

127 FERC ¶ 61,234
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 10, 2009

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP09-586-000

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

Attention: James R. Downs, Director of Regulatory Affairs

Reference: Negotiated Rate Agreements with Non-Conforming Provisions

Dear Mr. Downs:

1. On May 12, 2009, Columbia Gas Transmission, LLC (Columbia) filed a tariff sheet¹ and three negotiated rate service agreements with non-conforming provisions² with Chesapeake Appalachia, LLC (Chesapeake), CNX Gas Company, LLC (CNX) and Equitable Production Company (Equitable), for Firm Transmission Service (FTS), executed as part of Columbia's Appalachian Basin On-System Expansion Project (APX Project). Columbia states it filed the instant tariff sheet to list these non-conforming agreements in its tariff, as well as to include missing docket numbers for certain non-conforming agreements which were previously filed and accepted by the Commission. The Commission will accept the instant tariff sheet and non-conforming service agreements effective June 12, 2009, as requested, subject to the conditions set forth below.

2. On February 29, 2008, Columbia filed an application in Docket No. CP08-85-000 under section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas compression facilities to support the APX Project. On August 22, 2008, the

¹ Third Revised Sheet No. 503 to FERC Gas Tariff, Third Revised Volume No. 1.

² Rate Schedule FTS Service Agreement No. 8899 with Chesapeake, No. 8900 with CNX and No. 8901 with Equitable.

Commission granted Columbia certificate authorization for its APX Project.³ In its certificate application Columbia projected that the APX Project would be placed into service on November 1, 2009, but it states in the instant filing that it anticipates that it will be able to offer service through the APX Project facilities as early as June 23, 2009.

3. Columbia states that consistent with Ordering Paragraph H of the August 22 Order, service agreements consistent with the terms of the Precedent Agreements with Chesapeake, CNX, and Equitable were executed on September 5, 2008. Pursuant to Ordering Paragraph G of the August 22 Order, Columbia is filing with the Commission the three negotiated rate agreements with non-conforming provisions.⁴

4. Columbia states that the Chesapeake and Equitable service agreements provide that the applicable demand rate will be fixed at a negotiated rate of \$9.125 per Dth⁵ per month for the full term of service.⁶ In addition, an APX Project customer will pay the maximum applicable demand surcharges, commodity rates and surcharges and the maximum applicable Commission approved Transportation Retainage rate for fuel. The Chesapeake and Equitable service agreements provide that service will commence on the in service date of the APX Project.

5. Columbia states that the CNX agreement provides that the applicable demand rate will be fixed at a negotiated rate of \$8.212 per Dth per month and CNX will pay the maximum applicable demand surcharges, commodity rates and surcharges and the maximum applicable Commission approved Transportation Retainage rate for fuel. The CNX agreement states that service will commence on the later of the in service date of the APX Project or November 1, 2009.

6. In addition, Columbia states that it has agreed to make a single-purpose tariff filing with the Commission no later than November 1, 2009, pursuant to the terms set

³ *Columbia Gas Transmission, Corp.*, 124 FERC ¶ 62,148 (2008) (August 22 Order).

⁴ *Id.* p. 64,376.

⁵ The demand recourse rate without the inclusion of certain surcharges is \$5.787 per Dth.

⁶ The incremental recourse rate for the APX expansion consists of a Reservation Charge of \$6.195 per Dth plus a usage rate of 2.14 cents per Dth.

forth in Attachment A to the service agreement with Chesapeake.⁷ The single purpose filing would propose a mechanism to allow shippers utilizing Columbia's Segmentation Pool the ability to ultimately access Columbia's Interruptible Paper Pool on a year-round basis without charge for such pool access.

7. In addition, Columbia states that all three negotiated rate agreements contain non-conforming provisions in the form of a credit annex. The credit annex provisions differ from the pro forma service agreements in regard to creditworthiness provisions that must be satisfied before a customer may obtain service. The credit annex provisions under the precedent agreements establish the terms that credit guarantors must meet to guarantee the financial performance of the shippers as it relates to the negotiated rate agreements.

8. Notice of Columbia's filing was issued on May 14, 2009, with interventions and protests due on May 26, 2009, as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 384.214 (2008), 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. On May 26, 2009, the Indicated Shippers⁸ filed comments in this proceeding. On May 29, 2009, Columbia filed an answer to the filed comments. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), answers to protests are not accepted unless otherwise ordered by the Commission. We will accept Columbia's answer because it further clarifies the issues.

9. Indicated Shippers state that the credit annex provisions in the three contracts provide more flexible creditworthiness requirements than provided for under Columbia's tariff. Indicated Shippers state that these more flexible requirements must be generally available to all shippers; otherwise the negotiated agreements are unduly discriminatory or preferential. Further, the Indicated Shippers state that the APX shippers do not meet the creditworthiness standards as established in Columbia's tariff and that Columbia did not use the alternatives set forth in its tariff to determine the Shippers' creditworthiness requirements. Finally, the Indicated Shippers argue that the text of the credit annex should not be part of the negotiated rate letter agreement, but

⁷ Columbia states that if it chooses not to make the single purpose filing then Columbia will provide service to CNX at a reduced negotiated demand charge rate of \$6.691 per Dth exclusive of surcharges. In addition, Columbia states that the approval or rejection of the future filing will not alter the obligations of CNX under the instant service agreement.

⁸ The Indicated Shippers consist of BP Energy Company, BP America Production Company, and Hess Corporation.

should be incorporated in the contract itself.

10. The Indicated Shippers also comment on Columbia's contract with CNX concerning Columbia's agreement to make a future section 4 filing. Indicated Shippers state that the requirement that Columbia make a single-purpose tariff filing concerning use of Columbia's Interruptible Paper Pool is unclear. Indicated Shippers request that the Commission require Columbia to provide a detailed explanation of the proposed tariff filing.

11. Columbia states in its answer that the APX Shippers satisfied the credit assurance requirements set forth in section 9.6(c) of Columbia's General Terms and Conditions (GT&C). Columbia states that pursuant to section 9.6(c)(3) of its GT&C, uncreditworthy shippers may receive service if they provide a guarantee from a creditworthy entity. This is what the APX shippers have done in the instant case.

12. Further, Columbia disagrees that the APX Shipper's were required to meet less stringent credit terms than required by Columbia's tariff. Columbia states that the guarantors for the APX shippers at issue here were required to provide 12 months of credit assurance. Columbia points out that section 9.6 of Columbia's tariff requires only 3 months of reservation and/or usage charges in order to secure service for an uncreditworthy shipper. In addition, Columbia states that it has evaluated the guarantors' creditworthiness consistent with section 9.6(b)(4)(ii) of its tariff.⁹ Columbia further states that, while the guarantors may be permitted to have a lower credit rating, than is required by section 9.6(b)(3)(i), that is allowable under the tariff so long as the guarantor satisfies the alternative credit criteria set forth in section 9.6(b)(4). Columbia states that this assurance of payment option is available to all of Columbia's shippers if

⁹ Section 9.6(b) of Columbia's GT&C states that:

(4) If Shipper does not meet the criteria described above, then Shipper may have Transporter evaluate its creditworthiness based upon the level of service requested. That appraisal shall be based upon Transporter's evaluation of the following information and credit criteria:

* * *

(ii) Consistent financial statement analysis will be applied by Transporter to determine the acceptability of Shipper's current and future financial strength. Shipper's balance sheets, income statements, cash flow statements, and auditor's notes will be analyzed along with key ratios and trends regarding liquidity, asset management, debt management, debt coverage, capital structure, operational efficiency, and profitability.

the guarantor can meet Columbia's creditworthiness criteria, as found in its tariff.

13. Columbia also asserts that the Indicated Shippers mischaracterized the credit annexes when they describe them as "negotiated rate letter agreements" that are separate from the service agreements. Columbia states that section 6 of the APX service agreements incorporates the credit annexes into the service agreement in their entirety. Columbia states that the Indicated Shippers' arguments should be rejected because the credit annexes are already incorporated into the service agreements pursuant to the express language of section 6.

14. Columbia also asserts that the Indicated Shippers arguments regarding Columbia's future tariff filing should be rejected. Columbia states that it is still evaluating the best method of allowing shippers using Segmentation Pool to access the Interruptible Paper Pool. Accordingly, it argues that more detailed information regarding the filing is not available at this time. Further, Columbia states that prior to it making this single purpose filing, it will post the information on its website to solicit shipper feedback. Columbia states that Indicated Shippers will have time to review and comment on the filing before it is made with the Commission. Further, Columbia argues that there is nothing in the CNX agreement which restricts the Indicated Shippers' rights to comment on or protest the future filing.

15. Indicated Shippers assert that the APX shippers received more flexible creditworthiness treatment than provided for by Columbia's tariff. The Commission disagrees with this assessment. First, the pipeline's tariff does not control the collateral requirements of a pipeline's expansion project. Under expansion projects, the collateral required under the Commission's policies need only be reasonable.¹⁰

16. Second, Columbia's tariff provides that any shipper may utilize a Guarantor accepted by Columbia. While the Indicated Shippers suggest that the Guarantors utilized by the APX Shippers did not meet Columbia's creditworthiness requirements, Columbia did not accept a simple guarantee from these non-creditworthy Guarantors, but instead required that such Guarantors provide 12 months worth of collateral. While Indicated Shippers suggest that the APX Shippers received preferential treatment as compared to the tariff, the Commission notes that the collateral required by Columbia for this expansion service was four times what would have been required under the tariff for general service. Therefore, the Commission cannot find that the APX shippers received preferential treatment as suggested by the Indicated Shippers.

¹⁰*Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs. ¶ 31,191 (2005) (Permitting different creditworthiness provisions for foundation shippers on expansion projects) *Id.* P 17-18.

17. Further, the Commission also agrees with Columbia that the credit annex has been incorporated by reference into its service agreement and not as part of a separate letter agreement. Columbia is filing the service agreements as non-conforming service agreements. The Commission finds that the non-conforming provisions of the service agreements do not present a risk of undue discrimination and therefore the agreements are accepted as filed.

18. Moreover, the Commission will not require Columbia to elaborate on its future segmentation pool filing at the present time. The Commission also agrees with Columbia that the Indicated Shippers will have two opportunities to comment on Columbia's future NGA section 4 filing. As such, the Commission will not require Columbia to further explain its future NGA section 4 filing at this time.

19. Finally, in its proposed revisions to Third Revised Sheet No. 503, Columbia provides an incorrect docket number concerning its non-conforming service agreement with Equitable. Columbia references "Docket No. RP09-85." The correct reference is "Docket No. CP09-85." Columbia is required to file a revised tariff sheet to correct this error within 10 days of the issuance of this order.

20. The negotiated rate agreements with non-conforming provisions and the revised tariff sheet are accepted to be effective June 12, 2009, subject to the conditions set forth in this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.