

153 FERC ¶ 61,008  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC

Docket Nos. RP15-1252-000  
RP15-1253-000

ORDER ACCEPTING TARIFF RECORDS AND AGREEMENTS SUBJECT TO  
CONDITIONS

(Issued October 2, 2015)

1. On September 2, 2015, Columbia Gas Transmission, LLC (Columbia) filed tariff records<sup>1</sup> which reflect the elements of five non-conforming and negotiated rate agreements between Columbia and SWN Energy Services Company, LLC (SWN Energy), Cabot Oil & Gas Corporation (Cabot) and South Jersey Resources Group, LLC (SJ Resources) in the captioned dockets.<sup>2</sup> Columbia requests waiver of the Commission's 30-day notice requirement to permit the tariff records to become effective October 1, 2015. As discussed below, the Commission grants waiver of the 30-day notice requirement, accepts Columbia's tariff records and accepts the filed contracts to be just and reasonable subject to conditions.

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<sup>1</sup> See Appendix.

<sup>2</sup> In Docket No, RP15-1252-000, Columbia filed contracts it entered into with SWN which are: (1) FTS Service Agreement No. 161147, Rev 1 SWN Energy dated August 28, 2015 (SWN Energy I Agreement) and (2) FTS Service Agreement No. 161148, Rev 1 SWN Energy dated August 28, 2015 (SWN Energy II Agreement). In Docket No. RP15-1253-000, Columbia filed contracts it entered into with Cabot and SJ Resources which are: (1) FTS Service Agreement No. 161137, dated January 2, 2015 (Cabot Agreement); (2) FTS Service Agreement No.161144 dated May 29, 2015 (SJ Resources I Agreement), and; (3) FTS Service Agreement No. 163148, dated May 29, 2015 (SJ Resources II Agreement).

## I. Background

2. Columbia states that on February 21, 2012, it held an open season to solicit interest in its East Side Expansion Project. As a result of that open season, it entered into precedent agreements with SWN Energy, Cabot and SJ Resources, providing that it would enter into negotiated rate agreements under Rate Schedules FTS and NTS with these three shippers, including various contractual provisions that did not conform to Columbia's Form of Service Agreement.

3. On November 1, 2013, Columbia filed for authorization to construct and operate the East Side Expansion Project in Docket No. CP14-17-000. Columbia states that the East Side Expansion Project is designed to increase firm transportation service on the Columbia system by 312,000 Dth/day. Columbia included the precedent agreements with SWN Energy, Cabot and SJ Resources in the November 1, 2013 filing. However, Columbia did not request that the Commission make an upfront determination in the certificate proceeding concerning the reasonableness of the non-conforming contract provisions it had agreed to provide in the precedent agreements. On December 18, 2014, the Commission issued an order granting Columbia authorization to construct the East Side Expansion Project.<sup>3</sup> In that order, the Commission required Columbia to file either the negotiated rate agreements or tariff records describing the negotiated rates at least 30 days, but not more than 60 days, before the proposed effective for such rates. The Commission also stated that, "if any of the service agreements contain non-conforming provisions, Columbia is required to file those service agreements and identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement."<sup>4</sup>

4. Columbia states that the portion of the East Side Expansion Project underpinning the SWN Energy, Cabot and SJ Resources Agreements filed in this instant filing will be in service on October 1, 2015. Columbia states that the SWN Energy, Cabot and SJ Resources Agreements contain negotiated rates and non-conforming provisions and are consistent with the precedent agreements it entered into with these shippers after the February 21, 2012 open season. Columbia states that its filing includes an explanation of the provisions included in the subject agreements that do not conform with its Form of Service Agreement.

5. Additionally, on September 4, 2015, Columbia filed a modification to its filings in which it states the transmittal letters presenting the subject contracts for review by the

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<sup>3</sup> *Columbia Gas Trans., LLC*, 149 FERC ¶ 61,255 (2014).

<sup>4</sup> *Id.* P 23.

Commission contained an inaccurate statement with regard to the application of the Capital Cost Recovery Mechanism (CCRM) in these Agreements. Specifically, Columbia states that its Transmittal letters asserted that:

For CCRM rate design purposes, Columbia will treat this agreement, as well as all other negotiated rolled-in transportation contracts, as if SWN Energy was paying the maximum recourse rate. Columbia will include the agreement's full billing determinants in the calculation of the CCRM surcharge, thus treating the agreement as if SWN Energy paid the CCRM surcharge and placing Columbia at-risk for recoveries of CCRM costs associated with that capacity.<sup>5</sup>

Columbia states that this sentence is inaccurate and that the SWN Energy I and II Agreements will not be rolled-in contracts for purposes of the CCRM. Columbia states that the Commission approved Columbia's request to establish incremental recourse reservation rates for the SWN Energy I and II Agreements when the Commission approved Columbia's East Side Expansion project.<sup>6</sup> Moreover, Columbia states that the Cabot and SJ Resources I and II Agreements will not be rolled-in contracts for purposes of the CCRM and that the Commission also approved Columbia's request to establish incremental recourse reservation rates for these agreements.

6. Public notice of these filings was issued on September 9, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2015)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2015)), 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. 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.

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<sup>5</sup> Columbia September 2, 2015, Docket No. RP15-1252-000, Transmittal Letter at p. 5. Columbia maintains that it also made a similar statement concerning the contracts at issue in Docket No. RP15-1253-000.

<sup>6</sup> Columbia September 4, 2015 Filing at 1 (citing *Columbia Gas Trans., LLC*, 149 FERC ¶ 61,255, at PP 20-21 (2014)).

## II. Discussion

7. The Commission has stated that if a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.<sup>7</sup> In *Columbia*, the Commission clarified that a material deviation is any provision in a service agreement that: (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (b) affects the substantive rights of the parties.<sup>8</sup> The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.<sup>9</sup> However, not all material deviations are impermissible. As the Commission explained in *Columbia*,<sup>10</sup> provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (b) provisions the Commission can permit without a substantial risk of undue discrimination.<sup>11</sup>

8. For the reasons discussed below, the Commission finds that some of the material deviations contained in the subject service agreements are permissible, but others are not.

### A. Permissible Material Deviations

9. First, *Columbia* states that Section 2 of the SWN Energy II Agreement contains a non-conforming provision stating that at least six months prior to the Estimated In-Service Date, SWN Energy will notify *Columbia* of its Transportation Demand, which may be between 0 Dth/d and 30,000 Dth/d. SWN Energy, as an anchor shipper for the East Side Expansion Project, has exercised this right, and the SWN Energy II Agreement includes the contract demand it has chosen. This provision relates to the contracting choices of an anchor shipper before the in-service date of a project. As such, the provision is unique to service provided to anchor shippers, and it does not provide the

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<sup>7</sup> 18 C.F.R. §§ 154.1(d), 154.112(b) (2015).

<sup>8</sup> *Columbia Gas Trans. Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

<sup>9</sup> *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010) (*Monroe*).

<sup>10</sup> *Columbia*, 97 FERC at 62,003-04.

<sup>11</sup> *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010) (*Equitrans*).

anchor shipper a higher quality of service after the project goes into service or result in undue discrimination to the pipeline's other shippers.<sup>12</sup> Accordingly, we approve this provision.

10. Second, Section 2 of the Cabot Agreement states that the agreement "shall be effective as of September 1, 2015, or the first day of the month following the date that all of Transporter's East Side Expansion Project facilities necessary to provide firm transportation service to Shipper have been commissioned, tested, and are ready for service as determined in Transporter's discretion." Columbia states that, because it is expecting an in-service date of October 1, 2015 (or later), it requests an effective date of November 1, 2015, for the Cabot Agreement. This provision coordinating the effective date of an anchor shipper's service agreement with the in-service date of the project is also a permissible deviation addressing an issue unique to the service provided an anchor shipper.

11. Third, Columbia states that Section 2 of the three agreements with Cabot and SJ Resources 1 and II, contains a non-conforming provision which states that "[S]hipper shall be obligated to pay the rates and charges set forth herein on the Actual In-Service Date, regardless of whether Shipper will actually begin receiving service on that date." Columbia states that this provision was necessary to allow Columbia to recover the costs of building the East Side Expansion Project from Cabot and SJ Resources. This provision is permissible, because it relates solely to the rates to be paid by these anchor shippers, and it does not provide them a different quality of service than that provided Columbia's other shippers or adversely affect the other shippers.<sup>13</sup>

12. Fourth, Section 1 of the SWN Energy I, SWN Energy II and Cabot Agreements contains a non-conforming provision that states, "[A] portion of Shipper's transportation is provided by Transporter via off system capacity acquired by Transporter on Millenium Pipeline Company, LLC (MPC)." Columbia asserts that Section 47.1 of its tariff requires it to seek prior authorization from the Commission to acquire off-system capacity that will be used to meet new firm service commitments. Columbia states that it has already filed, and the Commission accepted, the requests for capacity on MPC.<sup>14</sup> Columbia

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<sup>12</sup> *Monroe*, 130 FERC ¶ 61,113 at P 46. *Tennessee Gas Pipeline Co.*, 144 FERC ¶ 61,219, at PP 26 and 32 (2013).

<sup>13</sup> *Gulfstream Natural Gas System*, 100 FERC ¶ 61,036, at P 16 (2002). *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008).

<sup>14</sup> Columbia asserts that its requests for capacity on MPC were granted by the Commission in *Columbia Gas Transmission, LLC*, Letter Order, Docket No. RP15-1175-000 (Aug. 21, 2015); *Columbia Gas Transmission, LLC*, Letter Order, Docket No. RP15-

asserts that no other shipper will be impacted by Columbia obtaining the Millennium capacity. As such, Columbia respectfully requests that the Commission approve the non-conforming language in Section 1 of the SWN Energy I, SWN Energy II, and Cabot Agreements. Section 47.1 of Columbia's tariff provides that it "will offer the offsystem capacity to Shippers on a primary firm basis." Thus, Section 1 of the SWN Energy I, SWN Energy II and Cabot Agreements is consistent with the generally applicable provisions of Columbia's tariff and does not provide these shippers any rights not offered to all shippers. As such, this provision does not constitute a material deviation or present a substantial risk of undue discrimination.

13. Finally, Section 2 of the Cabot Agreement, SJ Resources I Agreement and SWN Energy I Agreement contain a non-conforming provision that gives the shippers a one-time right to extend the agreements for an additional term of 5 years. Columbia asserts that all shippers on Columbia's system have a similar right. Accordingly, it argues that this provision does not confer any benefits that are not available to all shippers.

14. In regard to the one-time contract extensions presented by these contracts, the Commission has found that a contract extension provision is a valuable right that must be offered on a not unduly discriminatory basis in the pipeline's generally applicable tariff.<sup>15</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>16</sup> In this instance, a contract extension right was afforded to all anchor shippers in the Columbia open season bidding process.<sup>17</sup> Therefore, we find the one-time right to extend the terms incorporated in the Cabot, SJ Resources I and SWN Energy I agreements to be material deviations from Columbia's *pro forma* service agreements which are permissible. These provisions do not constitute a substantial risk of undue discrimination because all shippers were given the opportunity for this right as part of the open season.

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1167-000 (Aug. 14, 2015); *Columbia Gas Transmission, LLC*, Letter Order, Docket No. RP14-611-000 (Apr. 4, 2014).

<sup>15</sup> *Northern Natural Gas Co.*, 113 FERC ¶ 61,032, at P 11 (2005); *ANR Pipeline Co.*, 103 FERC ¶ 61,223, at PP 24-26, *reh'g denied*, 105 FERC ¶ 61,112, at P 22 (2003); *East Tennessee Natural Gas Co.*, 109 FERC ¶ 61,232, at PP 22-23, 28-29 (2004).

<sup>16</sup> *Equitrans, L.P.*, 133 FERC ¶ 61,075, at P 7 (2010). *Tennessee Gas Pipeline Co.*, 140 FERC ¶ 61,120, at PP 21, 25 (2012).

<sup>17</sup> "Anchor shippers will enjoy benefits *such as contract extension rights* and other benefits negotiated on a not unduly discriminatory basis." (Emphasis added) April 18, 2015 Data Request Response in Docket No. CP14-17-000, Open Season Notice p.3.

15. Accordingly, with the exception of the provisions discussed below the Commission finds that the non-conforming provisions identified by Columbia are permissible because they do not present a substantial risk of undue discrimination.

**B. Impermissible Material Deviations**

16. Several of the non-conforming provisions presented by Columbia concern the Commission. First, the Commission notes that, while not discussed in Columbia's transmittal letter, Section 3 of the SJ Resources I and II Agreements contains ramp-up and ramp-down provisions which adjust SJ Resources' transportation demand to different amounts of service during certain intervals during the terms of the agreements. Specifically, the SJ Resources I Agreement provides SJ Resources with a ramp-up of transportation demands from 40,000 Dth/day for September 1, 2015, through October 31, 2016, to 50,000 Dth/day for November 1, 2016, through October 31, 2018; and then a further increase to 60,000 Dth/day for November 1, 2018, through August 31, 2030. The SJ Resources II Agreement provides SJ Resources with both a ramp-up and a ramp-down of capacity transportation demands from 23,000 Dth/day for the actual in-service date, through October 31, 2015, then an increase to 40,000 Dth/day for November 1, 2015, through October 31, 2016; and finally a decrease to 20,000 Dth/day for November 1, 2016, through October 31, 2017.

17. The Commission has held that provisions giving a shipper a special right to increase its contract demand outside the ordinary procedures in the pipeline's tariff are unduly discriminatory and thus impermissible, except in the limited circumstance described below. As explained in *ANR*, such a special right to increase contract demand "could adversely affect others seeking capacity from the pipeline, since the shipper with the special provision would have a priority for obtaining the capacity."<sup>18</sup> The Commission has also found that the ability to reduce contract demand is a valuable and substantive right that must be afforded to all other similarly situated firm shippers that obtain service pursuant to a generally applicable provision in the pipeline's tariff.<sup>19</sup>

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<sup>18</sup> *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,025 (2001) (*ANR*). See also *East Tennessee Natural Gas Co.*, 109 FERC ¶ 61,232, at P 29 (2004); *Horizon Pipeline Co., LLC.*, 152 FERC ¶ 61,161, at P 6 (2015) ("The non-conforming provisions that vary MDQ over two periods of time present a substantial risk of undue discrimination among shippers and therefore constitute an impermissible material deviation.").

<sup>19</sup> *Tuscarora Gas Transmission Co.*, 131 FERC ¶ 61,091 (2010); *Dominion Cove Point LNG*, 134 FERC 61,219, at P 16 (2011); *Questar Pipeline Co.*, 131 FERC ¶ 61,011, at P5 (2010) ("The Commission finds this decreasing contract quantity provision to be impermissible since substantive rights are afforded to [shipper] that are

(continued ...)

18. The Commission has approved non-conforming provisions providing anchor shippers special contract demand adjustment rights, where those rights were offered to all parties in the open season for a project and were necessary to reflect the unique circumstances involved with the construction of new infrastructure.<sup>20</sup> In the instant case, the Open Season Notice for the subject expansion project did not offer anchor shippers a special right to ramp-up or ramp-down their contract demand after the project went into service, such as is in the SJ Resource agreements. The Commission simply cannot find that the bare reference to “other benefits negotiated on a not unduly discriminatory basis” in Columbia’s open season notice for this project is sufficient to provide adequate notice to parties that ramp-up and ramp-down rights were available for all anchor shippers.<sup>21</sup>

19. Similarly, Columbia states that Section 3 of the SWN Energy I Agreement includes a reference to five service agreements, which are for five successive one-year terms. The first of these service agreements is the SWN Energy II Agreement, which commences on October 1, 2015. Columbia asserts that this provision provides that each year, SWN Energy will notify Columbia of its Transportation Demand election under the corresponding Service Agreement (beginning with the SWN Energy II Agreement), and SWN Energy’s Transportation Demand elected under such Service Agreement will determine the rate paid by SWN Energy under both of the SWN Energy Agreements for that year. Columbia states that it granted SWN Energy these provisions to secure SWN Energy’s financial support for construction of the East Side Expansion Project. Columbia states that by allowing SWN Energy to adjust the level of capacity under contract on an annual basis, these provisions will give SWN Energy flexibility to address annual variability in its production schedules. Columbia asserts that this provision addresses the unique circumstances of this project shipper in a way that secured SWN Energy’s support for the project. Accordingly, Columbia asserts that the

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not afforded to other similarly situated firm shippers that obtain service pursuant to Questar’s tariff.”).

<sup>20</sup>*Equitrans, L.P.*, 133 FERC ¶ 61,075, at P7 (2010). *Tennessee Gas Pipeline Co.*, 140 FERC ¶ 61,120, at PP 6, 21, 23, and 25 (2012); *Columbia Gas Trans.*, 149 FERC ¶ 61,146, at P 32 (2014). *See also Rockies Express Pipeline, LLC*, 116 FERC ¶ 61,272, at P 76-78 (2006).

<sup>21</sup> “Anchor shippers will enjoy benefits such as contract extension rights and *other benefits negotiated on a not unduly discriminatory basis.*” (Emphasis added) April 18, 2015 Data Request Response in Docket No. CP14-17-000, Open Season Notice p. 3.

Commission should determine that this non-conforming provision does not present a risk of undue discrimination.

20. However, as with the SJ Resources service agreements discussed above, the open season notice for this project did not provide notice that any such ability to increase or decrease contract demand was offered to all anchor shippers. Therefore, for like reasons, the Commission finds that the SWN Energy I Agreement provision that would permit the shipper to adjust its Maximum Daily Quantity (MDQ) rights under five, successive annual agreements constitutes a substantial risk of undue discrimination and that it is therefore impermissible.

21. Accordingly, the Commission directs Columbia to either: (1) remove these provisions from the subject agreements or (2) show that these provisions do not give these shippers special rights to increase their MDQ outside the posting and bidding provisions set forth in Columbia's General Terms and Conditions (GT&C).

The Commission orders:

(A) The tariff records reflected in the Appendix are accepted to be effective October 1, 2015, subject to the conditions discussed in the body of this order.

(B) Columbia is required, within 30 days of the issuance of this order, to revise the instant contracts or show that these provisions do not give these shippers special rights to increase their MDQ outside the posting and bidding provisions set forth in Columbia's GT&C.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix**

Columbia Gas Transmission, LLC  
Baseline Tariffs, FERC NGA Gas Tariff

Accepted Effective October 1, 2015

[Service Agreement Forms, Non-Conforming Service Agreements, 23.0.0](#)

[Table of Contents, , 31.0.0](#)

[Service Agreement Forms, Non-Conforming Service Agreements, 24.0.0](#)

[Table of Contents, , 32.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.23 Cabot Oil & Gas Contract No. 161137, 0.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.20 SWN Energy Contract No. 161148, 0.0.0](#)

Accepted Effective October 1, 2015, Subject to Conditions

[Non-Conf Neg Rate Svc Agm, Section 4.19 SWN Engery Contract No. 161147, 0.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.21 South Jersey Resources Contract No. 161144, 0.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.22 South Jersey Resources Contract No. 163148, 0.0.0](#)