

128 FERC ¶ 61,071
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 21, 2009

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP09-397-002

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

Attention: James R. Downs, Director of Regulatory Affairs

Reference: Compliance Filing

Dear Mr. Downs:

1. On April 30, 2009, Columbia Gas Transmission, LLC (Columbia Gas) filed revised tariff sheets¹ in compliance with the Commission's order issued March 31, 2009 in this proceeding.² As discussed below, the referenced tariff sheets are accepted effective April 1, 2009, subject to the condition discussed in the order.
2. On February 26, 2009, Columbia Gas filed revised tariff sheets to adjust its Transportation Cost Rate Adjustment (TCRA) pursuant to section 36 of the General Terms and Conditions (GT&C) of its tariff. Columbia Gas' GT&C section 36 allows for the recovery of costs incurred for the transmission and compression of gas by others, applicable to Operational 858 costs as a transportation cost rate tracker.³

¹ Fourth Revised Sheet Nos. 25, 26, 29 and 30 and Fifth Revised Sheet No. 28 to FERC Gas Tariff, Third Revised Volume No. 1.

² *Columbia Gas Transmission, LLC*, 126 FERC ¶ 61,319 (2009) (March 31, 2009 Order).

³ Operational 858 costs are defined as amounts paid to upstream pipelines for contracts retained as a result of a transporter's Order No. 636 restructuring, or utilized in the transporter's post-restructuring operations.

3. In addition, Columbia Gas included the cost of a 24,600 Dth FT-1 contract on Columbia Gas' affiliate, Millennium Pipeline, LLC (Millennium Capacity) in its TCRA surcharge filing. According to Columbia Gas, the Millennium Capacity: (1) can be used to transport an additional source of gas receipts on its system; (2) can be used to provide flexibility in the use of Columbia Gas' New York storage fields to serve its eastern markets; (3) can be (and has been) used to maintain firm service during *force majeure* events or system outages; (4) will help mitigate the need to limit secondary capacity in this portion of the system; (5) can serve as back-up to historic line A-5 markets if gas supplies at the Ramapo interconnect become disrupted; (6) helps provide additional flexibility to shippers; and (7) allows Columbia Gas' shippers to access points on Millennium's system at a much lower rate.

4. The March 31, 2009 Order accepted and suspended Columbia's proposed TCRA, subject to refund and conditions. Specifically, the Commission directed Columbia Gas to: (1) either offer the Millennium Capacity to Columbia Gas' customers on a primary firm basis; or file a detailed explanation why it should not be subject to such a requirement; and (2) file revised tariff sheets reflecting the removal of the costs resulting from the rupture at Line 1278 from its proposed TCRA surcharges.

5. In its compliance filing, Columbia Gas states that it currently holds 24,600 Dth per day of firm capacity pursuant to a service agreement under Millennium's Rate Schedule FT-1. Columbia Gas estimates that 8,000 Dth of the Millennium Capacity will be needed through March 31, 2010 to ensure system flexibility, particularly during the upcoming peak winter heating season. Columbia Gas avers that this capacity will also allow Columbia Gas to gain invaluable operational experience with the firm capacity over the course of the first full winter season of Millennium's existence. Columbia Gas believes that its proposal to retain 8,000 Dth per day of the FT-1 capacity is prudent, given the relative newness of the Millennium system. Further, Columbia Gas argues that, if the Commission requires Columbia Gas to offer all of the Millennium Capacity to shippers on a primary firm basis, the experience, flexibility and benefits of the Millennium Capacity will be diminished.

6. Columbia Gas also states, in accordance with the March 31, 2009 Order, it will offer and post on the Electronic Bulletin Board (EBB) the remaining 16,600 Dth per day of firm capacity commencing with its next auction. Columbia Gas asserts that this capacity will be available for up to one full year. After the first one-year term, Columbia Gas states it will determine what Millennium Capacity is needed for operational purposes, and then offer any remaining capacity on a primary firm basis, as follows. Columbia Gas states that it will first offer the excess capacity for sale as new capacity to shippers. Columbia Gas also states that, pursuant to section 4.2(h) of the GT&C of its tariff, acceptable bids for newly available capacity have priority over any potential claims for that capacity under the flexible receipt and delivery point authority described at section 11 of its tariff. In addition, Columbia Gas argues that, since it will be evaluating

its operational needs for this capacity on an annual basis, the primary firm capacity will be offered at terms no more than one year.

7. Columbia Gas claims, because it cannot offer shippers primary firm rights to this capacity that are inconsistent with the primary rights set forth in the Millennium contract, this capacity will only be made available on a primary firm basis at the primary points set forth in the Millennium FT-1 service agreement. Since the Millennium FT-1 service agreement provides Columbia Gas with primary receipt point rights at “Millennium Empire-Corning” and primary delivery point rights at “Ramapo,” Columbia Gas argues that it can only offer this capacity on a primary firm basis to shippers with those specific receipt and delivery points listed as primary points in their Columbia Gas transportation service agreements.

8. Columbia Gas states that shippers who do not have Ramapo or Millennium Empire-Corning as primary points in their contracts will only be able to use these points on a secondary basis. Finally, Columbia Gas avers that nominations at any other Millennium points will only be available on a secondary basis and will be subject to the allocation provisions of Columbia Gas’ tariff and Millennium’s ability to accommodate these nominations.

9. Columbia Gas states that after it has auctioned this capacity under section 4.2 of the GT&C of its tariff, Columbia Gas will then evaluate its ability to accommodate point shifts for any of the remaining available Millennium Capacity. However, Columbia Gas states that it will not grant any point shifts: (1) that would require changes to the primary points currently set forth in the Millennium FT-1 service agreement; (2) to shippers with contracts with a remaining term of greater than one year; or (3) that cannot otherwise be supported on a primary firm basis.⁴

10. Finally, Columbia Gas states that it removed the \$951,259.13 emergency transportation costs associated with the rupture on its Line 1278 in compliance with the Commission’s decision in the March 31, 2009 Order. As a result of the recalculation of carrying charges, Columbia Gas states that this amount is less than the approximately \$961,000 of emergency costs set forth in Columbia Gas’ original filing. Overall, the revised TCRA rates provide decreases in the demand rates (as filed February 26, 2009 in Docket No. RP09-397-000), ranging from \$0.008 to \$0.010 per Dth and either no change

⁴ As discussed above, Columbia Gas states that it cannot grant point shifts for contracts with a term longer than one year, since Columbia Gas’ operational need for the capacity will be evaluated on an annual basis.

or decreases in the current commodity rates ranging from 0.00 cents to 0.06 cents per Dth.

11. Public notice of Columbia Gas' compliance filing was issued on May 4, 2009, with comments, interventions and protests due on or before May 12, 2009. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. A joint protest was filed by Stand Energy Corporation (Stand) and United Gypsum Company (USG) (collectively, the Joint Protesters). Columbia Gas filed an answer to the protest. While the Commission's regulations do not permit the filing of answers to protests,⁵ the Commission will accept the answer because it provides additional information which aids in our decision making process.

12. In their protest, the Joint Protesters argue that Columbia Gas still fails to justify the proposed restrictions on access to the Millennium Capacity although the Commission required Columbia Gas to provide such justification in the March 31, 2009 Order. The Joint Protesters assert that, regarding the 16,600 Dth per day of the Millennium Capacity, Columbia Gas' proposals to limit primary-point access to one-year, annually auctioned transactions and to exclude shippers with contracts whose remaining term exceeds one year are inconsistent with Columbia Gas' tariff and the Commission's regulations. The Joint Protesters contend that one-year limitations on contracts undermine the quality of firm service because, in effect, service would be subject to annual interruptions. The Joint Protesters also aver that limited term service would discriminate against long-term shippers. Further, the Joint Protesters argue that, in the case of shippers that seek to switch a primary point, limiting their ability to switch to one-year increments would place these shippers at risk of having no primary point to go back to.

13. The Joint Protesters assert that, if the Commission were to permit Columbia Gas to limit the term of the contracts involving the 16,600 Dth per day of Millennium Capacity in order to gain experience, the Commission should require Columbia Gas to come back in early 2010 to report on its experience. The Joint Protesters further state that Columbia Gas should also be required to justify the continued implementation of such restrictions on shippers.

14. In its answer, Columbia Gas states the Commission should reject the Joint Protesters' argument that Columbia Gas should not be allowed to evaluate its operational

⁵ 18 C.F.R. § 385.213 (2008).

need for Millennium Capacity on an annual basis. Columbia Gas contends that some of this retained capacity is needed to maintain historic system flexibility on this section of Columbia Gas' system. Columbia Gas also states that it must be afforded the right to evaluate its need for this capacity on an annual basis as its operational needs might change. Otherwise, Columbia Gas contends that the TCRA surcharge may increase if it is required to contract for additional capacity to meet its operational needs.

15. Columbia Gas argues that it has made every effort to maximize the amount of Millennium Capacity that can be made available to shippers on a primary firm basis. Columbia Gas asserts that, given that Millennium has yet to be in service for a full winter heating season, retaining 8,000 Dth per day in order to accommodate the total firm and no-notice loads for Columbia Gas' historic Line A-5 customers is justifiable and prudent. Columbia Gas states that the amount of capacity it is retaining for operational use is less than 4 percent of Columbia Gas' total firm obligations of 206,138 Dth on Line A-5. Further, Columbia Gas states that it is difficult to forecast the operational needs without real experience on Millennium and thus an additional year of operational experience will allow Columbia Gas to more precisely determine how much of the Millennium Capacity it will need to service its historic Line A-5 customers. Nevertheless, Columbia Gas agrees to reevaluate its need for the Millennium Capacity after the upcoming winter season and update that quantity in both next year's TCRA filing and in an EBB posting for its customers to review.

16. Columbia Gas asserts that Joint Protesters' allegation that the one-year limitation will limit gas supply options is unfounded and should be rejected. Columbia Gas contends that one-year contracts are quite common, and there is no evidence to support the assertion that these contracts affect the availability of gas supply. Columbia Gas also argues that, if the Joint Protesters need contracts with a longer term, there is no limitation on their ability to contract for capacity directly from Millennium. Moreover, Columbia Gas states that the results of its auction of the Millennium Capacity contradicts the assertion that the value of the Millennium Capacity has been undermined, as the full 16,600 Dth per day has been sold.

17. Finally, Columbia Gas asserts that gaining experience with Millennium Capacity is vital because once this capacity is sold as primary firm capacity, it can no longer be used by Columbia Gas for the beneficial operational reasons articulated previously in this proceeding. In addition, Columbia Gas argues that if it later requires more of the Millennium Capacity than it has retained for operational reasons, there is no guarantee that capacity will still be available. Therefore, Columbia Gas states the Commission should accept Columbia Gas' proposal subject to the requirement that Columbia Gas report on the continuing need for the term limitation on Millennium Capacity after the next winter heating season.

18. The Commission finds that Columbia Gas has supported its proposal. Columbia Gas can only offer service that it knows it can provide. The concept is similar to what Columbia Gas would do if it offered its excess FT-1 firm capacity under Millennium's capacity release procedures: Columbia Gas could only offer for release capacity for which it has firm rights, but Millennium's tariff permits firm transportation customers the opportunity to request secondary points. Therefore, that is a FT-1 right Columbia Gas also has with Millennium, and must offer its customers under its own tariff when it offers this capacity as part of available Columbia Gas capacity.

19. Columbia Gas also notes that, if its customers wish additional firm service similar to that which Columbia Gas acquired from Millennium, they can request such service from Millennium.⁶ This fact indicates that those requiring firm capacity in the region have access to alternatives and are not limited to just Columbia Gas.

20. The Commission accepts the tariff sheets referenced in footnote no. 1 to be effective April 1, 2009, subject to Columbia Gas including a report on the continuing need for the term limitation as well as updating the quantity of Millennium Capacity available on a primary firm basis in next year's annual TCRA filing and in an EBB posting for its customers to review.

21. Joint Protesters raise an additional argument which was not the subject of the original tariff filing or mentioned by Columbia Gas in its compliance filing. Specifically, Joint Protesters state that on March 4, 2009 and again on April 6, 2009, USG submitted a formal request to shift its primary receipt point (for 3,500 Dth per day of firm capacity along the former A-5 Line) from Milford to Millennium Empire-Corning, which is the primary receipt point for the FT-1 capacity reserved by Columbia Gas on Millennium. Joint Protesters argue that Columbia Gas improperly rejected both valid requests for a new primary point despite the availability of the Millennium FT-1 Capacity and the fact that it had been generally offered via Columbia Gas' attempted release of that capacity. Joint Protesters state Columbia Gas has reposted the 16,600 Dth of capacity for sale to others (who will be given priority over USG) after rejecting USG's requests to change its primary receipt point. Joint Protesters argue that, while Columbia Gas' tariff permits it to post capacity in an auction before allowing existing customers to switch primary points, Columbia Gas had already offered to release the capacity and had gotten no takers. Joint

⁶ The Commission notes that Millennium is under-subscribed: *see Millennium Pipeline Co., LLC, et. al*, 117 FERC ¶ 61,319, at P 30 (2006); *see also Millennium Pipeline Co., LLC*, Docket No. RP09-633-000 filed May 29, 2009, transmittal letter at p. 4.

Protesters aver that this action was discriminatory and violated Columbia Gas' duty to accept USG's valid requests to change its primary receipt point.

22. Joint Protesters assert, even if Columbia Gas were to sell the 16,600 Dth to another shipper under its yearly-release concept, 8,000 Dth per day would still be available for Columbia Gas' use under its proposed operational flexibility plan. Joint Protesters claim that Columbia Gas would still have the 8,000 Dth, but USG would merely take natural gas delivery from a different point on the system. Indeed, Joint Protesters argue there is no evidence that Columbia Gas' flexibility would be diminished by allowing USG to change receipt points for 3,500 Dth, particularly since Columbia Gas would retain access, at a minimum, to the points it had on the A-5 line. Therefore, Joint Protesters state that Columbia Gas should be required to honor USG's request to change its primary receipt point even if the Commission accepts Columbia Gas' proposal.

23. In its answer, Columbia Gas states that the above argument should be rejected. Columbia Gas argues that section 4.2(h) of the GT&C of its tariff is clear: acceptable bids for available capacity have priority "over any potential claims for that capacity under the flexibility receipt and delivery point authority" set forth in section 11 of the GT&C of its tariff. Columbia Gas maintains that it properly complied with the Commission's directive to offer this capacity to shippers on a primary firm basis by holding an auction for the capacity. Columbia Gas avers that offering the capacity in this manner is consistent with the Commission's policy that capacity should be awarded to the shipper that values it the most.⁷ Columbia Gas avers that granting USG preferential access to this capacity through a point shift request would be inconsistent with both Columbia Gas' tariff and Commission policy. Finally, Columbia Gas states that all of the available 16,600 Dth of available Millennium Capacity has been sold.

24. Further, Columbia Gas states that the Commission should also reject USG's argument that the point shift request should be granted on the basis of the 8,000 Dth of the Millennium Capacity that Columbia Gas has retained for operational purposes. Columbia Gas notes that, section 11 of the GT&C of its tariff states that Columbia Gas is only required to grant point shifts if Columbia Gas, "in its reasonable discretion, determines that sufficient capacity exists in its existing facilities to accommodate the proposed changes in primary receipt or delivery points." Columbia Gas states that in its reasonable discretion, it has determined that 8,000 Dth per day of the Millennium Capacity is necessary for operational purposes. Accordingly, Columbia Gas states that

⁷ *Citing, Saltville Gas Storage Co., L.L.C.*, 124 FERC ¶ 61,209, at P 2 (2008) (noting "the Commission's goal of ensuring that capacity is allocated according to its value to shippers in the marketplace").

there is not sufficient capacity available to accommodate the proposed change in USG's receipt point. To the contrary, Columbia Gas asserts that granting the point shift request could degrade service to existing shippers, contrary to Commission policy and Columbia Gas' tariff.

25. Columbia Gas states that it should have the right to retain the requested 8,000 Dth per day of Millennium Capacity for operational use that will benefit shippers, particularly Columbia Gas' historic Line A-5 shippers. Columbia Gas asserts that if the operational need for this capacity is reduced in subsequent years, it will make any additional Millennium Capacity available to shippers on a primary firm basis.

26. The Commission rejects the Joint Protesters' allegation that Columbia Gas is not in conformance with the terms of its tariff as outside the scope of this compliance filing or any issue related to Columbia Gas' TCRA proposal. The Commission has procedures and filing requirements for those that wish to file complaints against a regulated entity.⁸ Further, we agree with Columbia Gas' explanation above. Columbia Gas' tariff reflects a preference for the generation of incremental revenue from the sale of available capacity over permitting existing shippers who wish to redefine their service at no cost to themselves. This is consistent with industry practice.⁹

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁸ 18 C.F.R. § 385.206 (2008).

⁹ *Algonquin Gas Transmission, LLC*, 120 FERC ¶ 61,072, at P 49-52 (2007); *Tennessee Gas Pipeline Company*, 108 FERC ¶ 61,177 (2004); *Great Lakes Gas Transmission Limited Partnership*, 103 FERC ¶ 61,133, at P 30 (2003); *Southern Natural Gas Company*, 96 FERC ¶ 61,008 (2001)).