157 FERC ¶ 61,006
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 4, 2016

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP16-1232-000

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

Attention: Sorana Linder, Director, Regulated Services

Dear Ms. Linder:

1. On September 6, 2016, Columbia Gas Transmission, LLC (Columbia) filed revised tariff records[1] reflecting a non-conforming, negotiated rate agreement (the Eclipse Agreement) with Eclipse Resources Marketing, LP (Eclipse). The Eclipse Agreement involves a permanent release of capacity from Eclipse Resources I, LP. To facilitate the permanent release, Columbia requests a temporary, one-time waiver of section 284.8 of the Commission's regulations, concerning a shipper's release of natural gas pipeline capacity. Columbia also seeks waiver from the prohibition on tying, Section 14 of the General Terms and Conditions (GT&C) of Columbia's tariff, and to the extent necessary, any other policy or provision that the Commission deems necessary to effectuate the permanent release. In addition, Columbia seeks waiver of the Commission's 30-day notice requirement[2] to permit the tariff records to become effective on October 1, 2016. For the reasons discussed below, and for good cause shown, the Commission accepts the revised tariff records effective October 1, 2016 and grants the requested waivers.

[1] Columbia Gas Transmission, LLC, FERC NGA Gas Tariff, Baseline Tariffs, Service Agreement Forms, Non-Conforming Service Agreements, 29.0.0, Table of Contents, , 40.0.0, Non-Conf Neg Rate Svc Agm, Section 4.30 Eclipse Contract No., 0.0.0.

[2] 18 C.F.R. § 154.207 (2016).

2. On December 30, 2015, Columbia received authorization to construct and operate its Utica Access Project, a five-mile lateral pipeline that will extend from Dominion Transmission Inc.'s (Dominion) Cornwell compressor station in Kanawha County, West Virginia, to Columbia's existing line in Clay County, West Virginia.[3] The Utica Access Project will enable Columbia to receive gas from Dominion's system and transport it to Columbia's existing mainline facilities to provide 205,000 Dth per day of firm transportation service that includes upstream transportation on Dominion's system (Dominion Capacity). In accordance with section 47 of the GT&C of Columbia's tariff, Columbia requested and received authorization to acquire the Dominion Capacity and to release that capacity to its shipper. Columbia states that it initially executed a Rate Schedule FTS service agreement with Eclipse Resources I, LP but that Eclipse Resources I, LP later requested a permanent release to Eclipse Resources Marketing, LP to ensure consistency with the companies' internal business structure.[4] Columbia states that it anticipates placing the Utica Access Project in service on October 1, 2016.

3. Columbia states that the Eclipse Agreement contains negotiated rates and two provisions that are permissible deviations from the *pro forma* service agreement: term extension and capacity release.

4. Under section 2 (Term) of the Eclipse Agreement, Eclipse has the right, subject to certain conditions, to extend the term of the service agreement for two successive five-year terms. Columbia states that, consistent with its tariff, section 2 of the Eclipse Agreement gives Eclipse, as an anchor shipper, the right to mutually agree with Columbia to extend the term of the service agreement.[5] Columbia states that all shippers on its system have a similar right and that, therefore, the non-conforming provision does not confer any benefits on Eclipse that are not available to all shippers. Columbia asserts that the Commission has allowed Columbia to include similar term-extension provisions in prior cases.[6]

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[3] *Dominion Transmission, Inc.*, 153 FERC ¶ 61,382 (2015).

[4] Eclipse Resources I, LP (the production and drilling subsidiary) and Eclipse Marketing, LP (the subsidiary that manages natural gas transportation) are both wholly owned subsidiaries of Eclipse Resources Corporation.

[5] Section 4.1(b)(1) of the GT&C of Columbia's tariff provides that Columbia and a shipper have the right to renegotiate the terms of a long-term firm service agreement prior to the initiation of the ROFR (right of first refusal) procedure in exchange for the shipper's agreement to extend the use of at least part of its capacity.

[6] Columbia cites *Columbia Gas Transmission, LLC*, Docket No. RP16-1000-000, (June 24, 2016) (delegated letter order); *Columbia Gas Transmission, LLC*, Docket No. RP10-828-000 (July 6, 2010) (delegated letter order).

5. Section 7 (Capacity Release) of the Eclipse Agreement obligates Columbia to release the 205,000 Dth per day of Dominion Capacity to Eclipse. Columbia states that this provision highlights that the Dominion Capacity is a necessary component of Columbia's commitment to provide service on the expansion facilities. The Eclipse Agreement obligates Eclipse to "accept all temporary releases of [Dominion] Capacity from [Columbia] at the applicable [Dominion] currently effective maximum rate." The Eclipse Agreement also obligates Eclipse to honor the Dominion tariff as a condition of receiving this service. Finally, the Eclipse Agreement grants Eclipse the right to terminate the agreement with Columbia in the event that Columbia loses access to the Dominion Capacity. Columbia states that this provision is consistent with section 47 of the GT&C of its tariff and does not pose a substantial risk of discrimination because that section is generally applicable and permits Columbia to release capacity it holds on off-system pipelines. Columbia adds that the capacity will be released pursuant to the Commission's section 284.8 capacity release regulations, as well as Dominion's tariff.

6. Columbia requests certain waivers relating to the permanent release of capacity from Eclipse Resources I, LP to Eclipse Resources Marketing, LP. To facilitate the permanent release at a negotiated rate above Columbia's maximum tariff rate, Columbia requests a temporary waiver of section 284.8 of the Commission's regulations, i.e., the prohibition on exceeding the maximum rate and the requirements for competitive bidding. Columbia additionally requests waiver from the prohibition on tying in section 14 of the GT&C of its tariff, and to the extent necessary, any other policy or provision that the Commission deems necessary to effectuate the permanent release.

7. Public notice of the filing was issued on September 7, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[7] Pursuant to Rule 214,[8] 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 adverse comments or protests were filed.

8. We accept Columbia's proposed non-conforming Eclipse Agreement as just and reasonable. The Eclipse Agreement contains two non-conforming provisions that materially differ from its *pro forma* service agreement: the first specifying Eclipse's right to extend its term of service, and the second specifying the conditions under which Eclipse may use the Dominion Capacity that Columbia is acquiring from Dominion's system. We find that both provisions are permissible material deviations from Columbia's *pro forma* service agreement.

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[7] 18 C.F.R. § 154.210 (2016).

[8] 18 C.F.R. § 385.214 (2016).

9. We accept the provision allowing Eclipse to extend the term of the agreement as a permissible material deviation. The Commission only permits a pipeline to negotiate provisions giving shippers the right to extend their contracts if its tariff contains a provision offering to negotiate such provisions in a service agreement on a not unduly discriminatory basis.[9] Columbia's tariff provides that Columbia and a shipper have the right to renegotiate any of the terms of a long-term service agreement, including the rates to be charged, prior to the expiration of its term in exchange for the shipper's agreement to extend the use of at least part of its capacity.[10] As such, the Eclipse Agreement is only specifying a right that Columbia's tariff expressly offers on a similar basis to all shippers.

10. We accept the capacity release provision as a permissible material deviation because it is necessary to meet the operational circumstances surrounding the Eclipse Agreement, which appear to be unique on the Columbia system, and which do not appear to present any risk of undue discrimination. The Eclipse Agreement obligates Eclipse to honor the Dominion tariff as a condition of receiving this service, in keeping with Commission policy that recipients of off-system capacity follow "the provisions of the off-system pipeline's tariff in the same manner as any other holder of capacity on the off-system pipeline."[11]

11. Columbia's capacity release waiver request is generally consistent with previous waivers that the Commission has granted. In particular, the instant request is very similar to the situation in *MMGS*, in which a shipper's corporate management decided, before service commenced, to restructure its affiliate relationships such that the title for the capacity in question should be in the name of one of the shipper's affiliates, instead of the shipper who had initially signed the agreement.[12] By permitting a release in such a situation, we "will permit the subject capacity to continue to be used for the same purpose for which [Eclipse] originally purchased it."[13]

12. Furthermore, waiving the prohibition on exceeding the maximum rate and the posting and bidding requirements for this one transaction will not harm any third parties. In particular, as we have noted, a pipeline "may refuse to allow a permanent capacity release if it has a reasonable basis to conclude that it will not be financially indifferent to the

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[9] *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 101 (2010) (citing *Kinder Morgan Interstate Gas Transmission LLC*, 107 FERC ¶ 61,096, at P 5 (2004)).

[10] Columbia Gas Transmission, LLC, FERC NGA Gas Tariff, Baseline Tariffs, Gen. Terms & Conditions, Availability of Capacity for Firm Services, 6.0.0 at §4.2(b)(1).

[11] *See Columbia Gas Transmission, LLC*, 131 FERC ¶ 61,093, at P 34 (2010).

[12] *E.g., MMGS, Inc.*, 154 FERC ¶ 61,018, at P 3 (2016) (*MMGS*).

[13] *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151, at P 6 (2012).

release."[14] However, 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."[15]

13. In its request, Columbia fails to specify the scope or time frame of its requested waivers. Commission policy requires that capacity release waivers be "both limited in scope and temporary in time frame."[16] Accordingly, we limit the scope of our grant of waiver to Eclipse Resources I, LP permanently releasing its Rate Schedule FTS agreement on Columbia to its affiliate Eclipse Resources Marketing, LP. The limited waivers are effective for 30 days from the date of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[14] *Algonquin Gas Transmission, LLC,* 112 FERC ¶ 61,262 (2005).

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

[16] *Distrigas of Massachusetts LLC*, 135 FERC ¶ 61,028, at P 19 (2011), *cited in, e.g., MMGS*, 154 FERC ¶ 61,018 at P 9.