

148 FERC ¶ 61,218
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Columbia Gas Transmission, LLC

Docket No. RP14-1193-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS
SUBJECT TO CONDITIONS

(Issued September 19, 2014)

1. On August 20, 2014, Columbia Gas Transmission, LLC (Columbia) filed tariff records¹ to revise section 4 (Availability of Capacity for Firm Services) of the General Terms and Conditions (GT&C) of its tariff to modify the manner in which it markets available capacity. Columbia proposes a September 20, 2014 effective date for its filing. As discussed below, the Commission accepts and suspends the proposed tariff records to become effective, subject to conditions, the earlier of February 20, 2015, or further order of the Commission.

Background

2. Columbia states that the majority of the provisions related to sales of capacity in its tariff have not been updated since Columbia's Order No. 636 restructuring proceeding in 1993. Columbia proposes to update these provisions consistent with changes in market demands and Commission policy since that time, and asserts that such modernization of its tariff will allow it to transparently sell capacity to the shippers who value it most.

¹ Columbia Gas Transmission, LLC, FERC NGA Gas Tariff, Baseline Tariffs, Gen. Terms & Conditions, Requests for Service, 1.0.0, Gen. Terms & Conditions, Availability of Capacity for Firm Services, 4.0.0, Service Agreement Forms, Appendix B for FTS, NTS, NTS-S, TPS and SST, 2.0.0 and Service Agreement Forms, Appendix B for FSS, 0.0.0.

3. Specifically, Columbia proposes to revise section 4 of its GT&C to remove the current requirement that it auction all available capacity, and to: (1) provide that newly available capacity may be awarded on either a first-come, first-served basis or through an open season; (2) expand the criteria Columbia may consider when calculating Net Present Value (NPV) and allow Columbia to aggregate bids for purposes of its NPV calculation; (3) clarify posting procedures for existing firm capacity, and; (4) permit it to enter into service agreements that allow the shipper to reduce its contract quantity (Capacity Reduction Option). Finally, Columbia states it is reorganizing section 4 so that related provisions can be more easily identified.

Posting of Available Capacity

4. Columbia proposes in revised GT&C section 4.3(a) to provide that when capacity becomes available on its system, Columbia shall post the capacity as unsubscribed capacity on its EBB. Additionally, Columbia proposes that it may also be permitted to post the unsubscribed capacity on its EBB in an open season pursuant to the open season procedures set forth in sections 4.3 and 4.4.

5. Columbia states that while it proposes to sell capacity through open seasons, the flexibility to sell capacity on a first come first served basis is important on systems like Columbia's because its thousands of possible receipt and delivery point combinations make it infeasible to hold an open season for capacity based on every specific receipt and delivery point. Columbia states that fulfilling capacity requests for unsubscribed capacity posted as generally available will allow shippers to request service at specific receipt and delivery points that may not have specifically been posted, but for which Columbia has capacity available, without delaying that shipper's access to that capacity by having to go through an open season. Columbia affirms that it will award all capacity, whether through an open season or by fulfilling capacity requests, on a not unduly discriminatory basis.

Expanded NPV Criteria

6. Columbia proposes to revise section 4.2(c) of its GT&C (which will now be found in section 4.4 of its GT&C), to consider additional criteria for determining the NPV of a bid. Columbia states that these criteria include, but are not limited to: volume, term, service commencement date, rate and cost of facilities required by Columbia to provide service. Columbia also proposes to consider bid aggregation, and bidding on multiple parcels of capacity to be used for the purposes of calculating NPV. Columbia states that currently its tariff only authorizes Columbia to consider price and term in the calculation of NPV, and asserts that this limitation keeps it from assessing the true value of capacity. Accordingly, Columbia proposes to revise its criteria for determining NPV to better

allocate capacity to the shipper that values it the most based on a more comprehensive set of evaluation criteria consistent with NPV calculations approved for other pipelines.²

Posting Procedures for Existing Firm Capacity

7. Columbia proposes to revise section 4.3 to clarify its posting requirements for existing firm capacity. Columbia states the open season postings will include, but will not be limited to: the quantity of service available and the applicable locations, the recourse rate, any applicable restrictions, minimum price, whether the capacity is subject to a Right of First Refusal (ROFR) and when the bids are due back to Columbia. Columbia states the tariff will continue to state the minimum period of time that an open season will have to be posted based on the length of the service agreement. Columbia states that long-term capacity (longer than or equal to 12 months) will be posted in an open season for five business days, and short-term capacity that is available for at least five months will be posted in an open season for three business days. Columbia states that capacity that is available for less than 5 months but greater than 31 days will be posted in an open season for 1 business day, and that capacity that is available for less than 31 days will be posted in an open season for four hours.

Defined Timeline

8. Columbia proposes to include in its tariff a timeline to specify when it will be required to sell capacity depending on contract term. Columbia states that for a service agreement that is a year or longer, service must commence no later than six months from the date the request was granted, and for a service greater than 92 days but less than one year, the requested service must commence no later than 30 days from the date the request is granted. Columbia states that for a service agreement that is 92 days or less, service must start no later than five days from the date the request is granted. Columbia states its proposal is substantially similar to other previously approved proposals submitted by other pipelines.³

² Columbia Transmittal letter at 3 (citing *Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,101 (1996) (approving a proposal to use NPV criteria for evaluating competing bids for available capacity based on rate, term and quantity)).

³ Columbia Transmittal letter at 4 (citing *Algonquin Gas Transmission, LLC*, 118 FERC ¶ 61,123 (2007); *Texas Eastern Transmission, LP*, 106 FERC ¶ 61,018 (2004); *Tennessee Gas Pipeline Co.*, 105 FERC ¶ 61,167, at P 10 (2003)).

Capacity Reduction Option

9. Columbia proposes to add a provision to GT&C section 4.4 and 4.5 to permit it to enter into contracts for capacity with shippers that would allow such shippers to reduce contract quantities consistent with Commission precedent.⁴ Columbia states that, for purposes of calculating the NPV in an open season, it would always assume that the option will be exercised. Therefore, the NPV for the bid with a capacity reduction option would be the minimum guaranteed demand revenue that Columbia would receive.

Right of First Refusal

10. Columbia also proposes to streamline its ROFR procedures in GT&C section 4.1. Columbia states it will continue the current notification process to inform shippers of upcoming contract expirations as it does today. Columbia states that, to the extent that a shipper notifies Columbia that it wants the contract to extend for less than five years at recourse rates, Columbia will either accept the requested extension or will require the shipper to exercise its ROFR by posting that capacity in a ROFR open season.

Miscellaneous Additions

11. Columbia further proposes several miscellaneous modifications to GT&C section 4 to provide clarity, including updating the references in that section to provide that 15 days means 15 calendar days. Columbia also proposes to clarify existing tariff language regarding contractual ROFRs, and to include language in section 4.4(e) to

⁴ Columbia Transmittal letter at 5 (citing *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,225 (2001); *ANR Pipeline Co.*, 97 FERC ¶ 61,222; *Reliant Energy Gas Transmission Co.*, 99 FERC ¶ 61,271 (2002); *Georgia Strait Crossing Pipeline LP*, 100 FERC ¶ 61,280 (2002); *CenterPoint Energy Gas Transmission Co.*, 101 FERC ¶ 61,103 (2002); *Colorado Interstate Gas Co.*, 101 FERC ¶ 61,268 (2002); *Transwestern Pipeline Co.*, 102 FERC ¶ 61,183 (2003); *ANR Pipeline Co.*, 103 FERC ¶ 61,223 (2003); *Gulf South Pipeline Co. LP*, 104 FERC ¶ 61,029 (2003); *ANR Pipeline Co.*, 105 FERC ¶ 61,112 (2003); *East Tennessee Natural Gas, LLC*, 109 FERC ¶ 61,232 (2004), *order on reh'g*, 110 FERC ¶ 61,266 (2005); *Entrega Gas Pipeline LLC*, 114 FERC ¶ 61,226 (2006)).

change its tie breaker for allocating capacity between two equal value bids from *pro rata* to first-in-time.

Public Notice, Interventions, and Comments

12. Public notice of Columbia's filing was issued on August 25, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2014)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2014)), all timely filed 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 the proceeding or place additional burdens on existing parties. Washington Gas Light Company filed comments in support of the instant filing. Independent Oil & Gas Association of West Virginia, Inc. (IOGA) and Indicated Shippers⁵ also filed comments and the City of Charlottesville, Virginia and the City of Richmond, Virginia (collectively, Cities) filed a protest.

13. On September 9, 2014, Columbia filed an answer to the comments and protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure [18 C.F.R. § 385.213(a)(2) (2014)] prohibits answers to protests or answers unless otherwise permitted by the decisional authority. In this instance the Commission will accept Columbia's answer because it provides information that will assist in the decision-making process.

14. The commenters raised numerous issues with Columbia's proposal regarding the manner in which it proposes to sell available capacity. Indicated Shippers maintain that Columbia must be required to clarify that before Columbia can sell specific capacity on a first-come, first-served basis, Columbia must have previously posted that specific combination of receipt and delivery points as available unsubscribed capacity. IOGA raises issues related to Columbia's proposal to modify its ROFR, its proposed NPV modifications, and various other clarifications related to the capacity allocation process. Cities protests various ROFR modifications, the Capacity Reduction Option, and the tie breaker procedure proposed by Columbia. Cities also asserts that Columbia must modify the deadline for executing contacts in pre-arranged open seasons and clarify how its proposed sections 4.4(c) and 4.4(f) will work in tandem.

⁵ In the instant proceeding, the Indicated Shippers are comprised of: Anadarko Energy Services Co.; ConocoPhillips Co.; Cross Timbers Energy Services, Inc.; Delta Energy, LLC; Direct Energy Business Marketing, LLC; Interstate Gas Supply, Inc.; and SWEPI LP.

15. We address the comments, protest and Columbia's answer in detail below.

Discussion

16. The Commission finds that the tariff records filed by Columbia to remove the current requirement that it auction all available capacity and to provide that newly available capacity may be awarded on either a first-come, first-served basis or through an open season, as well as Columbia's other proposals to modify its NPV and posting procedure methodologies, are generally consistent with Commission policies. We find, however, that the commenters raise certain issues that Columbia has not adequately explained. Accordingly, the Commission accepts and suspends the proposed tariff records to become effective, subject to conditions, the earlier of February 20, 2015, or further order of the Commission.

ROFR Issues

17. IOGA comments on several aspects of Columbia's ROFR proposal. First, IOGA claims that proposed section 4.1(a)(1) is inadequate as it only captures one potential ROFR scenario. That section states:

If a Shipper elects to extend a Long Term Service Agreement, or any portion of its contract quantity thereunder for less than a period of five years and less than the Recourse Rate, then Transporter, at its option and in a manner which is not unduly discriminatory, shall either accept Shipper's requested extension period or shall require Shipper to exercise its ROFR by making the capacity under such agreement available in accordance with the procedures set forth below.

18. IOGA asserts that the provision should set forth the range of a Shipper's potential ROFR elections and Columbia's response to such elections. IOGA submits that if a Shipper elects to extend its contract for five years at the Recourse Rate, even at a reduced contract quantity, Columbia should accept the election and move forward without the ROFR process. However, if a Shipper elects to extend for less than five years at the Recourse Rate or for five years at less than the Recourse Rate, Columbia may want to accept but is not required to do so. Therefore, IOGA proposes that Columbia revise Section 4.1(a)(1) as shown below to clearly reflect each of the potential options:

If a Shipper elects to extend a Long-Term Service Agreement, or any portion of its contract quantity thereunder: (i) for a period of five years and at the Recourse Rate, then Transporter shall accept Shipper's requested extension; or (ii) for less than a period of five years or less than the Recourse Rate (or both), then Transporter, at its option and in a manner

which is not unduly discriminatory, shall either accept Shipper's requested extension period or rate or shall require shipper to exercise its ROFR by making the capacity under such agreement available in accordance with the procedures set forth below.

19. IOGA also asserts that other provisions in Section 4.1 appear to be inconsistent with Section 4.1(a)(1) and should be clarified. IOGA states, for example, that subsections 4.1(a)(2)-(4) describe what happens once a Shipper exercises its ROFR. It also states that subsections (3) and (4) should make clear that the referenced offers are Open Season offers.

20. In its answer, Columbia states that it will accept the language proposed by IOGA and submit tariff records in a compliance filing revising section 4.1(a)(1).⁶ However, Columbia asserts that IOGA's concerns regarding the interplay between section 4.1(a)(1) and subsections (2) - (4) are unfounded. Columbia points out that section 4.1(a)(1) details the notification and process with respect to the existing shipper requirements before the initiation of a ROFR Open Season for third party bids, while, section 4.1(a)(2) details the initiation of a ROFR Open Season, and sections 4.1(a)(3) and (4) detail the process for when acceptable and unacceptable third party offers are submitted during the ROFR Open Season. Accordingly, Columbia submits the sections are consistent and clearly outline the ROFR process.

21. The Commission finds revised section 4.1(a)(1) proposed by IOGA is acceptable and directs Columbia to include such language in a compliance filing within 30 days of the issuance of the instant order. The Commission rejects, however, IOGA's request for clarification of subsections (2)-(4) of section 4.1(a). IOGA has failed to identify any specific concern about how those subsections may be inconsistent with section 4.1(a)(1), and Columbia has adequately explained that those subsections address different aspects of the ROFR process than section 4.1(a)(1).

22. Cities also challenges Columbia's proposed ROFR provisions claiming that the rights of customers with contractual ROFRs are not clearly specified. Cities note that Columbia proposes to add language to its tariff stating that "[a]ll notifications and procedures that apply to Long-Term Service Agreements will also be applied to contracts with a contractual ROFR." Cities speculate that Columbia presumably intended to use the defined term "Contractual ROFR" here, so that clarification should be made. Cities contend it is unclear what particular rights and obligations this language is intended to

⁶ Columbia answer at 3.

confer. For example, Cities contends that any notifications and procedures granted to holders of long term service agreements should also apply to customers with a contractual ROFR.

23. In its answer, Columbia agrees to update the language to reflect the fact that it intended to use the defined term “Contractual ROFR,” and we hereby direct Columbia to make that change in its compliance filing. Columbia further clarifies that the language in GT&C section 4.1 is meant to be applied in the same manner to contracts with regulatory ROFRs and contractual ROFRs. Columbia states that the language it proposes is clear that “all notifications and procedures that apply to Long Term Service Agreements will also be applied to contracts with contractual ROFRs.”

24. We find Columbia’s proposed treatment of contractual ROFRs in section 4.1 is just and reasonable. The provision applies generally to all ROFR and extensions of firm service agreements. The sentence about which Cities complains clearly states that the pipeline’s option to grant a request for a contract extension or require a customer to exercise its ROFR option, and the procedures for doing so, apply to all ROFR contracts, regulatory or contractual. Thus, Cities’ requested clarification does not appear necessary.

25. IOGA asserts that Columbia proposes to modify sections 4.1(a)(2) and (3) to limit third party bids in an Open Season seeking a portion of available capacity for volumetric portions of the existing shipper’s capacity and not geographic portions. In doing so, IOGA states that Columbia uses the phrase “(volume, but not geographic portion).” IOGA avers that the meaning of the reference to “geographic portion” is unclear. IOGA submits that by merely referencing only volume in the tariff provisions, Open Season bidders will understand that if 10,000 Dekatherms per day (Dth/day) of capacity is posted from Waynesburg to Leach, Columbia would consider a bid for 5,000 Dth/day of capacity from Waynesburg to Leach (a volume), but not a bid of 10,000 Dth per day from Cobb to Leach (geographic).

26. In its answer, Columbia states that the parenthetical “(volume but not geographic portion)” as used throughout section 4 was approved by the Commission in 2004 when Columbia filed to revise its ROFR provisions to delineate when a shipper must exercise its ROFR rights when no bids are received for a shipper’s capacity.⁷ Columbia states that in approving the language the Commission cited to Order No. 637 and stated that, “such revised tariff language is consistent with the Commission ruling that shippers are to be

⁷ Columbia answer at 4 (citing *Columbia Gas Transmission Corp.*, 107 FERC ¶ 61,078, at P 14 (2004)).

permitted volumetric reductions of contractual demand under ROFR provisions.”⁸ Columbia argues that it wishes to preserve this language to highlight that shippers are permitted volumetric only reductions of their contractual demand in the described ROFR circumstances.

27. The Commission agrees that Columbia’s use of this term is consistent with prior Commission orders permitting the exercise of a ROFR for a portion of the shipper’s existing contract demand, but not for just a geographic portion of the shipper’s length of haul.⁹ Accordingly, the Commission does not find the reference to the phrase “geographic portion” to be unclear as suggested by IOGA.

28. IOGA also asserts that section 4.1(a)(3) should establish a definitive time line or schedule that would enable an existing shipper exercising its ROFR rights to know with certainty the last day Columbia can accept offers from third parties. IOGA argues that the timeline set forth in section 4.3 should apply and should be cross-referenced. IOGA maintains that knowing when the Open Season will close is important to ROFR Shippers for planning purposes.

29. In its answer, Columbia states section 4.3(c) provides a sufficient timeline and closing period for all open seasons, including ROFR Open Seasons. Columbia states that it currently follows substantially similar tariff timelines for its ROFR Auctions, and that it is not proposing to stray from those timelines during ROFR Open Seasons. To the extent any open season will allow a variation from these defined periods, Columbia states that it will define the variation in the posting so that the shipper can plan accordingly.

30. The Commission finds that Columbia’s answer adequately addresses the concern raised by IOGA. In particular, Columbia points out that in section 4.3 it provides the posting periods for capacity. These periods are: (i) five business days for firm capacity available 12 months or longer; (ii) three business days for firm capacity available at least five but less than twelve months; (iii) one business day for firm capacity available for less than five months but greater than 31 days; and (iv) four hours for firm capacity available for 31 days or less. The Commission finds that the information provided by Columbia for this matter is reasonable.

⁸ *Id.*

⁹ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,340 (2000).

31. IOGA states that in section 4.1(a)(4) Columbia proposes the following language:

Shipper may, thereafter, consistent with the terms of this Tariff, continue to receive all or a portion (volume but not geographic portion) of its service for such term *and rate agreed to* by Transporter and Shipper *at the applicable Recourse Rate* for a term to be specified by Shipper (in no instance shall Transporter be obligated to accept a rate lower than the Recourse Rate). (Emphasis added by IOGA).

IOGA contends that the reference to “rate agreed to” appears inconsistent with the succeeding clause “at the applicable Recourse Rate.” IOGA states that Columbia should delete the succeeding clause to make it clear that Columbia and a shipper may agree to a rate and term, but the pipeline is not required to accept a rate lower than the recourse rate.

32. In its answer, Columbia states that it will delete the succeeding clause to make it clear that Columbia and a Shipper may agree to a rate and term, but the pipeline is not required to accept a rate lower than the Recourse Rate.¹⁰ The Commission finds this modification to be acceptable and directs Columbia to include a revised tariff record in accordance with its agreement in its compliance filing.

Bidding, NPV and Open Seasons

33. Cities contends that the term “unsubscribed capacity” is used inconsistently in the instant filing. Cities states that in some instances, the term “unsubscribed capacity” is lower case, while elsewhere it is in initial caps, thereby implying it is a defined term. Cities aver there is no definition of the term in the tariff, and it should therefore be in lower case in all instances.

34. Columbia states in its answer in all cases the term “unsubscribed capacity” is used in GT&C section 4 is not a defined term and thus should be lowercase. Columbia agrees to make this change in a future compliance filing and we hereby direct them to do so.

35. IOGA raises several concerns with Columbia’s proposal to permit multiple bids for capacity. IOGA asserts that the first sentence of section 4.4(a) proposed by Columbia states: “[a] potential Shipper may submit multiple bids, each higher than its preceding bid, for all or any portion of the capacity or term of service made available by Transporter.” IOGA asserts that it is unclear whether this provision applies to

¹⁰ Columbia answer at 4.

simultaneous multiple bids by the same party or to a party's bids that supersede its prior bids during the bid process. IOGA contends that multiple bids should not be used to game the Open Season bidding process.

36. In its answer, Columbia agrees with IOGA that multiple bids should not be used to game the open season bidding process. Columbia also confirms that it will only accept the highest bid of any particular shipper. With regard to open season postings, Columbia confirms that it will clearly post in the open season posting all the criteria that will be considered for a particular open season. Columbia maintains that the open season process will be transparent, and as stated in section 4.4(b)(1)(a)(i), "all determinative factors will be defined in the open season."

37. The Commission finds that Columbia has adequately responded to IOGA's concerns with GT&C section 4.4(a). In particular, Columbia's agreement that multiple simultaneous bids from the same shipper will not be permitted and Columbia's assurance that it will only accept the highest bid by each shipper should alleviate IOGA's concerns.

38. Cities and IOGA also raise issues with the criteria set forth by Columbia in section 4.4(b)(1) for evaluating bids in open seasons. Proposed section 4.4(b)(1)(a) provides that Columbia will evaluate bids based on NPV, taking into account "the price, term, and any other criteria specified in the open season." Section 4.4(b)(1)(a)(i) provides that NPV may be based upon "such factors as the term, quantity, date on which the requested service is requested to commence, the cost of facilities required by Transporter to provide the service, and other factors determined to be relevant by Columbia." That section also provides that all determinative factors will be defined in the open season and the NPV shall only include revenues generated by the reservation rate, "or other form of revenue guarantee," as proposed by the bidder. Proposed section 4.4(b)(1)(a)(ii) provides that, for purposes of its NPV evaluation, Columbia may consider the aggregate NPVs of two or more bids for minimum bid packages, provided that if the combined quantity of capacity under those packages exceeds the maximum capacity available for subscription then these bids will only be considered if the bidders have agreed to accept a prorated award of capacity. Cities raises concerns with proposed GT&C section 4.4(b). Cities states that Columbia's current tariff provides that NPV will take into account only the price and term offered, but that Columbia proposes to replace this language with a provision stating that the pipeline will consider "price, term, and any other criteria specified in the open season." Cities states this is vague and open-ended, and urges the Commission to reject the proposal because it lacks transparency and could result in unduly discriminatory bid assessments. Cities also claims that Columbia's proposal lacks transparency because there is no requirement that Columbia disclose its NPV calculation or how any extraneous criteria will affect bids.

39. IOGA states that proposed section 4.4(b)(1)(a)(ii) does not define “minimum bid package.” IOGA also asserts that this provision does not define “other form of revenue guarantee.” IOGA is concerned about the open-ended nature of such revenue guarantees. IOGA contends that all bidders should know, in advance, the clear criteria for acceptable bids and calculating the NPV. IOGA urges Columbia to clarify either in the tariff or in Open Season postings what other forms of revenue guarantee will be acceptable to the pipeline.

40. In its answer, Columbia states that all bid packages will be clearly set forth in the open season including the minimum bid packages and any “other form of revenue guarantee.” Columbia states that the clear criteria for acceptable bids, including any form of revenue guarantees, will be included in the open season. In response to Cities, Columbia asserts that it is proposing to replace the limited criteria it currently uses to assess bids (price and term) with alternative relevant factors, including volume. Columbia states that it included only certain alternatives because it is not possible to describe all factors that may be relevant to future service opportunities. Columbia notes that the proposed tariff language requires it to clearly list in the open season posting any other criteria that it will consider as part of an open season. Columbia asserts that informing customers how each such factor may affect a shipper’s bid will ensure transparency and place all bidders on a level playing field. Columbia also argues that its proposed language, and its agreement that it will post all relevant factors in the open season posting, is consistent with similar proposals approved for other pipelines.

41. The Commission finds that Columbia’s obligation to present all bidding criteria in the open season posting renders Columbia’s proposal just and reasonable and consistent with Commission policy. The language in section 4.4(b)(1)(a)(ii) that IOGA claims is unclear states how Columbia will consider aggregate bids and requires that such methodology will be posted in the open season. “For purposes of its NPV evaluation and *as defined in the open season*, Transporter may consider the aggregate NPVs of two or more bids for minimum bid packages” Accordingly, under Columbia’s proposal, the open season must define the parameters of the NPV evaluation process. Moreover, the preceding section, 4.4(b)(1)(a)(i), requires that for the evaluation of bids “*all determinative factors* will be defined in the open season.”

42. This requirement to post all factors in the open season is consistent with past proceedings in which the Commission accepted NPV calculations that contained terms providing the pipeline with flexibility in assessing bids as long as the terms are defined in the open season posting. For example, in *Texas Eastern Transmission Corp.*, 79 FERC ¶ 61,258, at 62,109 (1997) (*Texas Eastern*) the Commission stated:

It appears to the Commission that Texas Eastern’s proposal gives it considerable discretion in determining what criteria it will use to determine

the winner in each transaction. For instance, Texas Eastern's proposed NPV criteria includes language such as "without limitation", and "such other objective criteria" as pointed out by the protesters. *The Commission believes that pipelines should have some flexibility, in open season provisions, to either include in their tariff a single non-discriminatory bid methodology, or provide different non-discriminatory bid evaluation methods, provided that the pipeline posts the bid evaluation methodology before the open season begins.* Therefore, the Commission will require that Texas Eastern post the NPV criteria and factors to be used in the NPV analysis on LINK. In addition, Texas Eastern is directed to post its NPV analysis used to determine the successful bidder after the close of the open season. The Commission recognizes that the "other objective criteria" language gives Texas Eastern flexibility to consider outside factors that may be unique to certain transactions. However, these factors and the weighting given to them by Texas Eastern must [be] posted with the open season posting. (Emphasis added).

43. We find Columbia's proposed language is just and reasonable and consistent with that approved for other pipelines. The Commission has previously allowed pipelines the leeway, in open season provisions, to either include in their tariff a single non-discriminatory bid evaluation methodology, or to provide themselves flexibility by choosing different non-discriminatory bid evaluation methods for different transactions, provided that the pipeline posts the bid evaluation methodology before the open season begins. Here, Columbia proposes to include in the open season posting the factors it will consider in its NPV analysis. While the "any other criteria" language gives Columbia the flexibility to consider factors that may be unique to certain transactions, Columbia's proposed tariff language states that any criteria to be considered as part of the open season evaluation will be listed in the posting so that all potential bidders will understand the relevant criteria and be placed on a level playing field. Further, in response to Cities' request, Columbia agrees that it will post the winning bid and the associated bid calculation. This information, coupled with postings of the criteria that Columbia will consider in evaluating the bids, should provide prospective bidders adequate information with which to construct their bids, together with a check on how the NPV analysis was actually performed.

44. IOGA also states that in section 4.4(b), the NPV calculation proposed by Columbia favors large shippers over smaller bidders because it proposes to evaluate the NPV of each bid based not only on the price and term of the bid, but also the volume of capacity requested. Thus, bids will be evaluated taking into account the total revenue produced by each bid rather than on a revenue per dekatherm basis. IOGA concedes that other pipelines calculate NPV on a total revenue basis but argues that because of the

prevalence of small producers and shippers on Columbia's system, Columbia should use revenue per dekatherm analysis and not take into account the volume of the bid. IOGA contends the proposed methodology is unfair to smaller bidders that may not require the full quantity of capacity posted in the open season. IOGA urges the Commission to direct Columbia to revise its NPV calculation provision to eliminate the undue preference for larger bidders and undue discrimination against smaller bidders.

45. In its answer, Columbia states that IOGA acknowledges that other pipelines calculate NPV on a total revenue basis, thus including the volume of the bid in their analysis, and Columbia maintains that its proposed NPV calculation is a widely accepted method for awarding capacity which has been approved by the Commission for many other pipelines.¹¹

46. The Commission finds that Columbia's proposal to base its NPV calculations on total revenue is consistent with that approved by the Commission for other pipelines. IOGA is correct that this type of NPV calculation may potentially affect the ability of an individual small customer to obtain capacity to the extent that a small customer only needs small amounts of capacity. Under Columbia's proposal, even a maximum rate bid for a relatively small volume of capacity might be insufficient to win the capacity. However, in the instant case, Columbia, consistent with Commission policy, proposes to permit the aggregation of bids. This allows small bids to be assessed as one in order to achieve a winning bid. The Commission has previously determined that the aggregation of bids is consistent with ensuring that the capacity is awarded based on the highest economic value and is an "important means to allow small customers to compete for

¹¹ Columbia answer at 6-7 (citing *Southern Natural Gas Co.*, 92 FERC ¶ 61,265, at 61,880 (2000) ("Southern's proposal to allocate available capacity on a NPV basis is consistent with Commission's policy that capacity be awarded to the shippers that value it the most, and is similar in most respects to capacity allocation proposals previously accepted by the Commission."); *Texas Eastern Transmission Corp.*, 79 FERC ¶ 61,258, at 62,109 (1997) ("...a NPV evaluation will necessarily favor a bidder who bids on the full package of capacity over a bidder who bids on a portion of the capacity. This method allocates capacity to the shippers who will produce the greatest revenue and least unsubscribed capacity. As such, it is an economically efficient way of allocating capacity and consistent with Commission policy."); *Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,101 (1996) (approving a proposal to use NPV criteria for evaluating competing bids for available capacity based on rate, term and quantity).

available capacity.”¹² Moreover, the Commission has also found that in aggregating bids capacity may be awarded to the combination of bids that yield the highest NPV, even if neither successful bidder individually submits the highest valued bid.¹³ Accordingly, the Commission finds Columbia’s proposal to be just and reasonable.

47. Indicated Shippers raise concern with Columbia’s proposed section 4.4 and seek a modification to section 4.3(a). Specifically, Indicated Shippers seek clarification that before Columbia can sell specific capacity on a first-come, first-served basis (i.e., a particular combination of receipt and delivery points and contract quantity), Columbia must previously have posted that specific combination of receipt and delivery points and up to that quantity of capacity on its EBB as available unsubscribed capacity. Indicated Shippers maintain that if, in response to a request for service at a specific point combination that had not been posted, Columbia determines that it can sell the capacity requested, it must post that capacity on its EBB in an open season in accordance with its generally applicable procedures, including the Prearranged Open Season procedure set forth in proposed section 4.4(c). In order to clarify this point the Indicated Shippers propose that the language of section 4.3(a) be revised to state:

If, after capacity has been posted on the EBB, Transporter receives a request for service pursuant to Section 3 (Request for Service) of the General Terms and Conditions, Transporter on a not unduly discriminatory basis shall award the capacity to the Shipper who submitted the valid request within the timelines set forth in Section 4.3(b) and at the applicable

¹² *Natural Gas Pipeline Co. of Am.*, 82 FERC ¶ 61,036 at 61,140 (1998) (citing *Tennessee Pipeline Co.*, 76 FERC ¶ 61,101, *order on reh’g*, 79 FERC ¶ 61,297 (1997); *Texas Eastern Transmission Corp.*, 79 FERC ¶ 61,258 (1997), *order on reh’g*, 80 FERC ¶ 61,270 (1997); *National Energy & Trade, LP v. Texas Gas Transmission, LLC*, 121 FERC ¶ 61,064, at P 50 (2007) (“The Commission permits such aggregation because aggregating bids by different shippers enable smaller bids to compete with larger bids and permits a pipeline to maximize its revenues”).

¹³ *Texican N. La. Transport, LLC v. Southern. Natural Gas Co.*, 132 FERC ¶ 61,167, at P 33 (2010) (citing *National Energy & Trade, LP v. Texas Gas Trans., LLC*, 121 FERC ¶ 61,064 (2007)).

Recourse rate. *Alternatively*, Transporter may [also] post capacity, which is available as unsubscribed capacity on Transporter's EBB, in an open season pursuant to the open season procedures set forth in Section 4.3 and Section 4.4 if such capacity is not subject to a valid request for service pursuant to Section 3. *If Transporter receives an otherwise valid Request for Service for capacity that has not been posted on the EBB as available unsubscribed capacity, before Transporter can award that capacity to the Shipper who submitted the request, Transporter shall post that capacity in an open season pursuant to the open season procedures set forth in Section 4.3 and Section 4.4, including but not limited to a Prearranged Open Season procedure under Section 4.4(c).* (Italicized language added bracketed language deleted by Indicated Shippers)

48. In its answer, Columbia states that the concern raised by the Indicated Shippers is addressed in its current section 4.2(a) and proposed Section 4.4(c). However, it states that to remove all doubt regarding its process for responding to requests for capacity, Columbia will adopt the revisions proposed by Indicated Shippers. Accordingly, the Commission will require that Columbia provide revised tariff records to memorialize its agreement in its compliance filing to this order.

Reduction Option

49. Proposed GT&C section 4.4(b)(2) provides "Transporter may grant, on a not unduly discriminatory basis a capacity reduction option," and it defines that option as "options to terminate the service agreement early and/or to reduce the capacity held thereunder for some portion of the term including multiple periods within the term in a manner which would reduce the reservation charges applicable to the service agreement." Cities states that Columbia has not clearly specified the availability of its proposed Capacity Reduction Option, as required by Commission precedent. Cities contends that while the provision suggests that any open-season bidder may include such an option in its bid, it does not expressly state whether and the extent to which the option is available in other contexts.

50. Columbia states in its answer that it proposed the Capacity Reduction Option at the request of certain shippers to provide the pipeline and its shippers with the flexibility to accommodate changes in business circumstances. Columbia clarifies that it proposes the Capacity Reduction Option as a part of its tariff to be a generally available option that shippers may seek in an open season or as part of a ROFR process. Columbia also states

that such an option must be agreed to by Columbia and that its proposed language specifically states it must grant any such options in a non-discriminatory manner. Columbia asserts that the Commission has specifically approved early reduction or early termination rights provided they are offered in a pipeline's tariff pursuant to generally applicable conditions.¹⁴

51. We find that Columbia's reduction option proposal is just and reasonable and consistent with our requirement that such rights must be offered generally in a pipeline's tariff. As Columbia clarifies, it proposes to place the option in its tariff as generally available to all its shippers in accordance with Commission precedent, and the option is available for open seasons, the ROFR process, and any other applicable circumstances. Columbia's proposal is consistent with our precedent to make any reduction right option a part of its generally available tariff, and thus, contrary to Cities' claim, we find no reason to consider that Columbia will apply this provision in an unduly discriminatory manner.

Bidding and Contract execution

52. Cities also protests that Columbia should modify the deadline for executing contracts in pre-arranged open seasons and clarify how sections 4.4(c) and 4.4(f) will work in tandem. Cities note that section 4.4(c) provides that a shipper may "enter into a prearranged service agreement" with Columbia and establishes a bidding procedure for a prearranged open season. Cities asserts that under the proposal, it appears that a shipper that outbids a pre-arranged shipper must execute a service agreement consistent with the terms of the bid within three (3) business days of receiving notice of its award. Cities observes that, in contrast, section 4.4(f) separately states that if a successful bidder fails to execute a service agreement before the start of the contract or within 15 calendar days after it is tendered by Columbia, then Columbia can offer the capacity to the next acceptable bidder. Cities contends that, to the extent that the three-business-day contract execution deadline applies to the winning bidder in a prearranged open season who bids more than the prearranged bid, the requirement that the new shipper sign an agreement shortly after being notified of the winning bid is inappropriate. Cities urge modification to the language in section 4.4(c) so that the winning bidder has a reasonable amount of time to execute a service agreement after it has been tendered by Columbia.

¹⁴ Columbia answer at 10 and n.18 (citing *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,225, at 62,028 (2001)).

53. Cities also request clarification regarding the interplay between the different deadlines contained in sections 4.4(c) and 4.4(f). Cities asserts that pursuant to section 4.4(f), even if a shipper did not sign a service agreement within three business days of notice of the award of capacity under section 4.4(c), there would be no consequence if the shipper ultimately executed the service agreement within 15 calendar days of having received it from Columbia (or prior to the effective date of the contract) as provided in section 4.4(f).

54. Columbia answers that contrary to Cities' assertions it does not propose to modify any of the deadlines for pre-arranged open seasons, and that the only substantive change it made to the pre-arranged open season process was to remove language allowing Columbia to require an original pre-arranged shipper to execute a service agreement if the highest bidder does not execute an agreement. Columbia further states that in light of the removal of this requirement, Columbia believed it was necessary to add the cross reference to section 4.4(f) in section 4.4(c) to put shippers on notice that all bids submitted in a pre-arranged open season are binding and subject to the consequences of section 4.4(f). Columbia asserts that section 4.4(f) simply explains the consequences for not executing a service agreement in a pre-arranged open season and that its proposed section 4.4(c) language should be approved as drafted because the Commission has already approved the prearranged open season deadlines in section 4.4(c).

55. The Commission finds that a three day deadline requiring a winning bidder in a pre-arranged open season to execute a contract is reasonable so that a pipeline would have the ability to go back to the original pre-arranged shipper in a short time frame to consummate a deal. Indeed, the language immediately succeeding the three day deadline, which Columbia proposes to remove, contemplated a relatively expedited turnaround:

If the highest net present value bidder does not enter into a Service Agreement with Transporter, Transporter will award capacity to the Shipper with the next highest bid. If there are no other highest bidders, Transporter will have the right, for a period of time not to exceed five (5) business days following the close of the auction, to require the Pre-Arranged Shipper, within three (3) business days, to enter into a service agreement under the terms of the Prearranged Agreement.

Thus under the existing tariff it was clear that if a winning higher bidder did not execute an agreement with Columbia within three days of being awarded the capacity, then Columbia would award the capacity to the shipper with the next highest bid, and eventually to the original pre-arranged shipper.

56. As revised, however, GT&C section 4.4(c) contains only the three-day deadline without any succeeding language as to the course of action if that party does not execute

an agreement in three days. Additionally, Columbia proposes to add to section 4.4(c) a reference to 4.4(e), which appears to contemplate a 15-day time period for the winning bidder in a pre-arranged open season to execute an agreement. As Cities points out, this creates an inconsistency in Columbia's tariff as to which time frame governs a pre-arranged open season winning bidder's obligation to sign an agreement before the pipeline may offer the capacity to a different party. As drafted, it appears that there would be no consequence for a shipper with a non-matched bid in a pre-arranged open season that does not meet the three-day deadline if it executes an agreement in accordance with the 15-day deadline of GT&C section 4.4(e). Accordingly we direct Columbia to clarify its proposed changes and to provide a detailed explanation of the interaction between these two provisions.

Tie Breaker

57. Cities and IOGA challenge Columbia's proposal to replace its current *pro rata* method for breaking ties among equal winning bids with a first-in-time bidder method. Cities contends that the proposal would provide an unfair advantage to organizations with staff devoted to capacity issues and to parties with potential access to inside information about the timing of an open season, such as Columbia's affiliated distribution companies. Cities assert that Columbia's interactions with employees of those affiliates are not governed by the Commission's Standards of Conduct because the employees are not engaged in wholesale gas sales and are, therefore, not marketing function employees. Cities conclude that nothing would expressly prevent Columbia from informing its affiliates of open seasons ahead of time, thereby positioning them to do the necessary work and obtain needed approvals before submitting the earliest bids.

58. IOGA also contests Columbia's proposal to use a first-in-time tie-breaker, and requests that the Commission require Columbia to retain a *pro rata* tie breaking mechanism. According to IOGA, there is no basis to favor a first-in-time bidder in an extended day open season.

59. Columbia asserts that the Commission has approved the first-in-time mechanism as an acceptable method for breaking ties,¹⁵ and that its proposal should thus be approved as filed. With respect to Cities' claim that nothing in Columbia's proposal would prevent the pipeline from informing its affiliates of an open season prior to its being posted, Columbia maintains that providing internal information to a pipeline's affiliate in

¹⁵ Columbia answer at 7 & n.14 (citing *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,292, at 62,010 (2000)).

advance of a posting is contrary to its tariff and longstanding Commission policies and precedent. Columbia states that contrary to Cities' claim, its tariff and the Commission's regulations broadly prevent pipelines from awarding capacity on an unduly discriminatory basis.

60. We find that Columbia's proposal to implement a time stamp tie breaker is just and reasonable and consistent with our approval of similar provisions for other pipelines.¹⁶ As we have stated previously, "while the first-in-time tie-breaker allocation is admittedly arbitrary we find it is also fair since it awards capacity in a nondiscriminatory manner after economic factors have been weighed and found to be equal."¹⁷ Accordingly we approve Columbia's proposal to use a first-in-time tie-breaking mechanism for awarding capacity.

61. Based upon review of the filing, the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept and suspend the effectiveness of the proposed tariff records for the period set forth below, subject to the conditions set forth in this order.

62. The Commission's policy regarding tariff filings is that they generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.¹⁸ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹⁹ Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records listed in footnote no. 1, to be effective, subject to conditions, the earlier of February 20, 2015, or further order of the Commission.

The Commission orders:

¹⁶ See *e.g.*, *ANR Pipeline Co.*, 115 FERC ¶ 61,273, at P5 (2006).

¹⁷ *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,292, at 62,010 (2000).

¹⁸ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(A) The tariff records are accepted and suspended to become effective, subject to conditions, the earlier of February 20, 2015 or further order of the Commission.

(B) Columbia is directed to file revised tariff records reflecting the discussion set forth in the body of this order within 30 days of the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.