

131 FERC ¶ 61,080
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 29, 2010

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket Nos. RP10-522-000,
RP10-523-000, and
RP10-576-000

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

Attention: James R. Downs,
Vice President of Rates & Regulatory Affairs

Reference: FTS Service Agreement Nos. 15260, 15245, and 15249

Dear Mr. Downs:

1. On March 30, 2010, Columbia Gas Transmission, LLC (Columbia Gas) filed in Docket Nos. RP10-522-000 and RP10-523-000 firm transportation service (FTS) agreements with Hard Rock Exploration, Inc. (Hard Rock)¹ and Blue Creek Gas Company (Blue Creek),² respectively and revised tariff sheets revising its list of non-conforming contracts to include such contracts. On April 1, 2010, Columbia Gas filed in Docket No. RP10-576-000 a FTS service agreement with Dominion Field Services, Inc

¹ Ninth Revised Sheet No. 503.01 to FERC Gas Tariff, Third Revised Volume No. 1 and FTS Agreement No. 15260.

² Eighth Revised Sheet No. 503.01 to FERC Gas Tariff, Third Revised Volume No. 1 and FTS Agreement No. 15245.

(Dominion) and tariff sheet again revising its list of non-conforming contracts.³ Columbia Gas states that these FTS service agreements are non-conforming agreements and provide for negotiated rates. Columbia Gas requests that the Commission grant a waiver of the thirty-day notice period to allow the above-referenced service agreements, and the tariff sheets, to become effective April 1, 2010, or May 1, 2010 consistent with the terms of the respective service agreement. As discussed below, the tariff sheet referenced in footnote no. 1 and the FTS service agreements with Hard Rock and Blue Creek are accepted to be effective April 1, 2010. The FTS service agreement with Dominion is accepted as filed to be effective May 1, 2010. However, the tariff sheets filed to reflect the contracts Columbia Gas submitted as non-conforming contracts for service to Blue Creek and Dominion listed in footnotes nos. 2 and 3 are rejected.

2. Each of the three FTS service agreements contain a rate provision in section 3 that provides for a negotiated rate of \$0.59 per Dekatherm (Dth) per day fixed for the primary terms of the agreements. The agreements also provide that the Customers will pay all other maximum applicable commodity rates and surcharges set forth in Columbia Gas' tariff as they may change from time to time. Further, Columbia Gas retains the right to adjust shipper's negotiated rates to reflect any cost overruns in the construction of the Cobb Project, up to a maximum demand charge for service of \$0.65 per Dth per day, exclusive of any other applicable surcharges.

3. The Hard Rock FTS service agreement contains an additional provision which provides in section 2 relating to its term provision, that Columbia Gas is obligated to receive volumes from Hard Rock at Scheduling Point No. 842446 on October 1, 2011 subject to the completion of the construction of the facilities at the Scheduling Point. The provision also provides that if this scheduling point is not placed into service by October 1, 2011, the termination date of the service agreement shall be extended day for day commensurate with the actual in-service date of Scheduling Point No. 842446. Columbia Gas states that the non-conforming term language is necessary because the service agreement with Hard Rock provides for a primary receipt point that has not yet been constructed by Hard Rock.

4. Public notice of Columbia Gas' filings in Docket Nos. RP10-522-000 and RP10-523-000 were issued on March 31, 2010, with comments due by April 12, 2010. Public notice of Columbia Gas' filing in Docket No. RP10-576-000 was issued on April 5, 2010, with comments due by April 13, 2010. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance of this order are granted. Granting late interventions at this stage of

³ Original Sheet No. 503.02 to FERC Gas Tariff, Third Revised Volume No. 1 and FTS Agreement No. 15429.

the proceedings will not disrupt the proceedings or place additional burdens on existing parties. No protests or adverse comments were filed.

5. Section 154.1(b) of the Commission's regulations sets forth the general requirement that pipelines must file all contracts related to their services.⁴ Section 154.1(d)⁵ further provides that, for the purposes of section 154.1(b), any contract that conforms to the *pro forma* service agreement required to be included in the pipeline's tariff by section 154.110 need not be filed.⁶ Sections 154.1(d) and 154.112(b) require that any contract or executed service agreement which deviates in any material aspect from the *pro forma* service agreement must be filed.⁷ However, section 154.1(d) also provides that "any contract that conforms to the form of service agreement that is part of the pipeline's tariff . . . does not have to be filed."⁸ In this same vein, section 154.112(b) of the Commission's regulations,⁹ requires that a pipeline file only contracts that contain material deviations, section 154.112(b) also requires that all accepted non-conforming agreements must be referenced in the pipeline's open access transmission tariff.

6. In *Columbia Gas*,¹⁰ the Commission clarified that a material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties. However, not all material deviations are impermissible. As explained in *Columbia Gas*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among

⁴ 18 C.F.R. § 154.1(b) (2009).

⁵ 18 C.F.R. § 154.1(d) (2009).

⁶ 18 C.F.R. § 154.110 (2009).

⁷ 18 C.F.R. § 154.112(b) (2009). In addition, section 284.13(b) requires pipelines to post on their internet website specific transactional information about all their contracts, including such items as the rate, term, contract demand, and other special details. *See* 18 C.F.R. § 284.13(b) (2009).

⁸ 18 C.F.R. § 154.1(d) (2009).

⁹ 18 C.F.R. § 154.112(b) (2009).

¹⁰ *Columbia Gas Transmission, LLC*, 97 FERC ¶ 61,221 (2001) (*Columbia Gas*). *See also ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001) (*ANR*).

shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.¹¹

7. In the instant proceeding, Columbia Gas filed all three of the FTS service agreements as non-conforming contracts. However, the only provision in the Blue Creek and Dominion contracts which Columbia Gas has identified as a material deviation from the *pro forma* service agreement are the negotiated rate provisions in section 3 of each contract. These provisions are not material deviations. Section 47 of Columbia Gas' General Terms and Conditions clearly authorizes it to enter into negotiated rate agreements and section 3 of the *pro forma* service agreement concerning rates provides for the shipper to pay the recourse rate "unless otherwise agreed to by the parties in writing and specified as an amendment to this Service Agreement."¹² Thus, section 3 of the *pro forma* service agreement expressly contemplates that the parties may, as here, modify its general provision that the shipper will pay the recourse rate by, instead, setting forth a negotiated rate. Therefore, the negotiated rate provisions in the Blue Creek and Dominion contracts do not go beyond filling in the blank spaces in the *pro forma* service agreement with the appropriate information allowed by the tariff. The Commission accordingly finds that these contracts are conforming contracts.¹³

8. When, as determined here, a pipeline enters into a negotiated rate agreement with no material deviations, the Commission requires that it either file the agreement or file a

¹¹ Columbia Gas, 97 FERC at 62,002; ANR, 97 FERC at 62,022.

¹² First Revised Sheet No. 500 to Columbia Gas' FERC Gas Tariff, Third Revised Volume No. 1.

¹³ In Order No. 637, the Commission stated that it generally considers negotiated terms and conditions to be related to operational conditions of transportation service. Order No. 637 stated that negotiated rates, which the Commission does authorize, include non-operational matters such as "the price, the term of service, the receipt and delivery points, and the quantity." *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091 (Order No. 637), *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 (Order No. 637-A), *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005). Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,344. *See also Monroe Gas Storage Co., LLC*, 128 FERC ¶ 61,033 ("For example, the rate agreed to between the parties is generally not itself a material deviation and is generally not relevant to consideration of whether the material deviation should be permitted.") *Id.* P 18.

tariff sheet describing the essential details of the negotiated rate and stating that the contract has no material deviations.¹⁴ However, it should not include the contract in the tariff sheet listing its non-conforming agreements, required by section 154.112(b). The purpose of that tariff sheet is to reveal which shippers have contracts that give them some special rights not generally offered under the tariff, and that tariff sheet should not be cluttered with other contracts that do not contain material deviations.

9. Because Columbia Gas has already filed the subject contracts with Blue Creek and Dominion consistent with the filing requirements for negotiated rate contracts, the Commission will accept them effective April 1, 2010 and May 1, 2010, respectively, but consistent with this discussion will reject the tariff sheets listing them as non-conforming contracts.

10. The FTS service agreement between Columbia Gas and Hard Rock in Docket No. RP10-522-000 contains the same type of price provisions as in the contracts discussed above; however, it also contains an additional provision which Columbia Gas has identified as a material deviation from its *pro forma* service agreement. Section 2 of Columbia Gas' *pro forma* service agreement governs the term of the service agreement. It includes blank spaces for the commencement and termination dates of the service agreement. Section 2 of the *pro forma* service agreement also includes optional language providing that service will commence on the later of a specific date to be filled in or the date that all of the specified facilities of Columbia Gas necessary to provide firm service are ready for service. Section 2 of the service agreement with Hard Rock utilizes the optional language to provide that the Hard Rock agreement will be effective as of the later of April 1, 2010 or the date all of Columbia Gas' Cobb Project facilities are ready for service. In addition, the parties have included language in section 2 of the Hard Rock agreement providing that Columbia Gas' obligation to receive gas at one of the primary receipt points in the agreement commencing on October 1, 2011 is subject to Hard Rock's completion of certain new facilities necessary for receipt of gas at that point by October 1, 2011. The additional language also provides that, if Hard Rock does not complete construction by that date, the termination date of the service agreement will be extended day for day commensurate with the actual in-service date of that receipt point.

11. As Columbia Gas states, the additional language concerning Hard Rock's construction of facilities necessary for Columbia Gas to receive gas at the receipt point in question is a material deviation from its *pro forma* service agreement, because the *pro*

¹⁴ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134, at P 32-33 (2003) (2003 Policy Statement), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

forma service agreement only provides for a delay in the commencement date of a service agreement when Columbia Gas has not completed construction of facilities necessary to provide service. However, the language identified by Columbia Gas as a material deviation would delay Columbia Gas' obligation to receive gas at a particular receipt point, if Hard Rock has not completed its construction of facilities.

12. The Commission finds that the material deviation does not present a substantial risk of undue discrimination. This provision reflects the special circumstance under which the contracts were executed, namely that Hard Rock is responsible for the construction necessary for Columbia Gas to receive gas at the subject primary receipt point.¹⁵ The provision is limited to coordinating the commencement of Columbia Gas' obligation to receive gas at that point with Hard Rock's completion of the necessary facilities. The provision does not affect the quality of service received by Hard Rock or any other shipper on Columbia Gas' system. Accordingly, the tariff sheet referenced in footnote no. 1 listing the Hard Rock contract as non-conforming is accepted effective April 1, 2010.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁵ Columbia Gas asserts that the facilities are to be constructed by Hard Rock, rather than Columbia Gas. Columbia Gas Transmittal Letter at p.2.