

120 FERC ¶ 61,127
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 2, 2007

In Reply Refer To:
Columbia Gas Transmission Corporation
Docket No. RP07-518-000

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

Attention: James R. Downs, Director of Regulatory Affairs

Reference: Second Revised Sheet No. 487 to FERC Gas Tariff, Second Revised
Volume No. 1

Dear Mr. Downs:

1. On July 3, 2007, Columbia Gas Transmission Corporation (Columbia Gas) filed the referenced tariff sheet to reflect a revision to section 48 (Offsystem Pipeline Capacity) of the General Terms and Conditions (GT&C) of its tariff, with a proposed effective date of August 2, 2007. The revised tariff sheet clarifies that when Columbia Gas provides service to its customers on off-system transportation and/or storage capacity and Columbia Gas' contract with the third-party service provider contains limited or no extension rights, a corresponding limitation may apply in Columbia Gas' service agreement with its customer. The Commission accepts the referenced tariff sheet, effective August 2, 2007, as proposed.

2. Section 48 of Columbia Gas' GT&C permits Columbia Gas to acquire capacity on a third party system. Columbia Gas states that its tariff does not currently address how limitations imposed by the off-system capacity provider may affect service provided by Columbia Gas on the off-system capacity pursuant to the terms and conditions of its tariff. For example, Columbia Gas states that if it enters into a transportation and/or storage agreement with an off-system capacity provider and that agreement is either not eligible for or does not provide a right of first refusal or has otherwise limited extension rights, Columbia Gas' tariff is silent concerning whether a corresponding limitation may be applied by Columbia Gas when it provides service to its shippers using the subject off-system capacity.

3. Columbia Gas states that it proposes to address this situation by adding language to its tariff that is consistent with language accepted by the Commission in recent *Tennessee*¹ and *Dominion* proceedings.² Specifically, Columbia Gas proposes the following language:

In the event that offsystem capacity used to render service to Transporter's Shippers is subject to renewal limitations, consistent with the offsystem capacity provider's tariff or operating statement, Transporter will indicate, in any posting of capacity available for service, any limitation to extension rights that will apply as a result of the limitation on the offsystem capacity. Any such extension limitation shall be reflected in the Service Agreement between Transporter and Shipper. This provision shall not impact any right of first refusal Shipper may have pursuant to this tariff, except that extension of the affected Service Agreement shall be limited to the term of Transporter's contract or service agreement with the offsystem capacity provider.

4. Public notice of the instant filing was issued on July 9, 2007. Interventions and protests were due as provided in section 154.210 (18 C.F.R. § 154.210 (2007)) of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any 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. Washington Gas Light Company (Washington Gas) filed comments. On July 24, 2007, Columbia Gas filed an answer to Washington Gas' comments.³

5. Washington Gas filed comments stating that the proposed tariff language is either unclear or inconsistent and that it does not allow Washington Gas to determine the intent of the provision. Washington Gas states that the language at one point states that the "extension limitation shall be reflected in the Service Agreement between Transporter and Shipper." Washington Gas states that following this statement, the proposed tariff reads: "[t]his provision shall not impact any right of first refusal Shipper may have pursuant to this tariff, *except that* extension of the affected Service Agreement shall be

¹ Citing *Tennessee Gas Pipeline Co.*, 115 FERC ¶ 61,120 (2006), and *Tennessee Gas Pipeline Co.*, 118 FERC ¶ 61,150 (2007) (*Tennessee*).

² Citing *Dominion Transmission, Inc.*, Docket No. RP07-404-000, Unreported Letter Order Issued May 18, 2007 (*Dominion*).

³ The Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers (18 C.F.R. § 385.213(a)(2)(2007)). However, the Commission finds good cause to admit Columbia Gas' answer since it will not delay the proceeding, and may assist the Commission in understanding the issues raised and insure a complete record on which the Commission may act.

limited to the term of Transporter's contract or service agreement with the offsystem capacity provider." (Emphasis added) Washington Gas argues that if all limitations on extension rights will be in the service agreement, as the proposed tariff provides, then there is no need for the "except that" language in the second quoted clause to further limit rights of first refusal.

6. Washington Gas states that it is concerned that Columbia Gas will attempt to construe a "limitation on the right of first refusal" as something other than an "extension limitation." Washington Gas asserts that to ensure that this does not become a reality and to ensure that it receives actual notice of any limitations in its extension or first refusal rights, Columbia Gas should be required to clarify its proposed tariff to modify the language quoted above by adding the following italicized language so that it reads that the "extension limitation, *including any limitation in Shipper's right of first refusal*, shall be reflected in the Service Agreement between Transporter and Shipper." Further, Washington Gas asserts that until Columbia Gas fully explains its status regarding extension rights with each third party transportation provider and how the loss of such third party capacity will affect its right to serve a particular shipper under its particular rate schedules, it should not be permitted to implement its proposed tariff language.

7. In its Answer, Columbia Gas states that its sole intention was to implement language previously accepted by the Commission for use on other pipelines which removes the potential for a disconnect between the extension limitations imposed on Columbia by an off-system capacity provider and the extension limitations available to Columbia Gas' shippers when Columbia Gas makes that off-system gas available to them. As such, Columbia Gas states that its proposed language is intended to replicate, in its arrangements with its shippers using off-system capacity, any extension limitation imposed on Columbia Gas' right to that capacity. Columbia Gas further explains that to the extent the extension limitations in its tariff do not match exactly the extension limitations in the off-system capacity provider's tariff or contract with Columbia Gas, either the Columbia Gas shipper would face loss of its capacity under Columbia Gas' tariff when its arrangement with the off-system provider still has "time to run" or Columbia Gas would face an obligation to its shipper to continue to provide capacity when Columbia Gas' right to capacity on the off-system provider has expired. In addition, Columbia Gas states that the phrase cited by Washington Gas as being inconsistent or ambiguous was taken literally from the language accepted by the Commission in the *Dominion* proceeding. Columbia Gas states that this language has its roots in the Commission's directive to Tennessee where the Commission was concerned that Tennessee not necessarily restrict the right of first refusal of shippers to whom off-system capacity is sold.⁴

8. The Commission finds that Columbia Gas' proposed tariff language is just and reasonable and consistent with Commission policy as explained in the Commission's orders in *Tennessee*, and, therefore, we will accept Columbia Gas' proposed tariff sheet

⁴ Citing *Tennessee Gas Pipeline Co.*, 118 FERC ¶ 61,150 at P 11-12 (2007).

without condition, to be effective as proposed. In the February 26, 2007 *Tennessee* order on compliance filing, the Commission explained the circumstances in which right of first refusal (ROFR) rights may or may not be available to shippers transporting gas on off-system capacity.⁵ Since the proposed tariff language requires these off-system capacity limitations to be posted and included in the service agreement, and there is no basis to interpret Columbia Gas' proposed language as excluding ROFR limitations of the off-system capacity provider, there is no need to include the language proposed by Washington Gas or to require Columbia Gas to explain the status of each contractual arrangement subject to off-system capacity limitations.

9. Accordingly, the Commission accepts the proposed tariff sheet, effective August 2, 2007, as proposed.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties

⁵ 118 FERC ¶ 61,150 at P 9-12. The Commission stated that Tennessee may only restrict its own shippers' ROFR rights relative to third-party pipeline capacity if the third-party pipeline's tariff imposes a limitation on ROFR rights and, if Tennessee wishes to impose such limitations relative to its own expansion projects, it may do so only pursuant to limitations permitted by its own tariff. However, the Commission explained that, if the pipeline acquires off-system capacity that is not subject to a ROFR, the pipeline nonetheless must provide a ROFR to its own customer permitting it to extend its service to the termination date of the pipeline's right to the off-system capacity if the customer's service is at the maximum rate and is for a term greater than a year but less than the term of the pipeline's contract with the other pipeline.