

126 FERC ¶ 61,256
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 20, 2009

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP09-375-000

Columbia Gas Transmission, LLC
5151 San Felipe, Suite 2500
Houston, TX 77056-3639

Attention: James R. Downs
Director of Regulatory Affairs

Reference: Fourteenth Revised Sheet No. 281 and Original Sheet No. 281A to FERC
Gas Tariff, Second Revised Volume No. 1.

Dear Mr. Downs:

1. On February 20, 2009, Columbia Gas Transmission, LLC (Columbia Gas) filed the above referenced tariff sheets to add a new section 4.1(d)(2), entitled "Early Termination of Service Agreements" to the General Terms & Conditions (GT&C) of its tariff. The referenced tariff sheets are accepted effective March 23, 2009, as proposed, subject to the conditions as discussed below.
2. Columbia Gas states that adding proposed section 4.1(d)(2) will allow Columbia Gas and its customers to agree to terminate an entire long-term service agreement prior to its expiration date in a not unduly discriminatory manner. Columbia Gas provides the following situations in which Columbia Gas may agree to terminate such a service agreement: (i) where a shipper responds to a solicitation for capacity release offers in a reverse open season for capacity requiring construction of new facilities and the conditions set forth in the solicitation have been satisfied and (ii) where a shipper agrees to pay an exit fee that is sufficient, to make the termination or reduction financially beneficial to Columbia Gas. In addition, Columbia Gas may waive the exit fee where a shipper's service agreement provides for a discounted rate and Columbia Gas concludes that the capacity would be sold at a higher rate for the full remaining term of the service

agreement. Columbia Gas notes that the Commission has approved similar provisions in the past.¹

3. Public notice of Columbia Gas's filing was issued on February 24, 2009, with comments due by March 4, 2009. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), 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 interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. The Indicated Shippers² filed comments concerning Columbia Gas's proposed modifications.

4. On March 5, 2009, Columbia Gas filed an answer in response to the Indicated Shipper's concerns. The Commission's Rules of Practice and Procedure generally do not permit answers.³ However, the Commission finds good cause to accept Columbia Gas's answer because it will assist us in resolving the issues raised. Therefore, Columbia Gas's answer is accepted.

5. Though not opposing Columbia Gas's proposal to amend its tariff to provide for early termination of a contract based on mutual agreement with a shipper, the Indicated Shippers state that they are concerned that Columbia Gas's proposed tariff revisions could result in: (1) undue discrimination or preference in contravention of the requirements of sections 4 and 5 of the Natural Gas Act (NGA); (2) failure to comply with the purposes of the non-conforming filing requirements set forth in sections 154.1(d) and 154.112(b) of the Commission's Regulations; and (3) inadequate disclosure of the terms and conditions that Columbia Gas will use to decide whether it will agree to an early termination in contravention of section 284.13 of the Commission's Regulations.

6. Specifically, the Indicated Shippers state that the placement of the early termination provision in a section of Columbia Gas's GT&C that deals generally with the shipper's right of first refusal (ROFR) is inappropriate as early termination is a different topic than the right to continue to receive service following expiration of the primary term. In addition, the Indicated Shippers state that Columbia Gas does not propose to amend its *pro forma* service agreement to include a "blank space" providing for early

¹ See *National Fuel Gas Supply Corp.*, 115 FERC ¶ 61,127, order on compliance, 116 FERC ¶ 61,307 (2006), *Northern Natural Gas Co.*, 118 FERC ¶ 61,124 (2007), and *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,225 (2001).

² The Indicated Shippers consists of BP Energy Company, Chevron U.S.A., Inc., ConocoPhillips Company, Hess Corporation and Interstate Gas Supply, Inc.

³ 18 C.F.R. § 385.213(a)(2) (2008).

termination. The Indicated Shippers state that in *Northern Natural Gas Co.*,⁴ the pipeline submitted far more comprehensive tariff revisions to implement a comparable early termination proposal. The tariff provisions in *Northern Natural* included changes to: (1) the Rate Schedule; (2) GT&C; and (3) the *pro forma* service agreement, by including a blank space in the service agreement. The Indicated Shippers argue that Columbia Gas's proposal to provide for early termination through a revision to its GT&C without any revisions to the relevant rate schedules and *pro forma* agreements falls well short of the Commission's standards of clarity and transparency, as exemplified by the *Northern Natural* order. Therefore, the Indicated Shippers request that the Commission require Columbia Gas to provide sufficient notice to its shippers of their ability to request early termination, through amendments to its rate schedules and *pro forma* agreements.

7. The Indicated Shippers also argue that Columbia Gas's proposal does not clearly provide for public disclosure of early termination agreements as Columbia Gas does not propose to amend its *pro forma* agreements to include a "blank space" providing for early termination. The Indicated Shippers further argue that it appears that Columbia Gas envisions early termination agreements as separate written contracts which would not be filed with the Commission in violation of NGA section 4(c).⁵ Indicated Shippers further argue that an agreement to terminate a service prior to the expiration of its primary term is a contract that affects or relates to a service.

8. In its answer, Columbia Gas states that it believes the Indicated Shippers have misunderstood the intent and application of its proposed tariff change. Columbia Gas states that the placement of the early termination option in section 4.1(d)(2) of its GT&C is appropriate and sufficient. Columbia Gas states that this provision will grant Columbia Gas and any of its shippers the right to negotiate and agree to the early termination of a service agreement at some point during the term of the agreement. Columbia Gas explains that the right to request early termination is not a right that Columbia Gas will negotiate in advance when it enters into a new service agreement. Columbia Gas states that it expects that all service agreements will continue for their agreed upon term and therefore, it is illogical and inappropriate to revise the *pro forma* service agreements to provide for the possibility of early termination.

9. Columbia Gas also states that proposed section 4.1(d)(2) is similar to section 4.1(b)(2) which permits shippers and Columbia Gas to extend the customer's service on a

⁴ 118 FERC ¶ 61,124 (2007) (*Northern Natural*).

⁵ 15 U.S.C. § 717c(c) provides in pertinent part that (emphasis added) "every natural-gas company shall file with the Commission...all contracts which in any manner affect or relate to ... services."

not unduly discriminatory basis.⁶ Section 4.1(b)(2) also permits Columbia Gas and its shippers to mutually agree to extend the customer's service on Columbia Gas's system through the re-negotiation of the customer's existing service agreement prior to the expiration of the agreement. Columbia Gas argues that in that case no modifications to the Rate Schedules or *pro forma* service agreements were required.

10. Finally, Columbia Gas argues that section 4.1(d)(2) is not hidden within the ROFR section of its tariff. Columbia Gas states that ROFR rights are addressed in section 4.1(c) of the GT&C. In addition, Columbia Gas states that section 4.1(d) is entitled "Termination of Other Long-Term Service Agreements" and subpart (d)(2) is entitled "Early Termination of Service Agreements." Columbia Gas states that there is no language anywhere in that subsection to suggest that the ability to request an early termination of a service agreement is tied to a ROFR.

11. The Commission agrees with Columbia Gas that the placement of the tariff provision for early termination of contracts in section 4.1(d)(2) is appropriate and sufficient to notify its customers that all long-term contracts may be renegotiated and terminated prior to their expiration date in a not unduly discriminatory manner. Shippers will know of the ability to request early termination of their service agreements because this ability will be defined in the GT&C of Columbia's tariff. We will not require Columbia Gulf to amend its *pro forma* service agreement by including a blank space for an early termination agreement, as the pipeline proposed to do in *Northern Natural*. As Columbia Gulf explains, it is not proposing to negotiate, at the time it enters into a long-term firm service agreement, a right for the shipper to terminate the agreement at some later date before the agreement would otherwise expire. Columbia Gas is only proposing to revise its GT&C to authorize it to mutually agree with the shipper to terminate an agreement after it has gone into effect. Since Columbia Gas's proposal does not contemplate an agreement, when a long-term firm service agreement is executed, upon the terms under which the shipper would have a right to early termination of the service agreement, there is no need for any blank space in the *pro forma* agreement for inserting such an early termination right.

12. The *pro forma* service agreement at issue in *Northern Natural* involved a different type of service than the long-term services at issue here. In that case, the pipeline proposed to permit the early termination of individual short-term transactions performed pursuant to an overall service agreement for a limited firm storage service, and the *pro forma* service agreement included blank spaces for various terms of each individual transaction, including amendments to those terms. In that case, the pipeline reasonably proposed to include a blank space to set forth the terms of any agreement to terminate an

⁶ Section 4.1(b)(2) was approved in Docket No. RP07-655-000 by Commission Letter Order issued on September 28, 2007 (*Columbia Gas Transmission Corp.*, 120 FERC ¶ 61,289 (2007)).

individual transaction under the overall service agreement. By placing the early termination provision in the GT&C of its tariff, Columbia Gas is providing notice to all shippers in every rate schedule that long-term contracts are eligible for early termination.

13. Indicated Shippers next state that in addition to the NGA section 4 contract filing requirements, the Commission's Regulations also require that Columbia post on its website information regarding early terminations as "special details" of a service agreement (*see* 18 C.F.R. § 284.13(b)(1)(viii)). Indicated Shippers state that Columbia Gas in its filing does not indicate that it intends to post early termination information as "special details." Indicated Shippers argue that, without access to information regarding the early termination agreements, including exit fees and information on how to evaluate exit fees as it relates to the remaining contract obligations that would be terminated, parties could not evaluate whether Columbia Gas has agreed to or refused to agree to early termination on an unduly discriminatory or preferential basis. In addition to requiring Columbia Gas to post early termination agreement information on its web site, the Indicated Shippers request the Commission to direct Columbia Gas to provide a written explanation of how interested parties may locate that information as it is unclear how Columbia Gas provides "special details" information on its web currently.

14. Columbia Gas disagrees with the Indicated Shippers' position that the terms of an early termination agreement should be posted. Columbia Gas states that the language in section 4.1(d)(2) clearly explains the circumstances under which Columbia Gas may agree to the early termination of an existing service agreement. Columbia Gas states that it is obligated to and intends to assess these requests in a not unduly discriminatory fashion. Columbia Gas also states that, if a shipper believes it is facing discrimination, it always has the option of seeking relief from the Commission.

15. Columbia Gas argues that the posting of the terms of an early termination also has the potential to harm the terminating shipper. Columbia Gas believes the specific detail of an exit fee may be a commercially sensitive item for the shipper and its disclosure could affect the shipper's competitive position by disclosing proprietary cost information in a public forum. Finally, Columbia Gas argues that the exit fee is not a term and condition affecting service since once negotiated, the service provided by Columbia Gas will cease.

16. The Commission shares the Indicated Shippers concern regarding the posting of the terms of any early termination agreement since, as Indicated Shippers accurately point out, section 284.13(b)(1)(viii) requires the posting of such information. Consistent with our decision in *Northern Natural*, we find that Columbia is required by section 284.13(b)(1)(viii) of the Commission's regulations to post such information on its web site as a special detail pertaining to a transportation contract. This requirement should alleviate the concerns raised by Indicated Shippers. Further, since posting termination

fees on its web site is already required by Commission regulation, we will not require Columbia Gas to further modify its tariff.

17. Finally, Indicated Shippers argue that Columbia Gas's proposal does not address how it will ensure that capacity that becomes unsubscribed due to early termination will be available to shippers on a not unduly discriminatory basis. Indicated Shippers are concerned that early termination capacity should not be a vehicle for Columbia Gas to allocate unsubscribed capacity outside of an open season process that awards the capacity to the shipper that places the highest value on that capacity. Therefore, Indicated Shippers request that the Commission direct Columbia Gas to clarify that it will make all early termination capacity available to shippers on a not unduly discriminatory or preferential basis.

18. In response, Columbia Gas asserts that the Indicated Shippers' concern that Columbia Gas will not post the availability of all capacity that becomes available following early termination is unfounded. Columbia Gas states that it has never been its intent or practice to withhold capacity and that there is no need for the Commission to require clarification on this point.

19. As Columbia Gas explained in its filing, the purpose behind the early termination proposal is to provide flexibility in order to accommodate changes in a shipper's business circumstances. The Commission agrees that there is no need for Columbia Gas to make any additional change to its tariff to provide for posting capacity that becomes available after an early termination. Section 4.2 of Columbia Gas's GT&C provides that "[a]s capacity becomes available... such capacity shall be made available for bidding provided that it is not previously committed and capacity remains available." Columbia Gas maintains in its answer that just as capacity becomes available whenever a service agreement expires on its own terms, the capacity previously held under a service agreement that is terminated early will become available and will be made available for bidding. If a party believes that Columbia Gas is not following its tariff provisions they can ultimately file a complaint with the Commission.

By direction of the Commission.

Kimberly D. Bose,
Secretary.