

153 FERC ¶ 61,098
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. RP15-47-002

Columbia Gulf Transmission, LLC

RP15-55-001
(not consolidated)

ORDER ACCEPTING COMPLIANCE FILING
SUBJECT TO CONDITIONS

(Issued October 29, 2015)

1. On November 20, 2014, the Commission accepted and suspended tariff records filed by Columbia Gas Transmission, LLC (Columbia Gas) and Columbia Gulf Transmission, LLC (Columbia Gulf) (collectively, Columbia Pipelines) setting forth the terms of various negotiated rate service agreements related to the Smithfield Expansion III Project (Smithfield III Expansion).¹ The Columbia Pipelines' negotiated rate service agreements with Antero Resources Corporation (Antero) included several non-conforming provisions. The November 2014 Order required the Columbia Pipelines to file any and all open season documents related to the Smithfield III Expansion within 15 days of the issuance of the order to assist in determining whether the Antero non-conforming provisions are permissible. For the reasons discussed below, the Commission accepts the compliance filing subject to conditions and we require the Columbia Pipelines to (1) remove the provisions for varying contractual entitlements or revise their tariffs to offer such rights to all shippers on a not unduly discriminatory basis and (2) revise or remove the non-conforming provisions concerning primary point shift rights.

¹ *Columbia Gas Transmission, LLC and Columbia Gulf Transmission, LLC*, 149 FERC ¶ 61,146 (2014) (November 2014 Order).

I. Background

2. In February 2012, Columbia Gas and Columbia Gulf held a non-binding open season to solicit interest in the Smithfield III Expansion. The purpose of that expansion is to facilitate the transportation of additional supply from southwestern Pennsylvania and north central West Virginia to Gulf Coast markets over both Columbia Gas and Columbia Gulf. Based on the open season, Columbia Gas and Columbia Gulf executed binding precedent agreements with Antero and two other shippers.

3. The Smithfield III Expansion required the addition of compression on the Columbia Gas system, but no additional facilities on the Columbia Gulf system. Accordingly, on May 10, 2013,² Columbia Gas filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)³ 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 (i.e., the Smithfield III Expansion).

4. In its certificate application, Columbia Gas stated that it would provide service to its customers under negotiated rate agreements pursuant to the negotiated rate authority in its General Terms and Conditions (GT&C). Columbia Gas did not request an upfront determination as to whether any non-conforming provisions in the negotiated rate agreements would be permissible. On December 19, 2013, the Commission approved Columbia Gas' certificate application subject to conditions.⁴ The *Smithfield III Expansion Order*, among other things, directed Columbia Gas 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*⁵ and

² Columbia Gas supplemented its application on May 13 and 21, 2013.

³ 15 U.S.C. § 717f(c) (2012).

⁴ *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,257 (2013) (*Smithfield III Expansion Order*).

⁵ *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) (Alternate Risk Policy Statement)).

the Commission's negotiated rate policies.⁶ 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.⁷

5. In accordance with the *Smithfield III Expansion Order*, Columbia Gas filed revised tariff records setting forth the terms of five negotiated rate service agreements in Docket No. RP15-47-000 on October 10, 2014, including two agreements with Antero (Contract Nos. 149759 and 149760). Columbia Gas stated that the Antero Agreements included two non-conforming provisions. These were: (1) provisions allowing a one-time right to extend the terms of the agreements; and (2) provisions permitting Antero to shift its primary receipt points. As stated in the November 20 Order, the Antero Agreements also included another non-conforming provision, not identified by Columbia Gas, permitting Antero to ramp-up and ramp-down its contract demand in several agreements. There were no non-conforming provisions in the other three agreements filed by Columbia Gas. Columbia Gas requested a November 1, 2014 effective date to coincide with the estimated in-service date of the Smithfield III Expansion.

6. On October 21, 2014, Columbia Gulf filed in Docket No. RP15-55-000 revised tariff records to reflect two negotiated rate agreements with Antero that also included non-conforming provisions. These provisions were similar to the non-conforming provisions in Columbia Gas' agreements with Antero, except that provision concerning primary point shifts related to Antero's delivery points instead of its receipt points. Orange and Rockland Utilities, Inc. (O&R) and Indicated Shippers protested Columbia Gulf's filing.⁸ In summary, both O&R and Indicated Shippers protested the "priority right" to change primary delivery points in section 7 of the Antero II Agreement between Columbia Gulf and Antero. They also protested 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

⁶ 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).

⁷ *Smithfield III Expansion Order*, 145 FERC ¶ 61,257 at P 23.

⁸ The Indicated Shippers include ConocoPhillips Company; Cross-Timbers Energy Services, Inc.; Direct Energy Business Marketing, LLC; and Noble Energy, Inc.

another shipper(s) when these shippers submit an equivalent bid for delivery point capacity.

7. In the November 2014 Order, the Commission stated that it required additional information in order to determine whether the non-conforming provisions in the Antero negotiated rate agreements with the Columbia Pipelines are permissible material deviations from the Columbia Pipelines' *pro forma* service agreements. The Commission stated that it has found 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. The Commission stated that, in cases of expansion involving an anchor shipper, the provisions may be permissible if offered to all shippers in the open season for the expansion. However, the Columbia Pipelines had not provided the Commission with the notice of its open season for the Smithfield III Expansion or provided any other documents related to that open season. Therefore, the Commission found that the record did not include any information as to whether any of the subject material deviations were offered to shippers participating in Columbia Gas' open season for the project. The Commission also found that the record did not disclose whether any open season document offered any special contracting options with respect to Columbia Gulf. Given the lack of sufficient information to determine if the material deviations were afforded to all shippers, the November 2014 Order directed the Columbia Pipelines to submit the Open Season Notice for the Smithfield III Expansion and any other information relevant to the issue of whether the subject material deviations were offered to any and all shippers participating in the Smithfield III Expansion, including related service agreements for Columbia Gulf. The November 2014 Order accepted Columbia Gas' filing of its conforming negotiated rate agreements with two other shippers, and therefore those agreements are no longer at issue in these proceedings.

II. Details of the Compliance Filing

8. In compliance with the Commission's November 20 Order, Columbia Pipelines submitted the Open Season Notice for the Smithfield III Expansion Project. In that Open Season Notice, the two Columbia Pipelines announced a "joint non-binding Open Season to solicit interest in" the Smithfield III Project "which is designed to facilitate the transportation of Marcellus production originating in southwest Pennsylvania and north central West Virginia and delivery to Gulf Coast markets on the [Columbia Gulf] system."⁹ The notice also stated that the goal of the project was to offer shippers access to both markets and liquid trading points in order to ensure consistent and reliable gas flows. "In order to accomplish this mission," the notice stated, "the Project will offer a

⁹ Open Season Notice at 1.

transportation path to and *through* the [Columbia Gas/Columbia Gulf] interconnect at Leach, Kentucky by offering seamless service to points as far south as Rayne, Louisiana on the [Columbia Gulf] system.”¹⁰

9. Under the heading “Anchor Shipper Status,” the notice stated the following:

Shippers who execute binding Precedent Agreements no later than April 30, 2012, have in-service dates no later than November 1, 2014, and commit to a minimum MDQ of 150,000 Dth/d for a term greater than 10 years shall receive anchor shipper status. Anchor shippers will enjoy benefits such as priority for subscribing capacity available for early in-service and contract extension rights. [Columbia Pipelines] will also endeavor to limit proration exposure risk for all anchor shippers.¹¹

10. Columbia Pipelines state that the Open Season Notice supports a finding that the non-conforming terms and conditions in Antero’s service agreement with both are permissible material deviations from their *pro forma* service agreements, because Antero is an anchor shipper on the Smithfield III Expansion.

11. Columbia Pipelines indicate that the Open Season Notice demonstrates that the Smithfield III Expansion would encompass a transportation path on both Columbia Gas and Columbia Gulf, in order for shippers to reach points as far south as Rayne, Louisiana on the Columbia Gulf system. Columbia Pipelines claim that all aspects of the project announced in the open season, including the expansion of Columbia Gas’ capacity and the north-to-south flow reversal and outlet via Columbia Gulf, are inextricably linked, because capacity on both pipelines was necessary to provide a major supply outlet for producers, such as Antero, to move production gas from the trapped Marcellus Shale production region south to other potential markets in the Gulf Coast of the United States. Columbia Pipelines state that it was the existing lines and capacity of Columbia Gulf and not Columbia Gas that provided shippers such as Antero an economically viable opportunity to move its gas out of the region.

12. Columbia Pipelines also contend that the Open Season Notice made clear that both pipelines were offering benefits to anchor shippers, including non-conforming terms and conditions. Columbia Pipelines claim that the Open Season Notice provided a non-exhaustive list of anchor shipper benefits “such as priority for subscribing capacity

¹⁰ *Id.* at 2 (emphasis in original).

¹¹ *Id.* at 3.

available for early in-service and contract extension rights.”¹² Columbia Pipelines also assert that the Open Season Notice stated that the pipelines will also endeavor to limit proration exposure risk for all anchor shippers.

13. Columbia Pipelines state that it is clear from the Open Season Notice that the non-conforming terms and conditions in the Columbia Gas/Antero Agreements should be granted because the capacity was created by the Smithfield III Expansion on Columbia Gas. Columbia Pipelines also state that Columbia Gulf was necessary and crucial in providing the market outlet for the entire path for potential bidders on the Smithfield III Expansion, which Antero ultimately helped anchor and as such, the non-conforming terms and conditions must be approved in the Columbia Gulf/Antero Agreements. Columbia Pipelines contend that the Open Season Notice also resulted in Antero becoming an anchor shipper on the entire “sleeve” of capacity offered by the pipelines. As an anchor shipper on the Smithfield III Expansion, Columbia Pipelines assert that Antero received benefits in the form of the non-conforming terms and conditions in both the Columbia Gulf/Antero Agreements and Columbia Gas/Antero Agreements. Columbia Pipelines state that the Open Season Notice made it clear that such benefits were subject to negotiation by any shipper participating in the open season, and Columbia Gulf was prepared to offer the non-conforming terms and conditions to other anchor shippers that submitted a qualifying bid during the open season.

14. Columbia Pipelines state that the list of anchor shipper benefits included in the Open Season Notice was not intended to be exhaustive as it is not always possible for a pipeline to anticipate all the terms and conditions an anchor shipper may find valuable. Columbia Pipelines point out that the Open Season Notice did include “contract extension rights” that were requested by Antero and these are included as non-conforming provisions in the Columbia Pipelines’ agreements.

15. Columbia Pipelines state that the unique circumstances surrounding the reversal of the Columbia Gulf system through Antero’s commitment to the Smithfield III Expansion justify the non-conforming terms and conditions in the Columbia Gulf/Antero Agreements. Columbia Pipelines argue that meeting the anchor shipper conditions in the Open Season allows Columbia Gulf, for the first time to offer the market significant north to south capacity on a firm basis. Columbia Pipelines go on to state that Antero provided them with the necessary market assurance to move forward with the Smithfield III Expansion, thus securing the financial viability of the project. Therefore, Columbia Pipelines claim that denying the negotiated non-conforming provisions would

¹² Columbia Pipelines December 5 Filing at 3.

undermine the very transaction that they agreed to with Antero, which allowed for the mutual commitments to long-term agreements under the Smithfield III Expansion.

16. Finally, Columbia Pipelines note that the delivery point shift rights in the Columbia Gulf/Antero Agreements are a necessary result of a pipeline, such as Columbia Gulf undertaking a reversal of its pipeline system for the first time in its history. Columbia Pipelines assert that, at the time of the Open Season Notice, attempting to sell north-to-south capacity on Columbia Gulf was challenging, as most of the Gulf Coast area points were traditional receipt points into Columbia Gulf. Columbia Pipelines state that Antero's primary delivery point (Rayne, Louisiana), traditionally the receipt point of the former Mainline Zone, was viewed as potentially illiquid due to limited interconnections, meaning Antero could bear the risk of not being able to transport its gas to active market points. In exchange for the inherent risk of anchoring the north-to-south capacity on Columbia Gulf, Columbia Pipelines state that Antero desired the flexibility to move from a potentially illiquid point to other liquid points that may develop in the future. Columbia Pipelines argue that Columbia Gulf agreed to the delivery point shift rights in order to sell the north to-south capacity and provide Antero the flexibility it required to support the Smithfield III Expansion.

III. Public Notice, Interventions and Comments

17. Public notice of the filing was issued on December 8, 2014, with protests due on or before December 17, 2014. 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 214,¹³ 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. Antero filed comments in support of its agreements with Columbia Pipelines. Indicated Shippers filed adverse comments in response to the filing.

18. On December 22, 2014, Antero filed comments requesting the Commission accept the non-conforming provisions to be effective without modification. Antero states it submitted a bid as part of the Open Season Notice and on March 6, 2012, Antero and Columbia Pipelines executed a single precedent agreement for the Smithfield III Expansion Project, later amended and restated on September 14, 2012. While other customers took capacity on parts of the Smithfield III Expansion, Antero states it was the only pipeline to subscribe to the entire project. Antero states that, based on the

¹³ 18 C.F.R. § 385.214 (2015).

agreement, Columbia Pipelines are obligated to provide Antero 360,000 Dth/day of capacity on the Columbia Gulf System and 314,000 Dth/day of capacity on the Columbia Gas System, to be allocated among various receipt and delivery points on the two pipelines' systems. Antero also contends that each of the non-conforming provisions in its service agreements with the Columbia Pipelines are permissible material deviations, because of its anchor shipper status.

19. On December 22, 2014, Indicated Shippers filed a response to the December 5, 2014 compliance filing. Indicated Shippers reaffirm their contention that section 7 of the Antero II Agreement between Antero and Columbia Gulf confers an unduly preferential right to future Columbia Gulf capacity.

IV. Discussion

20. The November 20 Order required Columbia Pipelines to file further information to assist the Commission in determining whether the non-conforming provisions in the Antero Agreements were permissible material deviations from the pipelines' pro forma service agreements. The Commission requested Columbia Pipelines to, among other things, submit the Open Season Notice and any explanations of the following provisions in the Antero Agreements: (1) the one-time right to extend the terms of the agreements; (2) to shift its primary receipt or delivery points; and (3) to ramp-up and ramp-down its contract demand throughout the terms of the agreements.

21. Based on the information submitted, the Commission accepts Columbia Pipelines' compliance filing subject to the conditions detailed more fully below. As it relates to both dockets, Columbia Pipelines are required to: (1) revise their tariff records by offering the right to ramp-up and ramp-down contract demands to all shippers on a not unduly discriminatory basis through a generally applicable tariff provision in the GT&C or a revised *pro forma* service agreement; or (2) revise the Antero Agreements to remove the ramp-up and ramp-down contract demand provisions within 30 days of the issuance of this order. With regard to the Columbia Gulf Antero II Agreement in Docket No. RP15-55-000, Columbia Gulf is required to eliminate section 7 which provides "priority" point shift rights for future additional or new interconnection capacity.

22. In *Columbia Gas*,¹⁴ 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

¹⁴ 97 FERC ¶ 61,221 (2001) (*Columbia Gas*). See also *ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001) (*ANR*).

Columbia Gas Transmission Corp., 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.¹⁵

A. Contract Extension Provisions

23. The Antero Agreements submitted by Columbia Pipelines in Docket Nos. RP15-47-000, and RP15-55-000 contain one-time contract extension rights. In the December 5 filing, Columbia Pipelines contend that these rights are permissible material deviations, because the Open Season Notice provided a list of anchor shipper benefits, including contract extension rights. Antero contends that anchor shippers on expansion projects often negotiate optional extension rights in service agreements because it ensures that customers can retain their capacity after the initial term of the agreement has ended.

24. 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.¹⁶ 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.¹⁷ In this instance, the Open Season Notice for the Smithfield III Expansion expressly offered a contract extension right to all anchor shippers for the project. Therefore, we find the one-time right to extend the terms incorporated in the Antero agreements with Columbia Pipelines in Docket Nos. RP15-47-000 and RP15-55-000 to be permissible material deviations from Columbia Pipelines' *pro forma* service agreements. These provisions do not constitute a substantial risk of undue discrimination because all shippers were given the opportunity to become anchor shippers as part of the open season and received this right.

¹⁵ *Columbia Gas*, 97 FERC at 62,002; *ANR*, 97 FERC at 62,022.

¹⁶ *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 LLC*, (Formerly *East Tennessee Natural Gas Co.*), 109 FERC ¶ 61,232, at PP 22-23 and 28-29 (2004) (contract demand changes).

¹⁷ *Equitrans, L.P.*, 133 FERC ¶ 61,075, at P 7 (2010). *Tennessee Gas Pipeline Co., L.L.C.*, 140 FERC ¶ 61,120, at PP 21 and 25 (2012) (*Tennessee*).

B. Varying Contractual Entitlements

25. The Antero Agreements submitted by Columbia Pipelines in Docket Nos. RP15-47-000 and RP15-55-000 also contain varying contract entitlements over the course of each service agreement. In the Antero I Agreements with each pipeline, the contractual entitlements increase each month during the first five months the agreement is in effect, and then gradually decrease at specified intervals over the last 10 years of the agreements. In the Antero II Agreements with each pipeline, the contractual entitlements decrease on two dates in 2022. Columbia Pipelines assert these provisions are permissible material deviations, because Antero is an anchor shipper for the Smithfield III Expansion, and the Open Season Notice made clear that both pipelines were offering benefits to anchor shippers, including non-conforming terms and conditions. Similarly, Antero claims that increasing and decreasing contract quantities is permitted, particularly when related to the ramp-up and ramp-down of natural gas productions. Antero states that as a major producer such rights are highly valuable to it because they allow for reduced reservation costs during the initial stages of production.

26. The Commission has held that provisions that increase or decrease a shipper's contract demand during the term of its service agreement are valuable rights that must be offered on a not unduly discriminatory basis in the pipeline's generally applicable tariff.¹⁸ 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.¹⁹

27. The Columbia Pipelines concede that the provisions in the Antero Agreements providing Antero varying contractual entitlements over the terms of its service agreements are material deviations from their *pro forma* service agreements. While the Commission has allowed such material deviations in anchor shipper service agreements when offered in the open season for a project, the Open Season Notice for the Smithfield III Expansion made no such offer. That notice contained a general statement

¹⁸ *Horizon Pipeline Co., L.L.C.*, 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.”) *Questar Pipeline Co.*, 131 FERC ¶ 61,011, at P 5 (2010) (“The Commission finds this decreasing contract quantity provision to be impermissible since substantive rights are afforded to [shipper] that are not afforded to other similarly situated firm shippers that obtain service pursuant to Questar's tariff.”). *Tuscarora Gas Transmission Co.*, 131 FERC ¶ 61,091, at P 9 (2010).

¹⁹ *Ruby Pipeline L.L.C.*, 128 FERC ¶ 61,224, at PP 84 (2009). *Equitrans, L.P.*, 133 FERC ¶ 61,075 at P 7. *Tennessee*, 140 FERC ¶ 61,120 at PP 6, 21, 23, and 25.

that “Anchor shippers will enjoy benefits such as priority for subscribing capacity available for early in-service and contract extension rights.” However, it did not specifically offer anchor shippers a special right to vary their contract demand over the term of their service agreements. The Commission simply cannot find that a general reference in the open season notice to “benefits” that the anchor shippers may enjoy is sufficient to provide adequate notice to parties that varying contract demands were available for all anchor shippers.²⁰

28. In these circumstances, the Commission requires the Columbia Pipelines either to: (1) remove from the Antero Agreements the provisions for varying contractual entitlements; or (2) revise their tariffs to offer such rights to all shippers on a not unduly discriminatory basis.

C. Receipt Point Shift Rights in Antero-Columbia Gas Agreements

29. The two Antero Agreements submitted by Columbia Gas in Docket No RP15-47-000 contain a non-conforming section 7 to incorporate receipt point shift rights. Specifically, the virtually identical, non-conforming new sections state:

Section 7. Receipt Point Shift Rights. 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 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 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 the 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 and 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 the Transporter’s system between (and including) Transporter’s Smithfield, West Virginia compressor station and

²⁰*Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,008, at P 18 (2015).

the interconnection between Transporter's system and the MarkWest Liberty Sherwood Processing Plant, with no impact to the reservation rate and the retainage rate in this Service Agreement.

30. Columbia Gas contends that this is a permissible material deviation, because the Open Season Notice offered to negotiate "benefits" with anchor shippers. Antero argues that the point shifting rights on Columbia Gas will merely provide that Antero can shift to new points following an agreement between Antero and Columbia Gas for the construction of such points. Antero states the non-conforming provisions in Antero's agreement with Columbia Gas are common in anchor shipper contracts and do not present a risk of undue discrimination, and should be approved.

31. The Commission has held that a special provision permitting shippers to change a primary point without following the regular procedures in the pipeline's tariff could adversely affect other shippers seeking primary point capacity from the pipeline. That is because the shipper with the special provision would have a priority for obtaining the primary capacity. Therefore, such a special right is contrary to Commission policy.²¹ In this case, section 7 of Antero's two service agreements does not provide Antero a special right to change its primary receipt points without following the regular procedures in Columbia Gas' tariff. Although section 7 in both of Antero's agreements with Columbia Gas contain non-conforming provisions, section 7 requires Antero to follow the terms and conditions of the existing section 11 of Columbia Gas' GT&C,²² when seeking a shift in its primary receipt points, either to a newly constructed receipt point or

²¹ *ANR Pipeline Co.*, 103 FERC ¶ 61,223, at PP 24-26, *reh'g denied*, 105 FERC ¶ 61,112, at P 22 (2003).

²² Section 11.2, Flexible Primary Receipt and Delivery Point Authority. Except as may otherwise be specified in this Section or in individual Rate Schedules, Shipper shall have flexible primary receipt and delivery point authority; provided that Transporter, in its reasonable discretion, determines that sufficient firm capacity exists in its existing facilities to accommodate the proposed changes in primary receipt or delivery points. Any Shipper seeking to change primary receipt or delivery points under an existing Service Agreement shall request such a change by advising Transporter, identifying the Service Agreement affected, and furnishing Transporter with the information described in Section 3 (Requests for Service) of the GT&C. If firm capacity is available to accommodate Shipper's requested change, Transporter and Shipper shall execute an agreement, superseding Appendix A to the relevant Service agreement that shall reflect the agreed changes in such receipt or delivery points, or maximum daily quantities.

to an existing receipt point. Therefore, we find the non-conforming provisions in section 7 of the agreements with Columbia Gas to be acceptable permissible deviations.

D. Delivery Point Shift Rights in Columbia Gulf-Antero Agreements

32. In Docket No. RP15-55-000, both Antero Agreements contain delivery point shift rights in section 7 of the agreements; however, the provisions are different and the relevant sections are identified below.

33. Columbia Gulf's Antero I Agreement contains the following non-conforming language pertaining to delivery point shift rights:

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.

34. This provision is similar to the first paragraph of section 7 of Antero's service agreements with Columbia Gas, and therefore, the Commission finds this provision to be a permissible material deviation for the same reasons as discussed above with respect to section 7 of the Columbia Gas-Antero Agreements.

35. Columbia Gulf's Antero II Agreement contains the following non-conforming language pertaining to delivery point shift rights:

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.

36. As justification for section 7 in the Antero II Agreement, Columbia Gulf offered to include in its tariff a similar provision offering the above right to similarly situated customers but the Commission stated its concern whether any such provision offering special priority primary point change rights would be just and reasonable.²³ In the December 5 filing, Columbia Pipelines state that the section 7 delivery point shift rights are a necessary result of Columbia Gulf undertaking an initial reversal of its pipeline system for the first time in history. Columbia Pipelines argue that Columbia Gulf agreed to the delivery point shift rights in order to sell the north-to-south capacity and provide Antero the flexibility it required to support the Smithfield III Expansion. In addition, Columbia Pipelines' Notice of Open Season states that they will endeavor to limit proration exposure risk for all anchor shippers. Antero states that, as the only anchor shipper on Columbia Gulf, it needed priority point change rights on Columbia Gulf's system that anticipate future changes on the system resulting from the flow reversal of the Smithfield III Expansion.

37. Antero states that it is the only anchor shipper on Columbia Gulf that needed priority point change rights on Columbia Gulf that anticipate future changes on the system resulting from a flow reversal. Because Columbia Gulf previously flowed from

²³ November 20 Order, 149 FERC ¶ 61,146 at 37.

south-to-north, Antero contends that the interconnections with other pipelines in the Gulf Coast area were traditionally receipt points rather than delivery points. Antero states that it had few delivery point options, as the north-to-south anchor customer on the newly revised Columbia Gulf. Antero further states that more options should arise as Columbia Gulf and other pipelines modify their operations in response to the changing supply and demand dynamics of the natural gas market, particularly Marcellus and Utica shale supply and LNG export terminal demand. Antero states that, since it made possible the flow reversal, it should be permitted to obtain access to new points that become available on a priority basis. Antero argues that the non-conforming provision point change rights are set to expire December 31, 2017.²⁴ Therefore, Antero states that the Commission should accept the Columbia Gulf non-conforming provision as a necessary inducement for Antero to participate in the Columbia Gulf flow reversal. Antero argues that Columbia Pipelines agreed in the Precedent Agreement to treat Antero as an “Anchor Shipper” for the Smithfield III Expansion and provide certain associated benefits to Antero. Therefore, Antero argues that these non-conforming provisions should be found acceptable by the Commission.

38. Indicated Shippers continue to argue that section 7 of the Antero II Columbia Gulf-Antero Agreement is an impermissible material deviation. They state that their concern is that Columbia Gulf’s pre-emptive right 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 argue 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. Specifically, Indicated Shippers state that its previous comments were not whether bidders in the open season could obtain seamless capacity on both the Columbia Gas and Columbia Gulf systems through a single open season in conjunction with the Columbia Gas Smithfield III Expansion. Instead, Indicated Shippers contend that their concern was focused on whether section 7 of the Antero II Agreement for Columbia Gulf capacity could permissibly include a provision granting Antero, as an anchor shipper, a priority right with pro-rationing protection to future Columbia Gulf expansion capacity that was not the subject of the open season.

²⁴ Antero Comments at 5 (citing Precedent Agreement at 11) The expiration date applicable to the non-conforming point change rights was inadvertently omitted from the amendments to the service agreements. After October 21 filing is accepted, Antero and Columbia Gulf will execute the revised agreement that include the December 31, 2017 expiration date.

39. Indicated Shippers argue that the reference in the Open Season Notice to Columbia Gas and Columbia Gulf's willingness to "endeavor" to protect anchor shippers "from pro-rationing in an open season" may have been intended to signal that this "pro-rationing protection" could apply to a *future* open season on the Columbia Gulf system for new or expanded delivery point capacity.²⁵ If so, Indicated Shippers state that this intent would contravene the prohibition against undue discrimination or preference under the Natural Gas Act (NGA),²⁶ the Commission's prohibition of negotiated terms and conditions of service,²⁷ and the Commission's general policies governing allocation of new capacity on an open-access basis to those who place the highest value on that capacity.²⁸ Indicated Shippers further state that section 7 of the Columbia Gulf/Antero Agreement provides "priority" point shift rights to future interconnect capacity with *pro rationing* protection, at the expense of other Columbia Gulf shippers. Indicated Shippers assert that Columbia Pipelines have provided no justification for such a provision, either in the October 10 and October 22, 2014 filings or in the December 5, 2014 compliance filing. Indicated Shippers assert that the "priority right" and pre-emptive protection against pro-rationing of capacity to future point expansion capacity (set forth in section 7 of the Antero II Agreement submitted in Docket No. RP15-55-000) are contrary to the NGA and the Commission's policies and prior orders. Moreover, Indicated Shippers state that, despite Columbia Gulf's commitment in its November 10,

²⁵ Indicated Shippers Protest at 7.

²⁶ Indicated Shippers Protest at 8 (citing 15 U.S.C. § 717 c (b) ("[no] natural gas company shall with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.")).

²⁷ Indicated Shippers Protest at 8 (citing 18 C.F.R. §§ 154.1(d) and 154.112(b); *Columbia Gas*, 97 FERC ¶ 61,221; *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at PP 27 and 32 (2003)).

²⁸ Indicated Shippers Protest at 8 (citing *Regulation of Short Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637-A, FERC Stats. & Regs. Regulations Preambles July 1996-December 2000 ¶ 31,099, at 31,598 (2000) ([t]he Commission encourages pipelines to look closely at their zone boundaries and to develop more efficient methods of allocating capacity based on price, so that capacity initially is allocated to the shipper placing the highest value on obtaining that capacity")).

2014 answer to “add to the Columbia Gulf Tariff provisions stating that Columbia Gulf will negotiate similar point shift provisions with similarly situated customers on a non-discriminatory basis,” the December 5 compliance filing contains no such proposed tariff revisions.

40. Lastly, Indicated Shippers state that Columbia Pipelines’ December 5 compliance filing does not address Indicated Shippers’ previously identified concern regarding a provision in the Antero II Agreement. Specifically, Indicated Shippers request the Commission make its acceptance of the Antero II Agreement in the Columbia Gulf proceeding subject to eliminating the section 7 provision for preferential rights to future additional or new interconnection capacity.

41. As described above, the Commission has held that a special provision permitting shippers to change a primary point without following the regular procedures in the pipeline’s tariff could adversely affect other shippers seeking primary point capacity from the pipeline. That is because the shipper with the special provision would have a priority for obtaining the primary capacity not otherwise provided for in the generally applicable tariff. Therefore, such a special right is contrary to Commission policy.²⁹

42. Section 7 of the Columbia Gulf Antero II Agreement gives Antero a special priority right to shift up to 93,000 Dth per day of primary delivery point capacity outside the procedures for primary point changes in GT&C section 11.2 for an indefinite period into the future. The Open Season Notice for the Smithfield III Expansion did not offer such a special priority for primary delivery point changes, and, even if it had, we would be compelled to find this provision unduly discriminatory. While we have approved pipelines offering special contractual provisions in open seasons that are directly related to the new service to be provided by the expansion and do not adversely affect the rights of existing shippers, such as contract demand reduction or contract extension provisions, the instant provision does not fall into that category. The instant provision would cause the existing shippers to have a lower priority to obtain primary delivery point changes at any point on Columbia Gulf’s system, than would otherwise be the case.

43. The Commission also finds unduly discriminatory the provision in section 7 of the Antero II Agreement providing that Antero will not be subject to a *pro rata* allocation for volumes up to 20 percent of new incremental delivery point capacity at an interconnection with an interstate pipeline, which Columbia Gulf may create in a future expansion. Such additional delivery point capacity would not be created as part of the

²⁹ *ANR Pipeline Co.*, 103 FERC ¶ 61,223 at PP 24-26, *reh’g denied*, 105 FERC ¶ 61,112 at P 22.

Smithfield III Expansion, but rather some other project. We agree with Indicated Shippers that providing an anchor shipper for one project special priority rights with respect to capacity on a different project is unduly discriminatory. Capacity created by any future expansion must be allocated in a not unduly discriminatory manner among the participants in that expansion.

44. Accordingly, the Commission requires Columbia Gulf either to remove section 7 from its Antero II Agreement or revise that section so that it does not provide Antero any right to obtain delivery point capacity outside of the ordinary processes set forth in section 11.2 of Columbia Gulf's GT&C within 30 days of the date of the issuance of this order.

The Commission orders:

(A) Columbia Pipelines compliance filing is hereby accepted subject to the Columbia Pipelines revising their tariff records: (1) to offer the right to varying contract demands to all shippers on a not unduly discriminatory basis through a generally applicable tariff provision in its GT&C or revise its *pro forma* service agreement; or (2) revise the Antero agreements to remove the varying contract demand provisions within 30 days of the issuance of this order.

(B) Columbia Gulf must either remove section 7 from its Antero II Agreement or revise that section so that it does not provide Antero any right to obtain delivery point capacity outside of the ordinary processes set forth in section 11.2 of Columbia Gulf's GT&C within 30 days of the date of the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.