbia has included these types of provisions in its service agreements for many years and has not determined with which customers it will so agree based on Columbia's amount of market power regarding that customer, the Commission should permit these provisions to remain effective and should not find that service agreements containing such provision are non-conforming.

NCNG's is a firm shipper on the Columbia system, receiving service under several Rate Schedules (FTS, NTS, SST). NCNG argues that were it not able to rely on this minimum pressure and hourly take entitlement at the delivery point, the value of this service would be materially reduced, and, indeed, could under certain circumstances become worthless. NCNG believes that Columbia should be allowed to add new tariff

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[35]All parties to this proceeding support or do not object to Columbia's practice. Virginia Power withdrew its protest and request for rehearing on October 4, 2001.

[36]In this regard, the Industrials note that Columbia has never called an Operational Flow Order on its system. However, if the Commission subsequently determines that the minimum pressures referred to in the footnotes in the majority of service agreements at issue in this proceeding actually limit Columbia's maximum delivery pressures, Industrials state that existing system reliability and flexibility may be significantly limited in the future.

[37]Although the Industrials understand the Commission's concern regarding the negotiation of terms and conditions of service that might lead to discriminatory treatment among shippers, they do not believe that those same risks are presented in the instant proceeding.

language to provide flexibility so that all existing service agreements may be reformatted to apply this flexibility without requiring them to be individually filed and processed as non-conforming service agreements under Section 154.1(d) of the regulations.

2. Commission response

The effective tariff of a natural gas company is the tariff filed pursuant to the requirements part 154 of the regulations and permitted by the Commission to become effective.[38] A natural gas company must not directly or indirectly, demand, charge, or collect any rate or charge for, or in connection with, the transportation or sale of natural gas subject to the jurisdiction of the Commission, or impose any classifications, practices, rules, or regulations, different from those prescribed in its effective tariff and executed service agreements on file with the Commission, unless otherwise specifically permitted by order of the Commission.[39] All proposed changes in tariffs, contracts, or any part thereof must be filed with the Commission and posted not less than 30 days nor more than 60 days prior to the proposed effective date thereof, unless a waiver of the time periods is granted by the Commission.[40]

The requirement that all nonconforming natural gas company contracts be filed with the Commission guarantees that all shippers receive proper notice of transportation transactions on the company's pipeline. That review did not occur here. By failing to file the subject agreements with the Commission, Columbia violated its tariff and Sections 4(c) and 4(d) of the NGA and the Commission's regulations.

As discussed in the next section, the Commission does find that the subject contracts contain material deviations from the pro forma service agreement. However, there has been no showing or complaint from any of the parties to the 159 contracts that would indicate that the non-conforming contract terms were unjust and unreasonable or that the affected shippers suffered discrimination or any other harm because of these provisions. As explained by various parties to the contracts, these provisions have been part of the working agreement with Columbia for many years. The Commission is convinced that canceling these provisions, now, would cause a significant and potentially harmful impact on the operation of Columbia's entire system. Accordingly, the

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[38] 18 CFR §154.3 (a) (2001).

[39] Id.

[40] 18 CFR § 154.207 (2001).

Commission will permit these provisions to remain effective while requiring that they be refiled and processed as non-conforming service agreements under Section 154.1(d) of the regulations.

III. Docket No. CP01-70-002

As discussed above, the Certificate Order stated that it appeared Columbia may have currently effective contracts that contain material deviations from the pro forma service agreement that had not been filed under NGA section 4 in violation of §154.1(d) of the Commission's regulations. Therefore, the Commission directed Columbia to file "all currently effective contracts in which Columbia has included, through footnotes or insertion of other language, conditions that would constitute material deviations from the pro forma service agreement that affect the service provided under its rate schedules." In compliance with the Certificate Order, Columbia filed 159 service agreements (FTS, SST, GTS, and OPT), dating from November, 1993 through March, 2001, that "Columbia does not believe constitute non-conforming service agreements, but that through footnotes or insertion of other language contain operational language that affect the service provided."[41] The Commission accepts for filing Columbia's 159 service agreements and clarifies that as of the date of this order Columbia must file all future non-conforming service agreements with the Commission prior to placing the agreements into effect.

Columbia's service agreements included in this filing have footnotes addressing operational type issues that may affect service to a shipper, including its obligations to its customers for pressure, hourly flow, and delivery obligations at specific meters. Columbia states that these types of contract provisions represent operational provisions that have historically been provided to all pipeline customers, reflecting a further definition of the parties rights and obligations under the contract. In particular, Columbia's service agreements have footnotes addressing operational type issues that may affect service to a shipper, including its obligations to its customers for pressure, hourly flow, and delivery obligations at specific meters.

Columbia states that the footnotes can be placed into five categories. The first category of footnotes addresses the issue of hourly flow and/or pressure. Columbia states that the Commission has previously recognized that shippers can benefit from pressure and hourly flow commitments made by a pipeline. Columbia states that pressure and hourly flow conditions have been included in traditional LDC contracts. As an example Columbia states that the November 1, 1993 Rate Schedule SST service agreement between Columbia and National Fuel Gas Distribution Corp., provides for a maximum

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[41] Columbia's transmittal letter at page 3.

hourly flow rate and for various pressure commitments. In addition, Columbia states that pressure and hourly flow provisions have been included in service agreements with power generators. For example, Columbia's Rate Schedule OPT service agreement with Virginia Power Services Energy Corp., Inc. dated August 4, 2000 provides that '[t]he maximum hourly delivery rate shall not exceed 1,800 mcf from April 1 through October 31." Also, Columbia's Rate Schedule OPT service agreement with Commonwealth Atlantic Limited Partnership dated April 7, 2000 contains both an hourly flow and pressure provisions. Columbia states that these types of provisions appear in its contracts with a broad spectrum of its customers.

The second category of footnotes addresses the issue of requiring shippers under Rate Schedule FTS service agreements to conform to Maximum Daily Delivery Obligations (MDDOs) contained in the appendix to the Rate Schedule SST service agreements. As described in Section 12.1 of Columbia's General Terms and Conditions MDDOs represent Columbia's maximum obligation to deliver gas at each primary delivery point listed in the shipper's service agreement. Columbia states that as part of the implementation of Order No. 636 services, service agreements for shippers with both Rate Schedules FTS and SST service agreements were structured such that the MDDOs listed in the SST appendix govern both the FTS and SST deliveries.

The third category of footnotes addresses MDDOs, Aggregate Delivery Quantities (ADQs)[42] and/or Design Daily Quantities (DDQ).[43] These provisions define Columbia's

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[42]An ADQ defines Columbia's total firm obligation to deliver gas under a firm transportation service agreement to multiple points or delivery within a defined portion of the system. An ADQ will be equal to or less than the sum of the individual station MDDOs or DDQs under the service agreement that are located within that defined area. An ADQ for a specific area can itself be further limited by a larger ADQ that covers multiple areas. Where applicable, Columbia's pipeline system is designed to serve the ADQ levels on a coincidental design day.

[43]Columbia states that DDQs are similar in concept to MDDOs. For those shippers to whom they apply, DDQs can be invoked to limit Columbia's obligation to deliver gas on a firm basis to a delivery point on a coincidental basis with other delivery points within a defined area, that is the DDQs in a customer's service agreement serve to limit Columbia's total firm obligation to deliver gas simultaneously at each of the meters within a defined pipeline area. As is the case with MDDOs, the individual meter-level DDQs may be rolled up into a combined Aggregate Design Quantity for a defined area of the system. Unless restricted by an Aggregate Design Quantity limitation, as described

(continued...)

obligations to provide service at individual delivery points where multiple primary delivery points are included on a single contract. Columbia states that many of it's LDC customers have a large number of delivery points. The MDDOs specify Columbia's delivery obligation to each point, and are the bases for design of laterals and meter stations. However, many of these customers have MDDOs that add up to far more than their Total Firm Entitlement, and Columbia does not maintain capacity through its pipeline system to serve all of the MDDOs in a particular area simultaneously. Columbia states that the ADQ and DDQ limitations serve to limit Columbia's obligations in this regard and gives the customers the delivery point flexibility that they need, without causing Columbia to overdesign the pipeline system.

The fourth category of footnotes addresses situations where Columbia requires that shippers utilize specific receipt points for gas supply in order for Columbia to meet its firm contractual delivery commitments to shippers in the areas specified by the footnotes. Columbia states that such receipt point supply obligations were implemented and approved as part of the Order No. 636 restructuring of Columbia's service agreement and recognize the fact that Columbia itself purchased gas supplies in the noted areas in order to meet Columbia's obligations to the shippers as a merchant seller of natural gas prior to Order No. 636.

The fifth category of footnotes addresses Columbia's market expansion project in Southeastern Virginia and the VNG expansion project. In those expansions, shippers were required to arrange transportation capacity on Transcontinental Gas Pipeline Corporation (Transco) (to avoid substantial construction costs) from Boswell's Tavern, Virginia to Emporia, Virginia as a condition of their transportation service on Columbia. The footnotes require that shippers both deliver to a specific receipt point and receive gas from Transco at Emporia for ultimate firm delivery by Columbia at the Shipper's primary delivery points.[44]

Interventions and Protests

Intervention and protests to the filing in Docket No. CP01-70-002, were due as provided in section 154.210 of the Commission's regulations. Honeywell International,

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[43](...continued)
above, Columbia's pipeline system will be designed to serve the DDQs expressed in the service agreement.

[44]Columbia Gas Transmission Corporation, 78 FERC ¶ 61,030 (1998) and 86 FERC ¶ 61,215 (1999).

Inc.(Honeywell) and Commonwealth Atlantic Limited Partnership (Commonwealth Atlantic) filed comments supporting Columbia's request to find that the subject contracts which contain minimum pressure commitments constitute conforming contracts which do not require Commission approval. In addition Commonwealth Atlantic requests clarification that Columbia may remedy these deficiencies by changing its form of service agreements to include blanks for (i) guaranteed levels of pressure and (ii) the hourly flow rights. Commonwealth Atlantic also requests that the Commission clarify that any changes to Columbia's pro forma agreements will satisfy the Commission's concerns and, in the interim, the non-conforming contract terms will remain in effect pending Commission approval of the pro forma agreements changes.

Discussion

For the reasons discussed below, the Commission finds that many of the 159 contracts included in Columbia's compliance filing contain material deviations from Columbia's form of service agreement and at least some of those material deviations are negotiated terms and conditions of service. However, the Commission will allow all the contracts included in the compliance filing to remain in effect. In the future, Columbia must file all contracts containing material deviations for approval by the Commission. Alternatively, Columbia can revise its tariff and form of service agreement so that in the future it can enter into these types of provisions without them constituting material deviations or negotiated terms and conditions of service.

The first category of footnotes included in a number of the subject contracts addresses the issue of pressure and/or hourly flow. For example, Service Agreement No. 38034 between Columbia and Baltimore Gas and Electric Co. contains a footnote stating that if a maximum pressure is not specifically stated for a delivery point, then Columbia's pressure obligation shall be as stated in section 13 of the General Terms and Conditions. The appendix to the service agreement listing BG&E's primary delivery points then includes a column listing the "Maximum Pressure Obligation (PSIG)" for various primary delivery points.

As discussed above, Columbia and a number of its customers have informed the Commission that these provisions are intended to set a minimum pressure level that Columbia must maintain at the relevant delivery points. However, Columbia's tariff does not, at present, clearly authorize Columbia to negotiate such minimum pressure commitments. Moreover, the contracts' actual language refers to the pressure obligation as a "maximum" pressure obligation, not a minimum pressure obligation. Since Columbia's tariff does not currently clearly authorize Columbia to negotiate minimum pressure levels, the minimum pressure obligations the parties state they intended to include in the service agreements would materially deviate from the service described in

the tariff. Therefore, Columbia must revise its tariff to clearly carry out its expressed intent to offer agreed-upon minimum pressure obligations as part of the service provided all customers under its rate schedules and revise its form of service agreement to include blanks for listing such obligations, so that such minimum pressure obligations would no longer constitute material deviations from the tariff or the form of service agreement.

The second category of footnotes addresses the issue of requiring shippers under Rate Schedule FTS service agreements to conform to Maximum Daily Delivery Obligations (MDDOs) contained in the appendix to the Rate Schedule SST service agreements. Section 12.1 of Columbia's General Terms and Conditions provides for the MDDOs at each primary delivery point to be set forth in the shipper's service agreement, and the form of service agreement for Rate Schedule FTS service includes a column for MDDOs to be listed. The FTS service agreements in this category include footnotes stating, for example, "All gas shall be delivered at existing points of interconnection within the MDDO's in seller's currently effective SST Service Agreement with Buyer, which for such points set forth are incorporated herein by reference."[45] Columbia states that these contracts were entered into and approved during Columbia's Order No. 636 restructuring proceeding. The Commission finds that these footnotes are not material deviations from the form of service agreement and therefore are acceptable. The tariff provides for shippers to have MDDOs at individual delivery points. In this situation where customers have the same MDDOs under contracts for two different services, incorporating the list of MDDOs from the contract for one service into the contract for the other service by reference is an acceptable means of completing the form of service agreement.

The third category of footnotes addresses MDDOs, Aggregate Delivery Quantities (ADQs) and/or Design Daily Quantities (DDQ). Columbia states that the ADQs and the DDQs define Columbia's obligations to provide service at individual delivery points where multiple primary delivery points are included on a single contract. An example of this type of contract is Service Agreement No. 380905-0002 under which Columbia provides SST service to Baltimore Gas and Electric Company. The Appendix to that contract lists MDDOs for a number of different delivery points in the space provided in the form of service agreement. However, the Appendix also includes a column to list the "Design Daily Quantity" for each of the delivery points, even though the form of service agreement does not include such a column or any reference to DDQs. The service agreement also contains a footnote stating:

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[45]Service Agreement No. 38122 with the City of Richmond.

> Transporter maintains measurement and lateral capacity to meet each MDDO listed above on a noncoincidental basis; however, notwithstanding the MDDOs set forth above, Transporter and Shipper agree that, if Transporter's system's physical constraints require, Transporter can limit Transporter's Delivery Obligation at Measuring stations to be within the Design Daily Quantity (DDQ) levels set forth above. If Transporter determines that such compliance is necessary,. Transporter's Gas Controller will notify shipper's gas controller telephonically. Any MDDOs specified in a separate firm service agreement between Transporter and Shipper shall be additive to the individual MDDOs and DDQs set forth above unless otherwise noted.

We have found no reference to DDQs in Columbia's tariff. Nor does the form of service agreement include any space to list DDQs. Columbia states that one reason the DDQs are necessary is that many shippers have MDDOs that total more than their mainline contract demand. However, section 12.1(b) of Columbia's tariff states that the "sum of the MDDOs at delivery points under Transporter's firm service Rate Schedule shall equal the sum of the Transportation Demands under all of Shipper's firm service Agreements for deliveries."[46] We conclude that the inclusion of DDQs in these service agreements constitutes a material deviation from the tariff and the form of service agreement, since neither the tariff nor the form of service agreement provide for DDQs. Also, DDQs clearly affect the substantive rights of the parties, since they limit the customer right to firm service at what would otherwise be primary delivery points. We also find that the DDQ provisions relate to operational conditions of transportation, since they authorize Columbia to limit service based on "if Transporter's system's physical constraints require" and permit Columbia's Gas controller to notify the shipper that deliveries cannot be made in excess of the DDQs. Therefore, as with the minimum pressure obligations discussed above, Columbia must modify its tariff and form of service agreement to address these problems.

The fourth category of footnotes addresses situations where Columbia requires that shippers utilize specific receipt points for gas supply in order for Columbia to meet its firm contractual delivery commitments to shippers in the areas specified by the footnotes. Columbia states that such receipt point supply obligations were implemented and approved as part of the Order No. 636 restructuring of Columbia's service agreement and

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[46]There is an exception for shippers that previously held service agreements under Columbia's former CDS Rate Schedule. But it is not clear that the customers Columbia states have MDDOs in excess of the mainline contract demands are limited to shippers in this category.

recognize the fact that Columbia itself purchased gas supplies in the noted areas in order to meet Columbia's obligations to the shippers as a merchant seller of natural gas prior to Order No. 636. An example of this type of footnote is in Columbia's SST service agreement No. 38094 with Columbia Gas of Ohio. This service agreement contains a footnote to one of the listed MDDOs stating:

> Deliveries at this station are contingent upon Buyer obtaining gas supplies and arranging for delivery of such gas supplies to this station. Seller's obligation to deliver gas on any day shall be limited to the quantities actually received for buyer's account at this station.

Another example is the following footnote found in Service Agreement 60599 with Aristech Chemical Corporation (Aristech):

> Receipts from Tennessee Gas Pipeline Company at Greenup from Columbia Gas of Ohio must be 60,000 Dth/D in order for [Columbia] to guarantee deliveries.

Again, since the tariff and form of service agreement do not provide for these limitations on Columbia's obligation to make deliveries, these footnotes constitute a material deviation from the tariff and form of service agreement. Moreover, these footnotes could be construed to change the contracted firm service to a semi-firm service, and thus degrade the service that has been contracted for. For example, the footnote in the Aristech agreement implies that if less than 60,000 Dth/D is received from Tennessee then Aristech may not receive service. This type of provision appears to give Columbia a unilateral right to cancel on a daily basis contracted firm service to Aristech and reduces the firm service to a semi-firm service. This type of provision changes the character and quality of service that Columbia must provide under the FTS Rate Schedule. The "semi-firm" service that Columbia provides under this contract is not the firm service that is required by the tariff. If Columbia wants to provide a "semi-firm" service, Columbia must propose a rate schedule with provisions to govern such a service, and the Commission will review such proposed service if a proposal is filed.

However, since these provisions were implemented and approved as part of Columbia's Order No. 636 restructuring, the Commission will not cancel the contracts with these footnotes. However, Columbia must file to propose a separate rate schedule consistent with the above discussion.

The final category of footnotes addresses Columbia's market expansion project in Southeastern Virginia and the VNG expansion project. In those expansions, shippers were required to arrange transportation capacity on Transcontinental Gas Pipeline Corporation (Transco) (to avoid substantial construction costs) from Boswell's Tavern,

Virginia to Emporia, Virginia as a condition of their transportation service on Columbia. The footnotes require that shippers both deliver to a specific receipt point and receive gas from Transco at Emporia for ultimate firm delivery by Columbia at the Shipper's primary delivery points. An example of this type of contract is FTS Service Agreement No. 62076 with International Paper Supply Co. That service agreement contains the following footnote:

> Customer will be required to transport the gas from Boswells Tavern Station Number 833097 in Louisa County, Virginia, to Emporia, MLI number E13, in Greenville County, Virginia, via Transcontinental Gas Pipe Line (Transco) in order to effectuate redelivery by Columbia to the delivery point specified herein. Customer will also be required to nominate at the receipt points into Columbia the quantities to be delivered at the delivery points specified in this agreement plus sufficient quantities for Columbia and Transco retainage.

The Commission approved this arrangement as part of certificating the service to these customers.[47] Accordingly, the Commission will not require any change to these contracts.

Another provision found within the footnotes of this contract that would be considered to be a negotiated term and condition increases BG&E's MDDO at station 8-03241 by 4,500 Dth upon the termination of Columbia's FTS agreement no. 37978 with General Motors and increased by 27,636 Dth upon the termination of Columbia's FTS agreement no. 38446 with Bethlehem Steel. The agreement increasing contract demand at the expiration date of contracts with other parties could affect other customers by giving a preferential right to sign up for service. This type of language in future contracts must be filed with the Commission giving both the Commission and other parties an opportunity to review the agreement and consider whether it is unduly discriminatory.

In review of the Columbia contracts the Commission notes that there are other deficiencies in the contracts that would result in finding the contracts to be material deviations from the pro forma service agreements and/or negotiated terms and conditions. An example of a contract that contains more than one form of material deviation is Columbia's SST service agreement No. 38034 with Baltimore Gas and Electric Co (BG&E).

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[47]Columbia Gas Transmission Corporation, 78 FERC ¶ 61,030 (1998) and 86 FERC ¶ 61,215 (1999).

This contract includes a Section 6 titled "Reduction Rights" that is not found in the other filed contracts. The provisions of this section sets forth BG&E's future reduction rights during the remaining primary term of the service agreement. The provision allows BG&E to reduce its transportation demand (TD) under Columbia's FTS, NTS, and SST Rate Schedule and its maximum daily storage quantity and its storage contract quantity under Columbia's FSS Rate Schedule at specified percentages with a total combined TD reduction not to exceed 45,745 Dth/day during the remaining primary term of the service agreement. The provision also allows BG&E to elect greater reduction rights if the Commission issues a final rule effective after November 1, 1993, requiring pipelines generally to grant reductions which are greater than those outlined in the service agreement. We find that these reduction provisions are also material deviations from the pro forma service agreement since the tariff and the pro forma form of service agreement do not authorize such provisions.

The Commission finds that all the contracts filed in this proceeding, except those in the second category discussed above, are non-conforming contracts that include material deviations from the pro forma service agreement found in Columbia's tariff. However, the Commission will not cancel these contracts. Many of the contracts were previously filed and approved by the Commission. All have been ongoing for some time and have been relied upon by the parties. Morever, no person has requested that the Commission modify or cancel these contracts. However, Columbia is put on notice that before new contracts with such material deviations can be placed into effect in the future, they must be filed and approved by the Commission. Further, Columbia must revise its tariff and form of service agreement consistent with the discussion above so that these provisions do not constitute material deviations or negotiated terms and conditions of service.

The Commission orders:

(A) The requests for rehearing in this docket are denied .

(B) The requests for clarification in this docket are granted or denied as discussed in the body of this order.

(C) The 159 service agreements filed pursuant to Section 154.1(d) of the regulations in Docket No.CP01-70-002, are accepted for filing.

(D) The FirstEnergy contracts are approved subject to the conditions that, within 30 days from the issuance of this order, Columbia must file revised tariff sheets providing for the negotiation of minimum pressure obligations and complying with the other conditions of the June 27, 2001 letter order.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.