

137 FERC ¶ 61,092  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

October 31, 2011

In Reply Refer To:  
Columbia Gas Transmission, LLC  
Docket No. RP11-2568-000

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

Attention: James R. Downs, Vice President, Rates & Regulatory Affairs

Reference: Negotiated Rate Agreement with South Jersey Gas

Dear Mr. Downs:

1. On September 15, 2011, Columbia Gas Transmission, LLC, (Columbia Gas) filed revised tariff records<sup>1</sup> to add to its tariff a negotiated rate agreement between Columbia Gas and South Jersey Gas Company (South Jersey Gas). Columbia Gas also proposes to add the contract to the list of non-conforming agreements in its tariff. For the reasons explained below, we accept the revised tariff records to become effective November 1, 2011, as proposed, subject to conditions as set forth below.
2. Columbia Gas' negotiated rate agreement with South Jersey Gas is for service under Rate Schedule FTS. Under the agreement, South Jersey Gas agrees to pay a negotiated rate of \$6.23 per Dth per month for service, and a negotiated overrun rate of \$0.00 for up to 1,000 Dth/day of overrun service. For quantities in excess of that overrun limit, South Jersey Gas will pay the maximum applicable recourse rate, and also all other applicable reservation and usage surcharges, overrun charges, and retainage charges set forth under Columbia Gas' FERC Gas Tariff. Service under the agreement commences on November 1, 2011, and runs through October 31, 2012.

---

<sup>1</sup> See Appendix.

3. In addition, Columbia Gas states the *Negotiated Rate Policy Statement* requires that pipelines provide a detailed narrative outlining the terms of its negotiated rate contract, the manner in which such terms differ from its form of service agreement, the effect of such terms on the parties and why such deviation is not discriminatory.<sup>2</sup> Columbia Gas identifies the following provision in the agreement as non-conforming:

Section 2. Term. Service under this Agreement shall commence as of November 1, 2011 and shall continue in full force and effect until October 31, 2012. Notwithstanding the foregoing and pursuant to Section 4.1(b)(2) of the General Terms and Conditions of Transporter's Tariff, if sufficient capacity becomes available, prior to the expiration of the term if this Agreement, to increase Shipper's Transportation Demand to 10,000 Dth/day, the term of this Agreement shall be automatically extended through October 31, 2021. Pre-granted abandonment shall apply upon termination of this Agreement, subject to any right of first refusal Shipper may have under the Commission's regulations and Transporter's Tariff.<sup>3</sup>

4. Public notice of the filing was issued on September 19, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2011)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time 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. No protests or adverse comments were filed.

5. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.<sup>4</sup> Moreover, if a negotiated rate agreement includes material deviations from the form of service agreement,<sup>5</sup> the *Negotiated Rate Policy Statement* requires that the pipeline clearly delineate differences between its negotiated contractual terms and that of its form of service agreement in redline/strikeout and provide a detailed narrative outlining the terms

---

<sup>2</sup> Columbia Gas, Tariff Filing at 2 (citing *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 33 (2003) (*Negotiated Rate Policy Statement*)).

<sup>3</sup> Columbia Gas, Tariff Filing at 2 (emphasis in original).

<sup>4</sup> 18 C.F.R. § 154.1(d) (2011)

<sup>5</sup> See *Negotiated Rate Policy Statement*, 104 FERC ¶ 61,134 at P 33.

of its negotiated rate contract, the manner in which such terms differ from its form of service agreement, the effect of such terms on the rights of the parties, and why such deviation does not present a risk of undue discrimination.<sup>6</sup>

6. In *Columbia Gas*, the Commission clarified that a material deviation is any provision in a service agreement that: (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties.<sup>7</sup> However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.<sup>8</sup> Therefore, there are two general categories of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination.<sup>9</sup>

7. In this case, the Commission finds that the provision in the negotiated rate agreement allowing South Jersey Gas to increase its assigned capacity under certain conditions by an additional 10,000 DTh/day of capacity and extend the term of the agreement may represent an impermissible material deviation from Columbia Gas' *pro forma* service agreement for two reasons. First, it appears to give South Jersey Gas a right to increase contract demand (CD) outside of the posting and bidding procedures set forth in Columbia Gas' General Terms and Conditions (GT&C). The Commission has held that provisions giving a shipper a special right to increase its contract demand outside the ordinary procedures in the pipeline's tariff are unduly discriminatory and thus impermissible,<sup>10</sup> except in limited situations involving the construction of new pipeline infrastructure.<sup>11</sup> Second, the provision appears to give South Jersey Gas a right to extend the term of the agreement outside of what is provided for in Columbia Gas' GT&C. The Commission has held that contract extension provisions present too much potential for undue discrimination unless offered in the pipeline's tariff pursuant to generally

---

<sup>6</sup> *Id.*; see also *East Tennessee Natural Gas Co.*, 105 FERC ¶ 61,162, at P 16 (2003).

<sup>7</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,004 (2001) (*Columbia Gas*).

<sup>8</sup> *Id.*

<sup>9</sup> 18 C.F.R. § 154.112(b) (2010)

<sup>10</sup> *East Tennessee Natural Gas Co.*, 109 FERC ¶ 61,232, at P 29 (2004).

<sup>11</sup> *Rockies Express Pipeline, LLC*, 116 FERC ¶ 61,272, at P 76-78 (2006).

applicable provisions.<sup>12</sup> While Columbia Gas acknowledges in its transmittal letter that the Commission's policy on filing non-conforming agreements requires a pipeline to provide "a detailed narrative outlining why . . . such deviation does not present a risk for undue discrimination."<sup>13</sup> Columbia Gas has provided only the text of the non-conforming provision without any discussion as to why the provision is not discriminatory. Thus, Columbia Gas has provided no explanation of how the provision is consistent with the above described policies concerning material deviations permitting a shipper to increase its contract demand or extend the term of its contract.

8. Therefore, we accept Columbia Gas' non-conforming agreement with South Jersey Gas subject to conditions. Specifically, with regard to the provision that would allow South Jersey Gas the right to increase its CD by 10,000 Dt/day under certain conditions, we direct Columbia Gas to either: (1) show that the provision does not give South Jersey Gas a right to increase its CD outside the posting and bidding provisions set forth in Columbia Gas General Terms and Conditions; (2) provide some other explanation as to how the provision is not discriminatory; or (3) remove the provision from its agreement. With regard to the contract extension portion of the provision, we direct Columbia Gas to either: (1) remove the contract extension provision; (2) offer the provision to all shippers in a non-discriminatory manner through a generally applicable tariff provision; or (3) explain why the provision is not discriminatory. We direct Columbia Gas to comply with the conditions set forth above within 21 days of the date this order issues.

By direction of the Commission. Commissioner Spitzer is not participating.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>12</sup> *Saltville Gas Storage Co.*, 110 FERC ¶ 61,324, at P 16 (2005). *Northern Natural Gas Company*, 113 FERC ¶ 61,032, at P 11 (2005).

<sup>13</sup> Transmittal letter at 2, *quoting Negotiated Rate Policy Statement*, 104 FERC ¶ 61,135 at P 33.

## **Appendix**

Columbia Gas Transmission, LLC  
Baseline Tariffs  
FERC NGA Gas Tariff

Service Agreement Forms, Non-Conforming Service Agreements, 9.0.0  
Table of Contents, 3.0.0  
Non-Conforming Svc Agmts, Section 2.6 South Jersey Gas Co. Contract No. 28769,  
0.0.0