

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 5, 2007

In Reply Refer To:
Columbia Gas Transmission Company
Docket No. RP07-413-000

Columbia Gas Transmission Company
5151 San Felipe
Suite 2500
Houston, TX 77056

Attention: James R. Downs
Director of Regulatory Affairs

Reference: Parking and Lending Service

Dear Mr. Downs:

1. On April 27, 2007, Columbia Gas Transmission Corporation (Columbia) filed revised tariff sheets¹ proposing to revise the Parking and Lending (PAL) Service Rate Schedule and the PAL *pro forma* Service Agreement to further streamline the contracting procedures for shippers under the PAL Rate Schedule.² Columbia proposes to further streamline its PAL procedures by creating a “Master PAL Agreement” modeled after the existing *pro forma* PAL Service Agreement in Columbia’s tariff. The tariff sheets are accepted, effective August 1, 2007, subject to the condition set forth below.³

¹ First Revised Sheet No. 227, Second Revised Sheet No. 228, Fourth Revised Sheet No. 229, Sixth Revised Sheet No. 538, Original Sheet No. 538A, Fourth Revised Sheet No. 539, and Second Revised Sheet No. 540 to FERC Gas Tariff, Second Revised Volume No. 1.

² Columbia recently revised and streamlined its PAL service procedures in Docket No. RP06-311-000. *Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,181, *reh’g denied*, 117 FERC ¶ 61,054 (2006).

³ On May 17, 2007, Columbia filed a request to change the proposed effective date from June 1, 2007 to August 1, 2007.

2. Under Columbia's proposal, Columbia will require a shipper to execute a Master PAL Agreement. Columbia states that thereafter, as that shipper from time to time desires to enter into new individual PAL transactions with Columbia, those transactions will be memorialized in a Transaction Confirmation Sheet in the form of "Appendix A" to the Master PAL Agreement. Columbia states that a separate Appendix A to the Master PAL Agreement will be used for each transaction and each will bear the relevant Master PAL Agreement number and a unique Transaction Confirmation identification (ID) number. Columbia further states that, on the shipper's behalf, it will complete the rate, quantity, and other terms required by the Transaction Confirmation Sheet consistent with the agreed-upon transaction.⁴ Columbia states that the completed Transaction Confirmation Sheet will be automatically e-mailed to the shipper and will be deemed executed if not disputed in writing within two Business Days.⁵

3. Columbia states that by eliminating the existing requirement that the current PAL *pro forma* service agreement be executed for each individual PAL transaction, an unnecessary step is eliminated, and an inherently more efficient and reliable electronic contracting process is implemented. Further, Columbia states that its proposed Master PAL Agreement/multiple Appendix A(s) approach is similar to the PAL tariff provisions of other interstate gas pipeline companies.⁶

4. Public notice of the filing was issued on May 2, 2007. Interventions and protests were due as provided in section 154.210, 18 C.F.R. § 154.210 (2006), of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any 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. Baltimore Gas and Electric Company (BGE) and Interstate Gas Supply, Inc. (IGS) filed protests. Piedmont Natural Gas Company, Inc. (Piedmont) filed a protest

⁴ See Section 6 of the Master PAL Agreement (Sheet No. 538).

⁵ *Id.*

⁶ See, e.g., Sheet No. 425 of Southern Natural Gas Company's tariff ("Company and Shipper shall execute a new Exhibit A for each park and loan service agreed to hereunder. Each Exhibit A shall set forth a deal number for each transaction, which Shipper will use when nominating its service thereunder."); Sheet No. 466 of Northern Border Pipeline Company's tariff ("Buyer shall initiate a request for interruptible park and loan service by executing and delivering to Company one or more Exhibit A(s). Upon execution by Company, Buyer's Exhibit(s) A shall be incorporated and made a part hereof.")

and request for clarification. On May 16, 2007, Columbia filed an answer to the protests and request for clarification and BGE filed a reply to Columbia's answer. The Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers.⁷ In this case, the Commission will accept Columbia's answer and BGE's reply to Columbia's answer as they provide information that may assist the Commission in its decision-making process.

5. Piedmont and BGE challenge one aspect of Columbia's proposal: that Appendix A to the Master PAL Agreement, upon being emailed to the shipper, will be deemed executed if not disputed by the Shipper in writing within two business days. They argue that holding shippers to terms they do not expressly assent to can lead to countless errors and is inconsistent with the basic tenets of contract law, that require evidence of acceptance of the terms of a commercial offer before a contract can be deemed to exist. Additionally, Piedmont argues that the length of time specified in Columbia's proposal (i.e., two business days) is too short and does not provide a reasonable opportunity for a shipper's employees to receive, review, and route Transaction Confirmations for necessary management approvals. BGE claims that Columbia's proposal is virtually identical to a proposal that was rejected by the Commission in *Northern Natural Gas Company*.⁸

6. In its answer, Columbia claims that BGE ignores the Commission's later September 22, 2004 Order on Northern's compliance filing in that same proceeding.⁹ Columbia contends that Northern argued that a shipper can agree in advance on the terms under which a service agreement will be binding, including agreeing that a service agreement will be binding if the shipper does not decline the service agreement within two business days. Columbia asserts that the Commission, in accepting Northern's compliance filing in that proceeding, stated that "acceptance of a contract requires an act of affirmation from the shipper, and that Northern's proposed agreement in advance qualifies as such an act."¹⁰

7. Columbia argues that section 6 of its proposed Master PAL Agreement fully comports with the Commission's September 22, 2004 Order on Northern's compliance filing by including a proposed agreement in advance, which constitutes

⁷ 18 C.F.R. § 385.213(a)(2) (2006).

⁸ *Northern Natural Gas Co.*, 107 FERC ¶ 61,217 (2004) (*Northern Natural*).

⁹ *Northern Natural Gas Co.*, 108 FERC ¶ 61,287 (2004) (*Northern Natural II*).

¹⁰ *Id.* at P 7.

the proactive action by shippers that the Commission requires. Columbia's Master PAL Agreement states that a:

Shipper must execute an Appendix A in order to receive service under this Agreement. On the Shipper's behalf, Transporter will complete the rate, quantity, and other terms required by the Appendix A consistent with the agreed upon transaction. The completed Appendix A will be automatically e-mailed to the Shipper and will be deemed executed if not disputed in writing within 2 business days. The Appendix A after execution shall be incorporated in and made a part hereof.

8. Further, Columbia argues that its proposal mirrors the North American Energy Standards Board (NAESB) Base Contract for Sale and Purchase of Natural Gas, which includes a provision whereby the nomination, scheduling and confirmation of volumes are made via an Exhibit A (transaction confirmation sheets) under an already existing contract. Columbia asserts that the NAESB Exhibit A includes a provision that deems the confirmation accepted if not disputed in writing within two business days. Columbia argues that, like the NAESB Transaction Confirmation process, it will require that the Shipper execute a service agreement – the Master PAL Agreement – before it can nominate, schedule, and confirm volumes under one or more Appendix A Transactions Confirmations and that, like the NAESB Confirmation form, Appendix A is binding unless disputed within two business days.

9. In its reply to Columbia's answer, BGE renews its protest against being held to the terms of a Transaction Confirmation Sheet prepared and e-mailed by Columbia, absent a reply by BGE within two days of Columbia's e-mail. BGE states that it has not "agreed in writing in advance" to follow the procedure that Columbia is requesting the Commission to approve. BGE asserts it filed its protest specifically to inform the Commission that it disagrees with this procedure. BGE characterizes Columbia's proposal as binding customers to documents that have never been executed, and for which an acknowledgement or receipt has not been given. BGE requests that the Commission find that Transaction Confirmation Sheets not confirmed in writing within a specified time frame be deemed as void.

10. We find that Columbia's streamlined procedures, a Master PAL Agreement with multiple Appendix A(s) for rendering service under Rate Schedule PAL, is generally reasonable. The revised procedures, including Columbia's proposal to deem the Transaction Confirmation Sheet, Appendix A, as binding and executed unless disputed in writing within two business days, should enable shippers to transact business in a more timely and efficient manner in a rapidly evolving energy marketplace. However, we recognize that some shippers, for various reasons, may not wish to follow this process. For example, a shipper requesting PAL service may need more than two business days to review the completed Appendix A.

11. In *Northern Natural II*, we approved the following language for Northern's tariff:

If Northern and Shipper have agreed in writing in advance, this Service Agreement shall be deemed to be executed and shall be binding for all purposes if (1) Shipper nominates under this Service Agreement; or (2) Shipper has not notified Northern in writing that it declines this Service Agreement within two (2) business days of the date of the Service Agreement. (emphasis added)

Northern's tariff language thus gives the shipper the option of agreeing in writing in advance that the agreement will be considered executed if the shipper does not object within two days. However, this language does not foreclose the shipper's option of declining to follow that procedure. Should the shipper choose not to execute a written agreement in advance agreeing to that procedure, it would then need to execute the service contract in the normal course of business with Northern. Columbia, however, does not provide shippers with such flexibility in its proposal. Section 6 of the Master PAL Agreement requires the shipper to execute a written agreement in advance agreeing to the listed procedure in order to receive service ("Shipper *must* execute an Appendix A in order to receive service under this Agreement . . . The completed Appendix A . . . *will be deemed executed* if not disputed in writing within 2 business days" (emphasis added)). Consistent with the *Northern Natural* decisions, we find that shippers must have an option as to whether or not to follow this procedure. Columbia is directed to revise its tariff accordingly.

12. Piedmont seeks clarification that the requirement to dispute Transaction Confirmations "in writing" includes documents in electronic file formats such as faxes, immediate messages, or electronic mail transmissions. In its answer, Columbia clarifies that the requirement to dispute Transaction Confirmations "in writing" includes faxes and electronic mail transmissions to Columbia's offices, but does not include immediate messages.¹¹

13. In its protest, IGS argues that Columbia fails to explain why the proposed changes are necessary and that the proposed changes result in discrepancies and adverse consequences. IGS states that among the adverse consequences, a monopoly interest is created if Columbia, which controls the amount of supply that can flow into the Interruptible Paper Pool (IPP), is able to facilitate PALs at the IPP level since shippers cannot move gas directly from storage to the IPP under Columbia's tariff.

¹¹ Columbia notes that it does not include immediate messages in the category of acceptable writings, because they are not provided via nor saved within a supported IT function in its corporate IT network.

Further, IGS argues that Columbia has the financial incentive to constrain its system to sell maximum rate PALs.

14. IGS argues that an additional problem arises because Columbia negotiates PALs with only a relatively small percentage of shippers on its system. IGS claims that an un-level playing field is created in which PAL counterparties are rewarded with information not available to non-PAL shippers. Moreover, IGS claims that the preferred shippers (valid IPP operators which enter PALs on a semi-frequent basis) seem to pay significantly less for PAL transactions than the other interruptible rates offered by Columbia and that the maximum tariff rate is well outside the cost structure of similar rates offered by Columbia.

15. IGS also claims that it remains unclear whether an Appendix A or Transaction Confirmation Sheet or other similarly named sheets will require posting under FERC guidelines, and that should such a requirement be eliminated, Columbia's transactions with preferred shippers would be further disguised. IGS requests that the Commission suspend Columbia's filing for five months and order a technical conference be held.

16. In its answer, Columbia argues that the bulk of IGS' protest presents a general challenge to the PAL service that has been in effect on Columbia's system for many years and should be rejected. Columbia asserts that IGS' only point directly related to Columbia's filing is that the need to post the Appendix A Transaction Confirmations is eliminated by Columbia's filing. Columbia argues that IGS is incorrect and that the step that is eliminated by its filing is the need to physically execute a new PAL Agreement for each transaction. Columbia states it intends to comply with all Commission and tariff posting requirements and will post the information contained in each Appendix A Transaction Confirmation Sheet.

17. We agree with Columbia that IGS' protest raises issues outside the scope and purpose of this proceeding, which deals with Columbia's proposal to streamline its PAL service procedures. Therefore, IGS' request for a five month suspension and a technical conference is denied. If IGS is concerned that Columbia is not providing service under its PAL Rate Schedule on a non-discriminatory basis, it may file a complaint with the Commission pursuant to Commission regulations.

18. The Commission accepts Columbia's tariff sheets to be effective August 1, 2007, subject to Columbia filing revised tariff sheets, within 15 days of the date of this order, consistent with the discussion above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.