

140 FERC ¶ 61,023
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 13, 2012

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP12-800-000

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 and Request for Waiver

Dear Mr. Downs:

1. On June 13, 2012, Columbia Gas Transmission, LLC (Columbia) filed tariff records¹ to: (1) list a negotiated rate agreement with Berry Energy, Inc. (Berry); (2) modify its list of non-conforming agreements; and (3) reserve Part X of its tariff for future use. In addition, Columbia requests waiver of sections 284.8(b)(2) and 284.8(e) of the Commission's regulations to allow a negotiated rate service agreement to be permanently released to a pre-arranged shipper, at a negotiated rate above Columbia's maximum rate.² As discussed below, for good cause shown, the Commission grants the

¹ Columbia Gas Transmission, LLC, FERC NGA Gas Tariff, Baseline Tariffs, [Service Agreement Forms, Non-Conforming Service Agreements, 10.0.0](#), [Section X, Reserved for Future Use, 1.0.0](#), [Table of Contents, , 10.0.0](#), [Negotiate Rate Agreements, Service Agreement No. 10232 - Berry Energy, Inc, 0.0.0](#).

² 18 C.F.R. §§ 284.8(b)(2), 284.8(e) (2012).

requested waiver of its regulations. In addition, the Commission accepts the tariff records filed herein to be effective June 15, 2012, as proposed.

2. Columbia states that it currently has a non-conforming negotiated rate agreement with Sutton's Exploration and Production Company (Sutton).³ Columbia states that Sutton requested that Columbia facilitate Sutton's permanent release of its capacity under its non-conforming negotiated rate agreement to Berry at the negotiated rate of \$17.9458 per Dth per month. Columbia states that the negotiated rate in the Sutton agreement is \$0.59 per Dth per day, which is the daily equivalent of the rate Sutton has negotiated with Berry. Columbia acknowledges that this negotiated rate is above Columbia's existing maximum recourse rate for the applicable service. The primary term of the Berry agreement continues in effect until March 31, 2020, which coincides with the primary term of the Sutton agreement.

3. Because this negotiated rate is above Columbia's maximum rate, Columbia also requests waiver of the Commission's capacity release regulations in order to permit a permanent capacity release transaction to occur. Specifically, Columbia requests waiver of sections 284.8(b)(2) and 284.8(e) of the Commission's regulations to allow a negotiated rate service agreement to be permanently released to a pre-arranged shipper, at a negotiated rate that is in excess of the maximum tariff rate. Columbia requests the Commission grant any additional waivers necessary to allow the permanent release of capacity from Sutton to Berry to become effective June 15, 2012, which is the date requested by Sutton and Berry.

4. Columbia states that on March 28, 2012, the Commission, in an unpublished letter order, accepted Columbia's request to relocate its negotiated rate service agreement tariff records from Volume 1 to Volume 1.1. Accordingly, in order to improve the clarity of its tariff, Columbia requests that Section X of Volume 1 "Negotiated Rate Agreements" be renamed "Reserved for Future Use."

5. Public notice of the filing was issued on June 14, 2012. Interventions and protests were due on or before June 25, 2012, as provided by the notice. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding

³ Columbia states that its agreement with Sutton contains two non-conforming provisions (the incorporation of a credit annex and the right to adjust a negotiated rate) that were approved by the Commission.

or place additional burdens on existing parties. No protests or adverse comments were filed.

6. The Commission requires that a pipeline allow a permanent capacity release, where the pipeline will be financially indifferent to the release.⁴ Where, as here, the releasing shipper is paying a negotiated rate in excess of the maximum rate, waiver of the maximum rate cap is necessary to render the pipeline financially indifferent to the release and is also necessary to ensure that permanent releases of capacity are not unnecessarily inhibited.⁵ The Commission finds that here, where Sutton proposes to permanently release long term capacity to a replacement shipper found acceptable by Columbia and willing to pay the same negotiated rate as Sutton, waiver of the applicable maximum rate cap is appropriate. First, all parties (releasing shipper, replacement shipper and pipeline) agree to the transaction. Second, no other shipper has protested that Sutton's choice of Berry as its replacement shipper was unduly discriminatory. Third, there is no reason to post this release to permit third parties to submit higher bids, because the Commission will not waive the applicable maximum rate cap to permit a release at a rate in excess of the negotiated rate the releasing shipper is currently paying. The Commission will only waive the maximum rate cap to render the pipeline economically indifferent to the permanent release, and to avoid inhibiting the permanent release of the capacity.

7. In the instant filing, Columbia has requested waiver of all Commission regulations that are deemed necessary to permit the subject capacity release to occur. Accordingly, for good cause shown, the Commission grants the requested waiver of section 284.8(b)(2) of the Commission's regulations in order to permit the instant permanent release to take place at the same negotiated rate as Sutton is currently paying, and of section 284.8(e), which would otherwise require posting of the agreement for competitive bidding.⁶

8. Lastly, Columbia states that the Berry agreement does not contain the two non-conforming provisions that were part of the Sutton agreement, and Columbia submitted

⁴ *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,311-12 (1992); *Texas Eastern Transmission Corp.*, 83 FERC ¶ 61,092 (1998); *Midcontinent Express Pipeline LLC*; *Enogex Inc.*, 124 FERC ¶ 61,089, at P 123 (2008).

⁵ *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086, at P 7 (2009).

⁶ *See Transcontinental Gas Pipe Line Corp.*, 134 FERC ¶ 61,184 (2011); *Salmon Resources, LTD and ShellEnergy North America (US), L.P.*, 138 FERC ¶ 61,059 (2012).

revised tariff records to reflect the removal of the Sutton agreement from the list of non-conforming agreements. The Commission accepts the revised tariff records as proposed to be effective June 15, 2012.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.