

154 FERC ¶ 61,162
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 4, 2016

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP16-586-000

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

Attention: James R. Downs, Vice President
Rate & Regulatory Affairs

Dear Mr. Downs:

1. On February 3, 2016, Columbia Gas Transmission, LLC (Columbia) filed revised tariff records¹ and a request for waiver of the Commission's capacity release regulations in order to permit Mountain State Production, Inc. (Mountain State) to permanently release capacity at a negotiated rate. Specifically, Columbia requests waiver of sections 284.8(b)(2) and 284.8(e) of the Commission's regulations² to allow Mountain State to permanently release a firm service agreement to a pre-arranged shipper at a negotiated rate that is in excess of the maximum tariff rate. Columbia further requests the Commission grant any and all waivers of its regulations necessary to permit this capacity release to occur and requests a February 1, 2016 effective date. As discussed below, the Commission grants waiver of sections 284.8(b)(2), 284.8(e), and its 30-date notice

¹ Columbia Gas Transmission, LLC, FERC NGA Gas Tariff, Baseline Tariffs, [Table of Contents, , 37.0.0](#); [Negotiated Rate Agreement, Section 3.23 Joseph E. Pauley Contract No. 172247, 0.0.0](#); and [Negotiated Rate Agreement, Section 3.24 Joseph E. Pauley Contract No. 172248, 0.0.0](#).

² 18 C.F.R. §§ 284.8(b)(2), 284.8(e) (2015).

requirement. The referenced tariff records are accepted effective February 1, 2016, as proposed.

2. Public notice of the filing was issued on February 4, 2016. Interventions and protests were due on or before February 16, 2016, as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214,⁴ all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

3. Columbia states that Mountain State intends to permanently release two pre-existing negotiated rate agreements to a new shipper, Joseph E. Pauley (the Pauley Agreements). Columbia states that the Pauley Agreements contain negotiated rate language, carried over from the service agreement with Mountain State, stating that: (1) shipper has elected to pay a fixed negotiated rate of \$0.59 dekatherms (Dth) per day for the primary term of the agreement; (2) shipper shall pay charges and furnish Retainage; and (3) all other maximum applicable demand surcharges, commodity rates and surcharges under Rate Schedule FTS will apply.

4. Columbia asserts both agreements with Mountain State were originally accepted by the Commission on September 15, 2009 in Docket No. RP09-863-000⁵ and on March 31, 2010 in Docket No. RP10-434-000.⁶ Mountain State and Joseph E. Pauley requested that Columbia facilitate the permanent release of this capacity to Joseph E. Pauley at the negotiated rate of \$0.59 Dth per day.

5. Specifically, Columbia requests that the Commission waive sections 284.8(b)(2) and 284.8(e) of its regulations to permit the instant pre-arranged permanent capacity release to be treated similar to pre-arranged maximum rate releases, which can be implemented without posting for bids from other shippers, and to allow the release to occur even though it is a release at a negotiated rate above Columbia's maximum tariff

³ 18 C.F.R. § 154.210 (2015).

⁴ 18 C.F.R. § 385.214 (2015).

⁵ *Columbia Gas Transmission, LLC*, Docket No. RP09-863-000 (September 15, 2009) (delegated letter order).

⁶ *Columbia Gas Transmission, LLC*, Docket Nos. RP10-434-000 and RP10-434-001 (March 31, 2010) (delegated letter order).

rate. Columbia avers that the Commission has previously granted such waivers under similar circumstances.⁷

6. The Commission only requires a pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release.⁸ Where, as here, “the releasing shipper is paying a negotiated rate [potentially] in excess of the maximum rate, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release.”⁹ Therefore, denial of a waiver request in these circumstances would unnecessarily inhibit the use of permanent releases to transfer capacity that the releasing shipper no longer needs to a shipper that does need it.¹⁰

7. The Commission finds that here, where Mountain State proposes to permanently release long term capacity to a replacement shipper found acceptable by Columbia and willing to pay the same negotiated rate as Mountain State, waiver of the applicable maximum rate cap is appropriate. First, all parties (releasing shipper, replacement shipper and pipeline) agree to the transaction. Second, no other shipper has protested that Mountain State’s choice of Joseph E. Pauley as its replacement shipper was unduly discriminatory. Third, there is no reason to post this release for third parties to submit higher bids, because the Commission would not waive the applicable maximum rate to permit a release at a rate in excess of the negotiated rate the releasing shipper is currently paying. The Commission is only willing to waive the maximum rate as necessary to render the pipeline economically indifferent to the permanent release, and thereby avoid inhibiting the permanent release of the capacity. Allowing the release to take place at an even higher negotiated rate than the releasing shipper is currently paying is unnecessary for that purpose.¹¹

⁷ Columbia Transmittal letter at 3 & n.5 (citing *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086, at P 8 (2009) (2009 *Transco*); *Transcontinental Gas Pipeline Co.*, 134 FERC ¶ 61,184, at P 7 (2011) (2011 *Transco*); *Salmon Resources, LTD and Shell Energy North America (US), L.P.*, 138 FERC ¶ 61,059, at P 8 (2012)).

⁸ *Algonquin Gas Transmission, LLC*, 112 FERC ¶ 61,262 (2005); 2011 *Transco*, 134 FERC ¶ 61,184, at P 6.

⁹ *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009).

¹⁰ *E.g.*, 2009 *Transco*, 126 FERC ¶ 61,086 at P 7; 2011 *Transco*, 134 FERC ¶ 61,184 at P 6.

¹¹ *Id.* P 8.

8. In the instant filing, Columbia has requested waiver of any regulations that the Commission deems necessary to permit the subject capacity release to occur. Finding good cause, the Commission in this order grants waiver of section 284.8(b)(2) of its regulations in order to permit the instant permanent release to take place at the same negotiated rate as Mountain State is currently paying. In addition, section 284.8(e) of the Commission's regulations states in part that, "[t]he pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate) and offering to meet any other terms and conditions of the release." For the reasons discussed above, the Commission also finds good cause to grant waiver of these regulations, and to accept the tariff records registering the permanent release, effective February 1, 2016 as proposed.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.