

149 FERC ¶ 61,146  
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 Nos. RP15-47-000 and  
RP15-47-001

Columbia Gulf Transmission, LLC

RP15-55-000  
(not consolidated)

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS  
SUBJECT TO CONDITIONS

(Issued November 20, 2014)

1. In this order, the Commission addresses filings by Columbia Gas Transmission, LLC (Columbia Gas) and Columbia Gulf Transmission, LLC (Columbia Gulf) of negotiated rate agreements related to the commencement of service on Columbia Gas' Smithfield III Expansion Project. On October 10, 2014, Columbia Gas filed in Docket No. RP15-47-000 revised tariff records<sup>1</sup> to set forth the terms of three conforming negotiated rate service agreements. One of the conforming service agreements (Contract No. 144509) is with Statoil Natural Gas LLC (Statoil), the other two (Contract Nos. 149727 and 149728) are with Rice Drilling B LLC (Rice Drilling). Columbia Gas also filed two non-conforming negotiated rate agreements (Contract Nos. 149759 and 149760)<sup>2</sup> with Antero Resources Corporation (Antero). On October 22, 2014, Columbia Gas submitted a filing in Docket No. RP15-47-001 to correct an error in its contract with

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<sup>1</sup> See Appendix.

<sup>2</sup> These agreements shall be referred to as Antero I Agreement and Antero II Agreement, respectively.

Statoil.<sup>3</sup> Columbia Gas requests waiver of the Commission's 30-day notice period to allow all the agreements to become effective November 1, 2014.

2. On October 21, 2014, Columbia Gulf filed in RP15-55-000 revised tariff records<sup>4</sup> to reflect two negotiated rate agreements with Antero. Both agreements include non-conforming provisions. Columbia Gulf requests that the Commission grant waiver of its 30-day filing requirements and approve the agreements effective November 1, 2014.

3. For the reasons discussed below, the Commission grants waiver of the 30-day notice period in section 154.207 of the Commission's regulations<sup>5</sup> and accepts the three conforming agreements filed by Columbia Gas effective November 1, 2014. However, the Commission requires further information before it can determine whether the non-conforming provisions in the remaining negotiated rate agreements filed by Columbia Gas and Columbia Gulf are permissible. Therefore, the Commission accepts and suspends the tariff records filed by Columbia Gas and Columbia Gulf listing those agreements as non-conforming, together with the non-conforming contracts, to be effective November 1, 2014, subject to conditions.

## **I. Background**

4. On May 10, 2013,<sup>6</sup> Columbia Gas filed an application in Docket No. CP13-477-000, pursuant to section 7(c) of the Natural Gas Act (NGA)<sup>7</sup> and Part 157, Subpart A of

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<sup>3</sup> In the October 10, 2014 filing, the Statoil agreement check box referring to the contractual right of first refusal equivalent to the right of first refusal set forth in section 4 of Columbia Gas' tariff was inadvertently marked "no" when it should have been marked "yes." Therefore, Columbia Gas and Statoil have re-executed the agreement to replace in its entirety the agreement submitted on October 10, 2014. Because Columbia Gas filed a replacement contract between it and Statoil in Docket No. RP15-47-001, the initial Statoil contract filing in Docket No. RP15-47-000 is rejected as moot.

<sup>4</sup> Columbia Gulf Transmission, LLC, FERC NGA Gas Tariff, Columbia Gulf Tariffs, [Service Agreement Forms, Non-Conforming Service Agreements, 11.0.0, Table of Contents, , 12.0.0; Non-Conforming Svc Agmts, Section 2.3 Antero Resources Corp Contract No. 158017, 2.0.0; and Non Conforming Svc Agmts, Section 2.4 Antero Resources Corp Contract No. 158018, 2.0.0.](#)

<sup>5</sup> 18 C.F.R. § 154.207 (2014).

<sup>6</sup> Columbia Gas supplemented its application on May 13 and 21, 2013.

<sup>7</sup> 15 U.S.C. § 717f(c) (2012).

the Commission's regulations<sup>8</sup> for a certificate of public convenience and necessity authorizing it to construct and operate a compressor station in Washington County, Pennsylvania and to add compression to an existing compressor station in Gilmer County, West Virginia (Smithfield III Expansion Project).<sup>9</sup> The purpose of the Smithfield Expansion III Project is to facilitate the transportation of additional supply to Gulf Coast markets over both Columbia Gas and Columbia Gulf. Specifically, Columbia Gas stated that the proposal would enable it to provide an additional 444,000 dekatherms (Dth) per day of firm transportation service on its system from the Appalachian Basin to an interconnection with Columbia Gulf near Leach, Kentucky.

5. Columbia Gas and Columbia Gulf held a non-binding open season in the first quarter of 2012 to solicit interest in the Smithfield Expansion III Project.<sup>10</sup> Based on the open season, Columbia Gas executed binding precedent agreements with three shippers for approximately 419,000 Dth per day of incremental firm transportation service. Antero, Rice Drilling, and PetroEdge Energy, LLC (PetroEdge)<sup>11</sup> have subscribed for approximately 314,000, 100,000, and 5,000 Dth per day of firm transportation service, respectively.<sup>12</sup> The shippers' gas would enter Columbia Gas' system at receipt points located on Columbia Gas' Line 1570 in Washington County, Pennsylvania, and Line 1360 in Dodge County, West Virginia and be transported to an interconnection with Columbia Gulf near Leach, Kentucky.

6. Columbia Gas stated that it will provide service to its customers under negotiated rate agreements pursuant to the negotiated rate authority in its General Terms and Conditions (GT&C). On December 19, 2013, the Commission, among other things,

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<sup>8</sup> 18 C.F.R. pt. 157, Subpart A (2014).

<sup>9</sup> Pursuant to section 2.55(a) of the regulations, 18 C.F.R. § 2.55(a) (2014), Columbia Gas will install auxiliary facilities in Greene County, Pennsylvania, and Monongalia, Wetzell, Roane, and Kanawha Counties, West Virginia, after the Smithfield III Expansion Project has been certificated.

<sup>10</sup> Columbia Gas stated that it solicited offers from its shippers to permanently relinquish capacity in the open season, but no shippers offered to turn back capacity.

<sup>11</sup> PetroEdge assigned its rights as an anchor shipper under the precedent agreement to Statoil.

<sup>12</sup> Columbia Gas filed the executed precedent agreements with Antero, Rice, and PetroEdge in Exhibit I of its application. The precedent agreement with Antero was subsequently amended and refiled with the Commission on August 15, 2013.

approved Columbia Gas' certificate application subject to conditions.<sup>13</sup> Specifically, as it relates to this order, Columbia Gas was directed to file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the project, in accordance with the *Alternative Rate Policy Statement*<sup>14</sup> and the Commission's negotiated rate policies.<sup>15</sup> Further, the Commission stated that Columbia Gas must file the negotiated rate agreements or tariff records at least thirty days, but not more than sixty days, before the in-service date of the proposed facilities.<sup>16</sup> Columbia Gas states that the estimated in-service date of the Smithfield III Expansion Project is November 1, 2014.

7. In accordance with the Commission's directives in the Smithfield Expansion III Order, Columbia Gas filed proposed tariff records and negotiated rate agreements in Docket No. RP15-47-000, as supplemented in RP15-47-001. Meanwhile, in Docket No. RP15-55-000, Columbia Gulf filed revised tariff records and negotiated rate agreements. Because these two proceedings involve the Smithfield III Expansion Project, the Commission will consider the tariff records and corresponding negotiated rate filings in the instant order concurrently.

## II. Details of Filings

### A. Details of Columbia Gas' Filings in Docket Nos. RP15-47-000 and RP15-47-001

8. Columbia Gas' Docket No. RP15-47-000 filing includes three conforming negotiated rate agreements. Contract No. 144509 with Statoil provides for a maximum daily quantity (MDQ) of 5,000 Dth of gas per day from November 1, 2014 through

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<sup>13</sup> *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,257 (2013) (Smithfield III Expansion Order).

<sup>14</sup> *Id.* P 23 (citing *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241, *order granting clarification*, 74 FERC ¶ 61,194, *reh'g denied*, 75 FERC ¶ 61,024 (1996)).

<sup>15</sup> *See Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

<sup>16</sup> Smithfield III Expansion Order, 145 FERC ¶ 61,257 at P 23.

October 31, 2024. Contract No. 149727 with Rice Drilling provides a MDQ of 75,000 Dth of gas per day from November 1, 2014 through October 31, 2024 and Contract No. 149728 also with Rice Drilling provides for a MDQ of 50,000 Dth of gas per day from November 1, 2014 through October 31, 2024. Columbia Gas states that the contracts contain no material deviations from the *pro forma* service agreement.

9. Contracts Nos. 149759 and 149760 with Antero I and Antero II provides a MDQ of 47,000 Dth and 267,000 Dth of gas per day, respectively. Columbia Gas states its Antero I and Antero II Agreements, contain two provisions that are non-conforming to the *pro-forma* service agreement for firm transportation.<sup>17</sup> Specifically, Columbia Gas stated that the agreements include: (1) a one-time right to extend the term of the agreement; and (2) the addition of section 7 to incorporate receipt point shift rights.

10. With regard to the contract extension provision, section 2 of the Antero I and Antero II Agreements provide that the shipper shall have a one-time right to extend its Service Agreement for the 47,000 (Antero I) and 267,000 (Antero II) Dth of gas per day for an additional five years at the then effective maximum recourse rate applicable to the Columbia Gas Rate Schedule FTS as set forth in Columbia Gas' tariff. Under both agreements, the shipper must notify Columbia Gas in writing of its intent to extend the agreement no later than April 1, 2023 and January 1, 2023, respectively. The Antero Agreements also provides that, "Shipper has a contractual right of first refusal upon the shipper's one-time subsequent extension (if exercised) equivalent to the right of first refusal set forth from time to time in Section 4 of General Terms and Conditions of [Columbia Gas'] FERC Gas Tariff."<sup>18</sup>

11. Columbia Gas states that its tariff already provides Columbia Gas and a shipper the right to renegotiate any of the terms of a long term service agreement, including rates to be charged prior to the expiration of its term in exchange for the shipper's agreement to extend the use of at least part of its capacity. Therefore, Columbia Gas asserts that section 2 gives Antero and Columbia Gas the right to mutually agree to extend the term of the service agreement. Columbia Gas states all shippers on its system have this right and the non-conforming provision does not confer any benefits on Antero that are not

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<sup>17</sup> Columbia Gas also describes the negotiated rate provisions in the Antero Agreements as non-conforming. However, as the Commission has previously explained, Columbia Gas' tariff authorizes it to enter into negotiated rate agreements, and therefore the rate provisions of its negotiated rate agreements are not non-conforming. *Columbia Gas Transmission, LLC*, 131 FERC ¶ 61,080, at PP 7-8 (2010) (*Columbia Gas*).

<sup>18</sup> Columbia Gas Transmittal at 4 (citing Antero I Agreement).

available to all shippers. Columbia Gas indicates the Commission has allowed similar provisions and the Commission should accept this non-conforming provision consistent with prior Commission orders.

12. Regarding receipt point shift rights, both Antero Agreements include a non-conforming provision entitled: Section 7. Receipt Point Shift Rights:

Section 7. Receipt Point Shift Rights. With respect to each increment of capacity identified in Appendix A of the agreement, at any time and from time-to-time during the term of this Service Agreement pursuant to which Shipper has subscribed the increment of capacity, Shipper may request to shift some or all of its existing receipt point quantities to allow the flow of its or its affiliate's production, including but not limited to production in the Utica Shale. Within 45 days of receiving such a request from Shipper, Transporter shall determine and communicate to the shipper the incremental cost, terms, and conditions, if any, necessary to meet the shipper's request to shift receipt point capacity to access the additional production. Upon mutual agreement of Shipper and Transporter, Transporter shall, consistent with its tariff, implement an agreement or similar mechanism in which to effectuate the receipt point amendment.

Shipper shall have the right, in accordance with Section 11 of the General Terms & Conditions of the Tariff, to reallocate Transportation Demand capacity rights at any time and from time to time among existing and future points of receipt located on its system between and including Smithfield, West Virginia, compressor station and the interconnection between its system and the MarkWest Liberty Sherwood Processing Plant, with no impact to the reservation rate and retainage rate in the Service Agreement.

Columbia Gas states that the Commission has accepted similar non-conforming provisions granting an anchor shipper on a pipeline expansion full maximum daily quantity rights at multiple receipt points in *Texas Eastern Transmission, LP*,<sup>19</sup> and the Commission should accept this provision.

13. Columbia Gas' non-conforming agreements with Antero also include ramp up and ramp down provisions that increase and decrease the contract quantities at specified dates for specified volumes throughout the terms of Antero I and Antero II Agreements. However, Columbia Gas does not identify these provisions as non-conforming.

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<sup>19</sup> 139 FERC ¶ 61,138 (2012) (*Texas Eastern*).

**B. Details of Columbia Gulf's Filing in Docket No. RP15-55-000**

14. Columbia Gulf states that it has entered into two negotiated rate and non-conforming service agreements with Antero: the Antero I Agreement (Service Agreement No. 158017) for 267,000 Dth/day and the Antero II Agreement (Service Agreement No. 158018) for 93,000 Dth/day under Rate Schedule FTS-1 to provide service from Leach, Kentucky to Rayne, Louisiana, commencing on November 1, 2014. Columbia Gulf states that the primary terms end on March 31, 2025 and October 31, 2022, respectively. Columbia Gulf further states that it awarded this capacity to Antero following an open season held on February 13, 2012.

15. Columbia Gulf states that in the Antero I and Antero II Agreements, there are two non-conforming provisions: (1) a one-time right to extend the term of the agreement and (2) the addition of section 7 to each service agreement to incorporate delivery point shift rights for Antero.<sup>20</sup>

16. With respect to the contract extension provision, Columbia Gulf asserts that the Antero I Agreement provides that the shipper shall have a one-time right to extend its Service Agreement for the Transportation Demand in effect as of June 30, 2023 (267,000 Dth day) for an additional five years at the then-effective reservation rate of \$3.6500 per Dth per month. Columbia Gulf also asserts that the shipper must notify transporter in writing no later than January 1, 2023 to exercise this right. Similarly, the Antero II Agreement provides that the shipper shall have a one-time right to extend its Service Agreement for the Transportation Demand in effect as of March 31, 2022 (93,000 Dth/day) for an additional five years at the then effective maximum recourse rate applicable to transporter's Rate Schedule FTS-1. Columbia Gulf states that the shipper must notify Columbia Gulf in writing no later than October 1, 2022 in order to exercise this right.

17. Columbia Gulf asserts that its tariff provides that Columbia Gulf and the shipper have the right to renegotiate any of the terms of a long-term service agreement, including the rates to be charged, prior to the expiration of its term in exchange for the shipper's agreement to extend the use of at least part of its capacity. Therefore, Columbia Gulf states that the one-time right to extend the term of the Antero I and Antero II Agreements does not confer any benefits on Antero that are not available to all shippers.

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<sup>20</sup> Columbia Gulf also describes the negotiated rate provisions in the Antero Agreements as non-conforming. However, because Columbia Gulf's tariff authorizes it to enter into negotiated rate agreements, the rate provisions of its negotiated rate agreements are not non-conforming. *Columbia Gas*, 131 FERC ¶ 61,080, at PP 7-8.

18. With respect to the delivery point shift rights, Columbia Gulf states that the Antero I Agreement contains the following non-conforming language pertaining to delivery point shift rights in section 7:

Section 7. Delivery Point Shift Rights at Sabine Henry Hub. With respect to each increment of capacity identified in Appendix A, at any time and from time to time during the term of this Service Agreement pursuant to which Shipper has subscribed the increment of capacity, Shipper may request to shift some or all of its delivery point quantities to the Sabine Henry Hub Meter No. 519 (“Hub”). Within 45 days of receiving Shipper’s request, Transporter will determine and communicate to Shipper the incremental cost, terms, and conditions, if any, necessary to meet Shipper’s request for additional Hub capacity. Upon mutual agreement of Transporter and Shipper, Transporter will implement a prearranged agreement or similar mechanism in which to effectuate the requested Hub capacity, consistent with Transporter’s Tariff.

19. Columbia Gulf states that the Antero II Agreement contains the following non-conforming language pertaining to point shift rights in section 7:

Section 7. Delivery Point Shift Rights at Other Interstate Pipeline Interconnections. Shipper will have a priority right to shift up to 93,000 Dth/day of primary delivery point capacity under this Service Agreement. Once Shipper exercises this right and ships 93,000 Dth/day of primary delivery point capacity, this right shall terminate.

Shipper will have the right to request a primary delivery point shift for up to 20% of the incremental capacity created by Columbia Gulf on Columbia Gulf’s system at Columbia Gulf’s interconnections with the interstate pipelines listed herein. Shipper may shift primary delivery point volumes, at the applicable Project rate, to Florida Gas Transmission Company, Southern Natural Gas Company, Transcontinental Gas Pipeline, and Texas Eastern Transmission, LP.

Shipper may also request to shift primary delivery point volumes to any expanded or new interconnection with Midwestern Gas Transmission Company, Kinder Morgan Louisiana Pipeline, LLC, Creole Trail Pipeline, or any other new interconnection with an interstate natural gas pipeline, provided that any such shift will be subject to additional rates or charges to be mutually agreed to by Shipper and Transporter. Such additional rates or charges will be limited to the difference between: (i) the maximum recourse rate applicable to such facilities (whether priced on a rolled-in or incremental basis); and (ii) the applicable Project rate.

Upon receipt of notice by Columbia Gulf of its intent to expand or construct an interconnection with an interstate pipeline, Shipper shall have

thirty days to inform Columbia Gulf of its election to shift its eligible volumes to that interconnection as a new primary delivery point. If Shipper elects such a shift, its point shift request will not be subject to pro rata allocation for volumes up to 20% of the incremental capacity at that point.

Columbia Gulf asserts that section 11.2 of the GTC of its tariff gives all shippers the right to request delivery point shifts. Columbia Gulf, therefore, contends that section 7 in the Antero I Agreement does not provide the shipper with any rights not offered to all its shippers under section 11.2 of its GT&C. Columbia Gulf also states that non-conforming primary point change provision in section 7 of the Antero II Agreement is permissible, stating that the Commission has accepted similar non-conforming provisions, citing *Texas Eastern*.<sup>21</sup>

20. Columbia Gulf's non-conforming agreements with Antero also include ramp up and ramp down provisions that increase and decrease the contract quantities at specified dates for specified volumes throughout the terms of Antero I and Antero II Agreements. Similar to Columbia Gas, Columbia Gulf does not identify these provisions as non-conforming.

### **C. Public Notice, Comments and Protests**

21. Public notice of the filings (RP15-47-000) and (RP15-47-001) was issued on October 14, 2014 and October 23, 2014, respectively. 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,<sup>22</sup> 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. No protests or adverse comments were filed. Statoil filed comments in support of its agreement with Columbia Gas.

22. Public notice of Columbia Gulf's (RP15-55-000) filing was issued on October 22, 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

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<sup>21</sup> 139 FERC ¶ 61,138.

<sup>22</sup> 18 C.F.R. § 385.214 (2014).

or place additional burdens on existing parties. Orange and Rockland Utilities, Inc. (O&R) filed a protest. Indicated Shippers filed comments.<sup>23</sup>

23. On November 10, 2014, Columbia Gulf filed an answer to O&R and Indicated Shippers. While the Commission's regulations do not permit the filing of answers to protests or answers to answers,<sup>24</sup> the Commission will accept Columbia Gulf's answer because it provided additional information which aided in our decision-making process.

24. In summary, both O&R and Indicated Shippers protest the "priority right" to change primary points in section 7 of the Antero II Agreement between Columbia Gulf and Antero. They also protest Columbia Gulf's proposal in section 7 of the Antero II Agreement to provide Antero a priority for up to 20 percent of its volumes that will be exempt from the typical *pro rata* allocation that occurs between Antero and another shipper(s) when these shippers submit an equivalent bid for delivery point capacity.

25. Specifically, in its protest, O&R states that the Commission should direct Columbia Gulf to remove provisions that provide Antero priority rights in the Antero II Agreement to shift capacity to alternative receipt and delivery points. O&R explains that Columbia Gulf has proposed to provide Antero, under its Antero II Agreement, a "priority right" to shift up to its contracted 93,000 Dth/day of delivery point capacity. O&R states that Antero would be given a higher priority to shift its delivery point than other shippers. While it may be consistent with Commission policy to allow shippers enhanced primary delivery point flexibility as a *quid pro quo* for those shippers' anchor participation in new section 7(c) certificated construction projects,<sup>25</sup> O&R maintains that the Commission does not permit pipelines to provide enhanced primary delivery point flexibility in other circumstances.<sup>26</sup>

26. O&R also contests Columbia Gulf's proposal to provide Antero a priority for up to 20 percent of its volumes that will be exempt from the typical *pro rata* allocation that occurs between Antero and another shipper (or shippers) when these shippers submit an

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<sup>23</sup> The Indicated Shippers include ConocoPhillips Company; Cross-Timbers Energy Services, Inc.; Direct Energy Business Marketing, LLC; and Noble Energy, Inc.

<sup>24</sup> 18 C.F.R. § 385.213(a)(2) (2014).

<sup>25</sup> O&R protest at 4 (citing *Tennessee Gas Pipeline Company, LLC*, 140 FERC ¶ 61,120 at PP 21 and 25 (2012)).

<sup>26</sup> O&R protest at 4 (citing *Colorado Interstate Gas Company*, 105 FERC ¶ 61,124 at P 21 (2003)).

equivalent bid for delivery point capacity. O&R states that Columbia Gulf has not adequately justified this provision nor demonstrated that it is not unduly preferential. O&R argues that it provides a contractual right in the Antero II Agreement which differs from Columbia Gulf's practices with regard to new capacity. If Columbia Gulf expands or constructs an interconnection with an interstate pipeline, that new capacity should be available to all shippers either by posting the capacity as generally available or conducting an open season. Also, O&R contends that section 4.2 of Columbia Gulf's GT&C governing the auction of capacity that becomes available clearly states that if two or more shippers submit equal, acceptable highest value bids, then Columbia Gulf will award capacity based upon the daily quantities requested *pro rata* among all shippers that submitted equivalent highest value bids.<sup>27</sup> O&R requests that the Commission reject section 7 of the Antero II Agreement as it would degrade the rights of other Columbia Gulf shippers, in violation of the Commission's policies.

27. In their comments, Indicated Shippers state that the Commission prohibits material deviations in negotiated rate agreements that present the risk of undue discrimination. Indicated Shippers further state that the one type of material deviation generally not permitted by the Commission is a negotiated term and condition of service. Indicated Shippers assert that, in Order No. 637, the Commission established a policy against permitting pipelines to negotiate terms and conditions of service with individual shippers that differ from those provided other shippers. Indicated Shippers aver that the point shift provisions in the Antero II Agreement appear to conflict with the Commission policy.

28. Indicated Shippers argue that the shipper's pre-emptive right under the Antero II Agreement to shift its delivery point rights for up to 20 percent of the capacity of a new or expanded point of interconnection without being subject to *pro rata* allocation with other shippers seeking capacity at that point is not provided to any other shipper under Rate Schedule FTS-1. Indicated Shippers contend that this pre-emptive right provides Antero with a capacity preference over all other FTS-1 shippers, and is unavailable under the Rate Schedule FTS-1 *pro forma* service agreement. Therefore, Indicated Shippers aver that the provision is impermissible. Indicated Shippers state that in *Northern Natural Gas Company*,<sup>28</sup> the Commission rejected a "load growth" provision in an agreement between Northern and CenterPoint Energy Minnesota as a condition of service that was not offered to all of Northern's customers. Furthermore, Indicated Shippers

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<sup>27</sup> O&R protest at 6, stating that, under the same section, a shipper may decline to accept a *pro rata* allocation of capacity resulting in an award of less than the full capacity requested if notification is provided to Columbia Gulf within one hour.

<sup>28</sup> 110 FERC ¶ 61,321, at P 18, *reh'g denied*, 111 FERC ¶ 61,379 (2005).

assert that Columbia Gulf's reliance on *Texas Eastern*,<sup>29</sup> as support for the "priority rights" provisions in the Antero II Agreement, including the pre-emptive rights to future capacity, is unavailing. Indicated Shippers state that *Texas Eastern* approved non-conforming contract provisions as part of its authorization of a capacity expansion under NGA section 7, and cited the need for the non-conforming provisions based on the unique circumstances of the expansion. Indicated Shippers argue that Columbia Gulf has not constructed new capacity to provide services under the contracts at issue here. Indicated Shippers further state that the pre-emptive point-switching right provided for in the Antero II Agreement appears to reflect consideration for Antero's subscription to capacity on the Smithfield III Expansion Project. In addition to deviation from the *pro forma* FTS-1 agreement, Indicated Shippers also argue that the Antero II Agreement's grant of a pre-emptive point switching right on future incremental capacity under the discounted negotiated rate appears to conflict with the Commission's policy of allocating capacity to the shipper(s) who place the highest value on it.

29. In its answer, Columbia Gulf states that it will mitigate any risk of undue discrimination in its section 7 of the Antero II Agreement by adding language to its tariff provisions stating that Columbia Gulf will negotiate similar point shift provisions with similarly situated customers on a non-discriminatory basis.

### **III. Discussion**

30. The Commission accepts the three conforming negotiated rates filed by Columbia Gas, effective November 1, 2014. These are Contract No. 144509 with Statoil and Contract Nos. 149727 and 149728 with Rice Drilling. However, the Commission requires further information before it can determine whether the non-conforming provisions in the remaining negotiated rate agreements filed by Columbia Gas and Columbia Gulf are permissible. Therefore, the Commission accepts and suspends the tariff records filed by Columbia Gas and Columbia Gulf listing those agreements as non-conforming, together with the non-conforming contracts, to be effective November 1, 2014, subject to conditions.

31. In *Columbia Gas*,<sup>30</sup> the Commission clarified that a material deviation is any provision in a service agreement that: (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. However, not all material deviations are impermissible. As explained in

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<sup>29</sup> 139 FERC ¶ 61,138 at PP 55-57.

<sup>30</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia Gas*). See also *ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001) (*ANR*).

*Columbia Gas*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.<sup>31</sup>

32. The Commission requires further information in order to determine whether the following provisions in all the Antero Agreements filed by Columbia Gas and Columbia Gulf are permissible material deviations from the two pipelines' *pro forma* service agreements: (1) the one-time right to extend the terms of the agreements, (2) the provisions permitting Antero to shift its primary receipt or delivery points, and (3) the provisions permitting Antero to increase and decrease its contract demand in the various agreements. The Commission has found that each of these types of provisions is a valuable right that must be offered on a not unduly discriminatory basis in the pipeline's generally applicable tariff.<sup>32</sup> Alternatively, in cases involving an anchor shipper for an expansion, the provision may be permissible if offered to anchor shippers in the open season for the expansion.<sup>33</sup>

33. Columbia Gas and Columbia Gulf contend that the contract extension provisions in the Antero Agreements are permissible deviations, because their tariffs include provisions permitting the pipeline and the shipper to renegotiate any of the terms of a long-term service agreement, including the rates, before the expiration of the contract's term in exchange for the shipper's agreement to extend the contract. However, the contract extension terms in the Antero Agreements go beyond simply permitting the pipeline and the shipper to mutually renegotiate an existing contract to extend its term before it expires. The Antero Agreements include provisions in the original contract providing the shipper a one-time unilateral right to extend the terms of those agreements. Thus, Columbia Gas and Columbia Gulf have not shown that their tariffs offer contract extension terms of the type included in the Antero Agreements to all shippers.

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<sup>31</sup> *Columbia Gas*, 97 FERC ¶ 61,221 at 62,002; *ANR*, 97 FERC ¶ 61,224 at 62,022.

<sup>32</sup> *Northern Natural Gas Co.* 113 FERC ¶ 61,032, at P 11 (2005) (contract extension provision); *ANR Pipeline Co.*, 103 FERC ¶ 61,223, at PP 24-26, *reh'g denied*, 105 FERC ¶ 61,112, at P 22 (2003) (primary point changes); *East Tennessee Natural Gas Co.*, 109 FERC ¶ 61,232, at PP 22-23 and 28-29 (2004) (contract demand changes).

<sup>33</sup> *Equitrans, L.P.*, 133 FERC ¶ 61,075, at P 7 (2010). *Tennessee*, 140 FERC ¶ 61,120 at PP 21 and 25.

34. Similarly, while Columbia Gas and Columbia Gulf have not identified the contract demand increase and decrease provisions of the Antero Agreements as non-conforming, we have not found in the pipelines' tariffs any provisions offering such provisions to all shippers on a not unduly discriminatory basis.

35. Columbia Gas recognizes that the provisions in its Antero Agreements permitting primary point changes are non-conforming but asserts that those provisions are permissible because Antero is an anchor shipper for the Smithfield III Expansion Project. Columbia Gulf has proposed in its answer to mitigate any risk of undue discrimination related to the priority primary point change rights in its Antero II Agreement by adding tariff language offering to negotiate similar priority primary point change provisions with similarly situated customers on a non-discriminatory basis.

36. As described above, all three of the types of material deviations included in the Columbia Gas and Columbia Gulf Antero Agreements may be permissible, if they were offered to all anchor shippers in the open season for an expansion. However, Columbia Gas has not provided us with the notice of its open season for the Smithfield III Expansion Project, or provided any other documents related to that open season. Therefore, the current record does not include any information as to whether any of the subject material deviations were offered to shippers participating in Columbia Gas' open season for that project. In addition, it appears that Columbia Gulf entered into its Antero Agreements in conjunction with the Smithfield III Expansion Project, even though it apparently did not engage in any construction as part of that project. If Columbia Gas' notice of the open season for that project (or any comparable open season notice by Columbia Gulf) offered any special contracting options with respect to Columbia Gulf, that fact could be a relevant factor in determining whether the material deviations in Columbia Gulf's Antero Agreement are permissible.

37. With regard to Columbia Gulf's offer to include in its tariff a provision offering to negotiate priority primary point change provisions similar to those in its Antero II Agreement with similarly situated customers on a non-discriminatory basis, we have concerns whether any such provision offering special priority primary point change rights would be just and reasonable.

38. In these circumstances, before deciding whether to accept any of the material deviations in the Antero Agreements, we require Columbia Gas and Columbia Gulf to submit the open season notice for the Smithfield III Expansion Project and any other information relevant to the issue of whether the subject material deviations were offered to any shipper participating in that expansion project, including for related service agreements on Columbia Gulf. Columbia Gas and Columbia Gulf must submit that information within 15 days of the date this order issues. In addition, they may provide any other support for approving the subject material deviations they desire. Responses to

the filings by Columbia Gas and Columbia Gulf must be submitted within 30 days of the date of this order.

39. Therefore, the Commission accepts and suspends the tariff records filed by Columbia Gas and Columbia Gulf listing the Antero Agreements as non-conforming, together with the Antero Agreements themselves, to be effective November 1, 2014, subject to the conditions described above. The Commission waives the 30-day notice requirement as necessary to permit the November 1, 2014 effective date.

40. The Commission's policy regarding rate suspensions is that rate filings 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 that it may be inconsistent with other statutory standards.<sup>34</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.<sup>35</sup> Such circumstances exist here where Columbia Gas and Columbia Gulf are filing several negotiated rate agreements with Antero. Therefore, the Commission shall exercise its discretion to suspend the tariff records and the Antero negotiated rate agreements to become effective on November 1, 2014, subject to refund, the conditions set forth in the body of this order, and further review and order.

The Commission orders:

(A) The Commission accepts Columbia Gas' Docket No. RP15-47-000 filing of Contract Nos. 149727 and 149728 with Rice Drilling and its Docket No. RP15-47-001 filing of Contract No. 144509 with Statoil, effective November 1, 2014. The Commission rejects Columbia Gas' Docket No. RP15-47-000 filing of the contract with Statoil as moot.

(B) The proposed tariff records in Docket No. RP15-47-000 are accepted and suspended subject to the conditions discussed herein, to be effective November 1, 2014.

(C) The proposed tariff records in Docket No. RP15-55-000 are accepted and suspended, subject to the conditions discussed herein, to be effective November 1, 2014.

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<sup>34</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>35</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(D) Waiver of the 30-day notice requirement is granted in both dockets.

(E) Columbia Gas and Columbia Gulf are directed to file any and all open season documents related to the Smithfield Expansion III Project as discussed herein within 15 days of the issuance of this order. Responses to Columbia Gas' and Columbia Gulf's filings are due within 30 days of the issuance of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## **Appendix**

Columbia Gas Transmission, LLC  
FERC NGA Gas Tariff  
Baseline Tariffs

### **Docket No. RP15-47-000**

*Tariff Records Accepted and Suspended Effective November 1, 2014*

Service Agreement Forms, Non-Conforming Service Agreements, 20.0.0  
Table of Contents, , 27.0.0  
Non-Conforming Svc Agmts, Section 2.10 Reserved for Future Use, 1.0.0  
Non-Conforming Svc Agmts, Section 2.11 Reserved for Future Use, 1.0.0  
Negotiated Rate Agreement, Service Agreement No. 149727 - Rice Drilling B, 0.0.0  
Negotiated Rate Agreement, Service Agreement No. 149728 - Rice Drilling B, 0.0.0  
Non-Conf Neg Rate Svc Agm, Section 4.17 Antero Resources, 0.0.0  
Non-Conf Neg Rate Svc Agm, Section 4.18 Antero Resources Contract No. 149760,0.0.0

*Tariff Record Rejected as Moot*

Negotiated Rate Agreement, Service Agreement No. 144509 - Statoil Natural Gas, 0.0.0

### **Docket No. RP15-47-001**

*Tariff Record Accepted Effective November 1, 2014*

Negotiated Rate Agreement, Section 3.19 Statoil Natural Gas Contract No. 144509, 1.0.0