

153 FERC ¶ 61,146  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC

Docket No. RP16-37-000

ORDER ACCEPTING TARIFF RECORDS AND AGREEMENTS SUBJECT TO  
CONDITIONS

(Issued November 5, 2015)

1. On October 9, 2015, Columbia Gas Transmission, LLC (Columbia) filed tariff records<sup>1</sup> which reflect four non-conforming and negotiated rate agreements between Columbia and New Jersey Natural Gas Company (NJNG), South Jersey Gas Company (SJ Gas) and South Jersey Resources Group (SJ Resources).<sup>2</sup> Columbia requests waiver of the Commission's 30-day notice requirement to permit the tariff records to become effective November 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.

**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

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<sup>1</sup> See Appendix.

<sup>2</sup> Columbia filed the following contracts: (1) FTS Service Agreement No. 161129, Rev 1 dated September 28, 2015 (NJNG I Agreement); (2) FTS Service Agreement No. 161136, Rev 1 dated September 28, 2015 (NJNG II Agreement); (3) FTS Service Agreement No. 161135, dated September 9, 2015 (SJ Gas Agreement); and (4) FTS Service Agreement No. 169245, dated October 7, 2015 (SJ Resources Agreement) (collectively the East Side Expansion Project Agreements).

precedent agreements with negotiated rate agreements and non-conforming provisions to Columbia's Form of Service Agreement which were agreed to by NJNG, SJ Gas, and SJ Resources.

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 NJNG and SJ Gas 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 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 NJNG, SJ Gas and SJ Resources Agreements filed in this instant filing will be in service on November 1, 2015. Because the NJNG, SJ Gas, and SJ Resources Agreements contain negotiated rates and non-conforming provisions, Columbia has filed those agreements with the Commission and requests a November 1, 2015 effective date. Columbia contends that all of the provisions of the East Side Expansion Project Agreements are either: (1) consistent with Columbia's form of service agreements and therefore not material deviations; or (2) permissible deviations that do not pose a threat of undue discrimination.

5. Public notice of these filings was issued on October 13, 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

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

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

stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

## II. Discussion

6. The Commission accepts the four East Side Expansion Project negotiated rate agreements filed by Columbia, to be effective November 1, 2015, subject to conditions. 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.

7. 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>5</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>6</sup> However, not all material deviations are impermissible. As the Commission explained in *Columbia*,<sup>7</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>8</sup>

### Permissible Material Deviations

8. First, Columbia states that, in Section 2 of the Agreements, the non-conforming provisions state that NJNG, SJ Resources and SJ Gas have the one-time right, subject to certain conditions, to extend the term of their service agreements for an additional term of 5 years, at certain, specified rates and that the East Side Expansion Project Agreements also provide the procedures that must be followed to notify Columbia of this one-time extension. Columbia asserts section 4.1(b)(1) of its General Terms and Conditions

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<sup>5</sup> *Columbia Gas Transmission. Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

<sup>6</sup> *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

<sup>7</sup> *Columbia*, 97 FERC ¶ 61,221 at 62,003-04.

<sup>8</sup> *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

(GT&C) provides a similar right to all shippers on its system. Accordingly, it argues that this provision does not confer any benefits that are not available to all shippers.

9. With respect 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>9</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>10</sup> In this instance, while Columbia's generally applicable tariff does not offer a contract extension right similar to that in the East Side Expansion Project Agreements,<sup>11</sup> the open season notice for the East Side Expansion Project stated, "[a]nchor shippers will enjoy benefits *such as contract extension rights* and other benefits negotiated on a not unduly discriminatory basis."<sup>12</sup> Accordingly, a contract extension right was afforded to all anchor shippers in the Columbia open season bidding process. Therefore, we find the one-time right to extend the terms incorporated in the NJ NG, SJ Gas and SJ Resources 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 to become anchor shippers as part of the open season and receive this right.

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<sup>9</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 Gas, LLC (Formerly East Tennessee Natural Gas Co.)*, 109 FERC ¶ 61,232, at PP 22-23, 28-29 (2004).

<sup>10</sup> *Equitrans, L.P.*, 133 FERC ¶ 61,075, at P 7 (2010) (*Equitrans*); *Tennessee Gas Pipeline Co., L.L.C.*, 140 FERC ¶ 61,120, at PP 21, 25 (2012) (*Tennessee*).

<sup>11</sup> GT&C section 4.1(b)(1), cited by Columbia as providing contract extension rights to all shippers, provides that, before the expiration of a service agreement, Columbia and the shipper "may mutually agree" to renegotiate the terms of such agreement in exchange for the shipper's agreement to extend the service agreement. That tariff provision does not offer shippers a similar contract extension right as included in the East Side Expansion Project Agreements. The tariff provision only permits a contract extension, if the parties mutually agree. By contrast, the non-conforming provision at issue here gives the shippers a unilateral right to extend their service agreements.

<sup>12</sup> April 18, 2015 Data Request Response in Docket No. CP14-17-000, Open Season Notice at 3 (Emphasis added).

10. Second, Columbia states that Section 2 of the Agreements with SJ Gas and SJ Resources 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 SJ Gas 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>

11. 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.

### **Impermissible Material Deviations**

12. Several of the non-conforming provisions presented by Columbia concern the Commission. First, Appendix A of the SJ Gas Agreement contains transportation demand that increases from 50,000 Dth/day to 70,000 Dth/day at pre-determined intervals (Appendix A). Columbia asserts that these provisions are consistent with Commission precedent and policy.

13. As Columbia notes, in a recent case concerning the East Side Expansion Project Agreements,<sup>14</sup> the Commission found that similar provisions in agreements allowing a shipper to adjust transportation demand to different amounts during pre-determined intervals were non-conforming provisions granting the shipper unduly discriminatory rights.<sup>15</sup> Accordingly, the Commission ordered Columbia to either remove the provisions from the agreements or “show that these provisions do not give these shippers special rights to increase their [Maximum Daily Quantity] MDQ outside the posting and bidding provisions set forth in Columbia’s General Terms and Conditions.”<sup>16</sup>

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<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 Gas Transmission., LLC*, 153 FERC ¶ 61,008 (2015) (October 2015 Order).

<sup>15</sup> October 2015 Order, 153 FERC ¶ 61,008 at PP 16-18.

<sup>16</sup> October 2015 Order, 153 FERC ¶ 61,008 at P 21.

14. Columbia contends, however, that, while Appendix A of the SJ Gas Agreement contains provisions similar to the provisions addressed in the October 2015 Order, the Commission should find here that the provisions in Appendix A are not material deviations, and that even if they were, the Commission should find that the provisions do not give SJ Gas special rights that are not available to other Columbia shippers. Columbia states that Appendix A of its *pro forma* FTS Service Agreement provides fill-in-the-blanks for transportation demand, including a blank for begin and end dates and a blank for “recurrence intervals.” Columbia asserts that the information added to the SJ Gas Agreement Appendix A is the type of information contemplated by the fill-in-the-blank provision. Columbia also asserts that the increase in transportation demand is nondiscretionary because Appendix A does not allow SJ Gas to adjust transportation demand; rather, Appendix A provides for a specified transportation demand to increase to a specified level on a specified date. Columbia further asserts that this structure was necessary for Columbia to secure SJ Gas’ support for the East Side Expansion Project.<sup>17</sup> Finally, Columbia contends that the East Side Expansion Project was originally proposed to be 500,000 Dth/day but was reduced to 312,000 Dth/day, to reflect market interest at the time, and it also argues that no shipper that wished to proceed to a precedent agreement was denied capacity in the project as a result of Columbia accommodating SG Gas’ request to grow into the needed capacity.

15. The Commission has held that provisions that increase or decrease a shipper’s contract demand by fixed amounts 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.<sup>18</sup> Alternatively, in cases involving an anchor shipper for an

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<sup>17</sup> Columbia asserts that, while SJ Gas was interested in a total of 70,000 Dth/day of East Side Expansion Project capacity, SJ Gas did not need this entire amount at the time the project would be placed into service. Columbia further asserts that it was willing to accommodate SJ Gas’ request to structure its transportation demand so that it would grow into the total awarded capacity.

<sup>18</sup> *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).

expansion, the provision may be permissible if offered to anchor shippers in the open season for the expansion.<sup>19</sup>

16. In the instant case, as we noted in the October 2015 Order, the Open Season Notice for the subject expansion project did not offer anchor shippers a special right for varying contract demands during the terms of their agreements, such as is provided by 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 varying contract demands were available for all anchor shippers.<sup>20</sup>

17. In this proceeding, Columbia asserts that the information set forth in Appendix A to the SJ Gas Agreement is the type of information contemplated by the fill-in-the-blank provisions, in Appendix A of its *pro forma* FTS Service Agreement, including begin and end dates and recurrence intervals. However, Appendix A to Columbia’s *pro forma* service agreement contains headings for entering in the agreement’s “Begin Date”, “End Date,” “Transportation Demand” and “Recurrence Interval,” with no explanation that varying contract demands with different beginning and ending dates may be entered under each heading, rather than just a single contract demand, with one beginning and end date. Moreover, the entry for “Recurrence Interval” in each of the East Side Expansion Project Agreements filed in this docket is simply “1/1-12/31,” without any reference to a particular year. Columbia has provided no explanation of the purpose of this entry. Absent such an explanation, we cannot find that Appendix A to the *pro forma* service agreement, including its reference to “Recurrence Interval,” provides sufficient notice to Columbia’s shippers that they have the same option for varying contact demands as provided to SJ Gas.<sup>21</sup> Accordingly, Columbia has not shown that this is either a conforming provision or that as a non-conforming provision it does not present a substantial risk of undue discrimination. Therefore, the Commission requires Columbia either to (1) revise the SJ Gas Agreement so that it no longer provides for varying

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<sup>19</sup> *Ruby Pipeline L.L.C.*, 128 FERC ¶ 61,224, at PP 75, 84 (2009) (*Ruby*); *Equitrans, L.P.*, 133 FERC ¶ 61,075, at P 7 (2010); *Tennessee*, 140 FERC ¶ 61,120 at PP 6, 21, 23, and 25; *Columbia Gas Transmission, LLC, et al.*, 149 FERC ¶ 61,146, at P 32 (2014). *See also Rockies Express Pipeline, LLC*, 116 FERC ¶ 61,272, at PP 76-78 (2006).

<sup>20</sup> *October 2015 Order*, 153 FERC ¶ 61,008 at P 18.

<sup>21</sup> *Questar Pipeline Co.*, 132 FERC ¶ 61,152, at P 7 (2010).

contract demands or (2) revise its *pro forma* service agreement to include a statement clarifying its intent that the blanks in Appendix A can be filled in with multiple terms and quantities.<sup>22</sup>

18. Second, the NJNG I and NJNG II Agreements contain provisions allowing NJNG a one-time right to reduce the term of the agreements from fifteen years to ten years. Therefore, these agreements contain provisions allowing NJNG to terminate these agreements early. Columbia contends that the Commission has approved such early termination provisions in anchor shipper contracts, when the provision was necessary in order to obtain capital for an expansion.<sup>23</sup>

19. The Commission has held that a contract provision giving a shipper the option to terminate, or reduce, its contract demand before the expiration of its contract is a valuable right, since it can enable the shipper to avoid liability for future reservation charges. Accordingly, such a valuable right must be afforded to all other similarly situated firm shippers pursuant to a generally applicable provision in the pipeline's tariff.<sup>24</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>25</sup>

20. In this case, Columbia's tariff does not state that it has any generally applicable tariff provision offering an early termination option of the type included in the two NJNG Agreements. While the open season notice for the East Side Expansion Project offered anchor shippers an option to extend the term of their contracts, it did not offer an option to terminate a contract early.<sup>26</sup> Accordingly, the Commission requires Columbia to

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<sup>22</sup> *Id.*

<sup>23</sup> Columbia Transmittal Letter at n.11 (citing *Questar Pipeline Co.*, 129 FERC ¶ 61,017, at P 10 (2009) (*Questar*)).

<sup>24</sup> *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,225, at 62,029 (2001).

<sup>25</sup> *Ruby*, 128 FERC ¶ 61,224 at PP 75, 84. *Equitrans*, 133 FERC ¶ 61,075 at P 7. *Tennessee*, 140 FERC ¶ 61,120 at PP 6, 21, 23, and 25.

<sup>26</sup> *Questar*, 129 FERC ¶ 61,017 at P 10, cited by Columbia, involved a contract that went into effect on December 1, 2001, only several days after the Commission's November 21, 2001 *Tennessee* order establishing its policy that early termination provisions were impermissible material deviations, absent an express tariff provision permitting them. In addition, as discussed above, in other orders the Commission has made clear that, in order for a material deviation offered to an anchor shipper to be permissible, it must have been offered to all anchor shippers in the open season.

either: (1) remove the early termination from the SJ Gas Agreement or otherwise revise the SJ Gas Agreement to include contract term provisions consistent with the open season notice; or (2) provide such rights to all its customers under its generally applicable tariff.

The Commission orders:

(A) The tariff records reflected in the Appendix are accepted to be effective November 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 its tariff, consistent with the discussion in this order.

(C) For good cause shown, the Commission grants waiver of the 30-day notice requirement.

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 November 1, 2015

[Service Agreement Forms, Non-Conforming Service Agreements, 27.0.0](#)

[Table of Contents, , 35.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.28 South Jersey Resources Contract No. 169245, 0.0.0](#)

Accepted Effective November 1, 2015, Subject to Conditions

[Non-Conf Neg Rate Svc Agm, Section 4.25 New Jersey Nat Gas Contract No. 161129, 0.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.26 New Jersey Nat Gas Contract No. 161136, 0.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.27 South Jersey Gas Contract No. 161135, 0.0.0](#)