

150 FERC ¶ 61,019
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 16, 2015

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP15-271-000

Columbia Gas Transmission, LLC
5151 San Felipe, Suite 2400
Houston, TX 77056

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

Dear Mr. Downs:

1. On December 19, 2104, Columbia Gas Transmission, LLC (Columbia) filed tariff records¹ containing a service agreement under Rate Schedule OPT (Agreement) between Columbia and Pacific Summit Energy, LLC (Pacific Summit), which contains terms that deviate from Columbia's tariff and form of service agreement. As discussed below, the Commission accepts the subject tariff records, to be effective January 1, 2015, subject to Columbia revising the Agreement as discussed below.
2. Columbia states that Rate Schedule OPT is a hybrid service consisting of both firm and interruptible qualities and has been offered by Columbia to shippers since 1991.² According to Columbia, Rate Schedule OPT is designed to provide firm

¹ Columbia Gas Transmission, LLC, FERC NGA Gas Tariff, Baseline Tariffs, [Service Agreement Forms, Non-Conforming Service Agreements, 22.0.0, Table of Contents, , 29.0.0, and Non-Conforming Svc Agmts, Section 2.4 Pacific Summit Energy Contract No. 160441, 2.0.0.](#)

² See *Columbia Gas Transmission, Corp.*, 54 FERC ¶ 61,226, *order on reh'g*, 55 FERC ¶ 61,366, *order on reh'g*, 56 FERC ¶ 61,182, *order on reh'g*, 56 FERC ¶ 61,449, *order on reh'g*, 57 FERC ¶ 61,250 (1991).

transportation to shippers during Columbia's off-peak season (April through October), while Columbia retains the ability to interrupt service for either 30 days (OPT 30 Service) or 60 days (OPT 60 Service) during the peak season (November through March). Columbia explains that currently, pursuant to section 2(d) of Rate Schedule OPT, Columbia may only offer OPT service for an initial minimum term of one year, and thereafter for succeeding one year increments. Pursuant to section 2(c) of Rate Schedule OPT, Columbia may interrupt service during each one-year increment for up to either 30 or 60 days during the five months of that one year increment that fall within the peak period.

3. Columbia states that it routinely examines the availability of marketable capacity in an effort to align itself with the Commission's policy objective of maximizing capacity on its system. Columbia claims that a recent review uncovered the availability of OPT capacity in an area of Columbia's system that has experienced an upward trend over traditional receipts. Columbia states that this increase in receipts, combined with the interruptible characteristics of the OPT service, created a tranche of capacity available for the fifteen months from January 2015 to March 2016.

4. In order to sell this capacity to Pacific Summit for OPT 30 Service, Columbia explains that it included in the Agreement a deviation permitting a 15-month contractual term. This 15-month contractual term deviates from section 2(d) of Rate Schedule OPT, which only contemplates OPT service in 12-month increments. In addition, to account for the three extra months of OPT service and to equitably distribute the amount of allowable interruption days without recourse to the Shipper, Columbia added 18 additional interruption days during the first peak period of the contract (January-March 2015), while providing that the second peak period (November 2015-March 2016) will have the standard 30 interruption days.³ The 18 additional interruption days deviate from the 30 allowable interruption days for OPT 30 Service authorized in section 2(c) of Rate Schedule OPT.

5. Columbia states that it eliminated the potential of undue discrimination associated with the above provision by offering the service, with the non-conforming terms, to all of Columbia's shippers. Columbia states that on December 4, 2014, it posted an open season for the OPT 30 day capacity. Columbia states that this open season detailed the non-conforming nature of any resulting service agreements due to the extended term and additional prorated days of interruption. Through the open season, Columbia explains

³ Columbia states its tariff does not contemplate an OPT service scenario that includes two winter periods. Therefore, Columbia explains that it created a mechanism to enable interruption in the first winter period by prorating the interruption days over the remaining three months of the five month peak period.

that all shippers were given notice of these conditions of service – thus eliminating the prospect of undue discrimination among shippers.

6. Finally, Columbia believes the Commission can permit the above-referenced deviation without a substantial risk of undue discrimination and that the Agreement provides substantial benefits to the Columbia shipper community. Columbia states that beyond the immediate benefit this Agreement provides by delivering reliable transportation around traditionally constrained parts of Columbia's system, it also provides substantial benefits to all of Columbia's shippers. Specifically, Columbia states that the Agreement benefits existing shippers on the Columbia system by spreading the costs of Columbia's modernization efforts and other surcharges over additional billing determinants.

7. Public notice of the filing was issued on December 22, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214, all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted.⁵ Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. On December 31, 2014, Direct Energy Business Marketing, LLC (DEBM) filed a protest. On January 5, 2015, Columbia filed an answer.⁶ While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, pursuant to Rule 213 of the Commission's regulations,⁷ we will accept Columbia's answer in this proceeding to allow a better understanding of the issues. The arguments of the parties are set forth below.

8. DEBM protests Columbia's proposal because it believes that the Agreement with Pacific Summit potentially discriminates against other OPT-30 shippers who were not interrupted for the assumed 12 days during the initial period (November and December 2014). As a result, DEBM argues that those shippers are subject to being interrupted for more than 18 days during the final period (January to March 2015), while Pacific Summit is only subject to being interrupted for 18 days. DEBM states the OPT Rate Schedule

⁴ 18 C.F.R. § 154.210 (2014).

⁵ 18 C.F.R. § 385.214 (2014).

⁶ In its Motion to Intervene, Antero Resources Corporation (Antero) indicated its intent to file comments or a protest. In its January 7, 2015 comments, Antero states that, based on Columbia's clarification in its answer, it no longer intends to file a protest.

⁷ 18 C.F.R. § 385.213(a)(2) (2014).

provides for 12 month terms precisely to balance the peak period subject to interruption and the off-peak period not subject to interruption. DEBM argues that the fifteen month term provided for in the Agreement with Pacific Summit plainly alters this balance. DEBM argues that the approach Columbia proposes here would potentially discriminate against other OPT shippers that have subscribed to OPT service for the entire winter period from November 2014 through March 2015. DEBM claims that, if Columbia does not interrupt the other shippers' service as many times in November and December as it has arbitrarily attributed to Pacific Summit, other OPT shippers, including DEBM, could be subject to a greater number of interruption days in January to March 2015 than Pacific Summit. DEBM points out that, according to Columbia's most recent Form 2 Annual Report, Columbia's peak day and consecutive three-day peak has occurred in January for the past three years. In addition, DEBM states that section 3(c) of Rate Schedule OPT provides a scheduling priority for OPT shippers with the fewest number of remaining interruption days, consequently giving Pacific Summit a potential scheduling preference over other OPT shippers during the January to March 2015 period.

9. DEBM argues that an open season cannot cure the discriminatory impact on shippers who had already contracted for service as of November 1, 2014, when the peak season commenced. DEBM states Columbia did not post the open season until December 4, 2014, after the first peak season covered by the contract had already begun. DEBM states that an OPT shipper that had already contracted for OPT service commencing November 1, 2014, was already contractually bound as of December 4, 2014, when the open season for the service to Pacific Summit commenced, and therefore would have had no opportunity to obtain comparable service.

10. DEBM argues that Columbia should be able to determine the number of days it would have interrupted service under the Agreement in November and December 2014, as Columbia posts information regarding OPT service interruption days on its Informational Postings web page. Thus, DEBM submits that Columbia can determine how many actual interruptions would have occurred to Pacific Summit's OPT service in November and December 2014. DEBM therefore requests that the Commission require Columbia to modify the 18 prorated days of allowable interruption in the first winter period to either 30 days minus any actual days interruption that Pacific Summit may have experienced in November and December 2014, or, alternatively, to simply revise the 18 prorated days of allowable interruption to 30 days of allowable interruption.

11. In its answer, Columbia states that it has no intention of providing undue preferential treatment to Pacific Summit during the 15-month term of its OPT 30 contract. Columbia explains that its attempt to sell Rate Schedule OPT 30 for a 15-month term is a direct result of a market request, and its attempt to maximize and sell its available capacity to that market. Columbia maintains that it held an open season to determine if there was an ability to sell Rate Schedule OPT on its system for a period

longer than 12 months. Columbia states that it found a market need for this capacity, and has sold this capacity in an open and transparent manner.

12. Columbia clarifies that the pro-rata treatment under the 15-month term was merely intended to provide a trigger for reservation charge crediting pursuant to section 3(f) of Rate Schedule OPT,⁸ in the event Columbia has to interrupt service for a period of more than 18 days between January 1, 2015 and March 31, 2015. Columbia states that the reduced number of interruption days before reservation charge credits are required effectively results in a negotiated contract for a less-than maximum recourse rate to Pacific Summit. However, Columbia states that, operationally, it still intends to schedule this particular OPT contract as if it had the same number of remaining interruption days on its contract with all other similarly situated OPT shippers, which it argues would, from a scheduling perspective, put this contract on equal grounds as all other OPT contracts.⁹ Columbia asserts that it understands DEBM's concern regarding section 3(c) of Rate Schedule OPT. Therefore, Columbia requests that the Commission provide any waiver necessary to allow Columbia to administer the Rate Schedule OPT service with Pacific Summit in the same manner as all other OPT shippers, thus avoiding the potential discrimination issue identified in DEBM's protest.

13. In *Columbia Gas Transmission Corporation*,¹⁰ 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. A material deviation may be permissible if the Commission finds that such deviation does not constitute a substantial risk of undue discrimination.¹¹ Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit because they present a significant potential

⁸ Section 3(f) of Rates Schedule OPT provides [i]f circumstances beyond Transporter's control mandate interruptions of service in excess of the number of days of allowable interruption stated in Shipper's OPT Service Agreement, Transporter shall provide a demand charge credit to Shipper for each such additional day of interruption. That credit shall constitute Shipper's exclusive remedy for any such interruptions.

⁹ Columbia notes that, as of January 1, 2015 there have been no OPT-30 restrictions on the operational segment of Columbia's system connected to the agreement with Pacific Summit.

¹⁰ 97 FERC ¶ 61,221 (2001).

¹¹ *Id.* at 62,004.

for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.

14. The Commission finds that Columbia's assumption that it would have interrupted Pacific Summit's service on 12 days in the November to December 2014 period if the Agreement had been in effect during that period is potentially discriminatory against other OPT shippers who could be subject to a greater number of interruptions than Pacific Summit in the January to March 2015 period and a corresponding lower scheduling priority. Although Columbia did make the non-conforming provisions available to all potential shippers in the open season, the Commission agrees with DEBM that the timing of the open season (after the peak season had already begun and other OPT shippers had already made their contractual commitments) cannot cure the discriminatory impact on shippers that had already contracted for service.

15. In its answer, Columbia recognizes that the Agreement with Pacific Summit has a potentially discriminatory impact because it could give Pacific Summit a scheduling priority over other similarly situated OPT shippers. Columbia also recognizes that during November and December 2014 it did not interrupt the service of any Rate Schedule OPT shippers using the same segment of its pipeline as Pacific Summit. Consequently, those other shippers remain subject to the maximum number of interruptions permitted by Rate Schedule OPT for the current peak season. Therefore, we direct Columbia to revise the Agreement to permit it to interrupt service to Pacific Summit during the January-March 2015 peak period for the full 30 days allowed for OPT 30 Service. The proposed tariff records are accepted, subject to Columbia filing to satisfy this condition within 15 days of the issuance of this order.

16. Columbia states that the purpose of the provision in the Agreement limiting the number of interruption days during the January to March 2015 period to 18 was to make Pacific Summit eligible for reservation charge credits under section 3(f) of Rate Schedule OPT, if circumstances beyond Columbia's control required it to interrupt Pacific Summit's service on more than 18 days. As Columbia states in its answer, the Commission permits a pipeline to include in negotiated rate agreements reservation charge crediting provisions different from those in its generally applicable tariff.¹² Therefore, if Columbia and Pacific desire, they may refile the Agreement as a negotiated rate agreement with a negotiated reservation charge crediting provision.

17. Finally, the Commission notes that Columbia recently made several similar non-conforming filings with regard to OPT service.¹³ To the extent Columbia believes that

¹² *Kern River Gas Transmission Co.*, 135 FERC ¶ 61,050, at P 32-33 (2011).

¹³ Columbia made those filings in Docket Nos. RP14-1294-000 and RP15-54-000.

(continued ...)

these conditions will continue to arise on its system and affect how Columbia intends to sell OPT service, the Commission's preference is for such recurring events to be addressed by generic tariff language, rather than through filing non-conforming agreements. Columbia is encouraged to review its OPT Rate Schedule and to propose any potential revisions necessary to minimize the potential number of future non-conforming agreements.

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

Kimberly D. Bose,
Secretary.

No party protested those filings, and they were accepted by delegated letter orders.