

133 FERC ¶ 61,003  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

October 1, 2010

In Reply Refer To:  
Columbia Gas Transmission, LLC  
Docket No. RP10-1273-000

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

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

Reference: Service Agreements with Non-Conforming Provisions

Dear Mr. Downs:

1. On September 2, 2010, Columbia Gas Transmission, LLC (Columbia) filed a revised tariff section<sup>1</sup> and two service agreements with non-conforming provisions<sup>2</sup> with Statoil Natural Gas, LLC (Statoil) and Chesapeake Energy Marketing, Inc. (Chesapeake). Columbia states the agreements include a credit annex, which incorporates the specific credit requirements applicable to each shipper. We grant waiver of the Commission's thirty day notice requirement and accept the non-conforming service agreements effective September 1, 2010 and the revised tariff section effective October 1, 2010, as requested, subject to the conditions set forth below.

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<sup>1</sup> Service Agreement Forms, Non-Conforming Service Agreements, 5.0.0, to Baseline Tariffs, FERC NGA Gas Tariff, Fourth Revised Volume No. 1.

<sup>2</sup> Rate Schedule FTS Service Agreement No. 19034 with Statoil Natural Gas, LLC and Rate Schedule FTS Service Agreement No. 19035 with Chesapeake Energy Marketing, Inc.

2. Columbia states, in supplemental information filed on September 22, 2010, that the service agreements with Statoil and Chesapeake were entered into in connection with Columbia's filing in Docket No. CP10-7-000 to make modifications to portions of Columbia's Majorsville System in Marshall County, West Virginia, in order to provide Chesapeake and Statoil with an incremental 225,000 Dth/d of incremental transportation capacity from Chesapeake's production fields in the Marcellus shale formation.

3. Columbia states that in connection with this project, both Chesapeake and Statoil entered into precedent agreements which provided for two different levels of service. The first level of service is for transportation of primarily unprocessed gas from Chesapeake's production fields to a processing plant, which is now gathering service provided by NiSource Midstream Services, LLC (NMS).<sup>3</sup> The second portion of their contracted capacity was for incremental transportation service on Columbia under the service agreements submitted in this proceeding. Columbia states the transportation service agreements are for less than the total capacity of the project because Chesapeake and Statoil also transport their gas on Texas Eastern Transmission, LLP, which interconnects with NMS.

4. Columbia states that the specific credit requirements applicable to each shipper are set forth in a separate Attachment A to the service agreements. Columbia asserts that these provisions are consistent with section 9.6 of the General Terms and Conditions (GT&C) of Columbia's tariff, which provides that if Columbia constructs new facilities to accommodate a shipper, Columbia may require credit assurance in an amount up to the shipper's proportionate share of the cost of the new facilities. Columbia further asserts that the Commission has approved similar non-conforming credit provisions that are entered into pursuant to GT&C section 9.6.<sup>4</sup>

5. Notice of Columbia's filing was issued on September 7, 2010, with interventions and protests due on September 14, 2010, as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2010). Pursuant to Rule 214, 18 C.F.R. § 384.214 (2010), 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 September 14, 2010, Statoil filed comments in support of Columbia's application. On September 22, 2010, Columbia filed further details

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<sup>3</sup> Columbia states it received authorization to abandon the Majorsville System by sale to Majorsville Gathering 1758, LLC, a subsidiary of NiSource Midstream Services, LLC, citing *Columbia Gas Transmission, LLC*, 132 FERC ¶ 62,071 (2010).

<sup>4</sup> Citing *Columbia Gas Transmission, LLC*, 127 FERC ¶ 61,234 (2009).

regarding the non-conforming contracts to assist the Commission in its review of the service agreements.

6. Section 154.112(b) of the Commission's regulations,<sup>5</sup> requires that a pipeline file all contracts that contain material deviations, and that all such non-conforming agreements must be referenced in the pipeline's open access transmission tariff.

7. In *Columbia Gas*,<sup>6</sup> 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 shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.<sup>7</sup>

8. The Commission accepts the above-mentioned agreements as permissible non-conforming service agreements. The Commission's Policy Statement on Creditworthiness allows pipelines to enter into alternative credit arrangements in support of new pipeline construction.<sup>8</sup> Therefore, we accept the non-conforming agreements, as detailed above, as permissible non-conforming service agreements, and also accept the related tariff record identified in footnote no. 1. The service agreements with non-conforming provisions are accepted to be effective September 1, 2010 and the revised tariff record is accepted to be effective October 1, 2010, subject to the conditions set forth in this order.

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<sup>5</sup> 18 C.F.R. § 154.112(b) (2010).

<sup>6</sup> *Columbia Gas Transmission, LLC*, 97 FERC ¶ 61,221 (2001) (*Columbia Gas*). See also *ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001) (*ANR*).

<sup>7</sup> *Columbia Gas*, 97 FERC ¶ 61,221 at 62,002; *ANR*, 97 FERC ¶ 61,224 at 62,022 (2001).

<sup>8</sup> See *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs. ¶ 31,191, at P 17-18 (2005).

9. Consistent with our finding in *Dominion Transmission, Inc.*<sup>9</sup> in Docket No. RP10-1025-000, Columbia's filing is not in compliance with the Commission's regulations and Order No. 714 with regard to the filing of a service agreement. Columbia is required to file non-conforming service agreements. Section 154.112(b) of the Commission's regulations requires in part that "contracts that deviate in any material aspect from the form of service agreement must be filed."<sup>10</sup>

10. In Order No. 714, the Commission adopted regulations that established electronic filing requirements for filings affecting tariffs, rate schedules, service agreements, and jurisdictional contracts in order to establish an electronic database of these jurisdictional agreements accessible to the Commission and the public.<sup>11</sup> The Commission stated that the database would consist of all "tariffs, rate schedules, jurisdictional contracts, and other jurisdictional agreements that are required to be on file with the Commission."<sup>12</sup> The Commission required that these filings be made according to the electronic formatting requirements prescribed by the Commission.<sup>13</sup> Under these electronic filing rules, all tariffs, rate schedules, and jurisdictional contracts, including service agreements such as those filed here, are required to be filed as "tariff records" so they will be included as part of the electronic database for the company.<sup>14</sup>

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<sup>9</sup> *Dominion Transmission, Inc.*, 132 FERC ¶ 61,179 (2010). See also *Columbia Gas Transmission, LLC*, 132 FERC ¶ 61,147, at P 14 (2010).

<sup>10</sup> 18 C.F.R. § 154.112(b) (2010).

<sup>11</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 9-12 (2008).

<sup>12</sup> *Id.*, P 13 and n.11.

<sup>13</sup> 18 C.F.R. §§ 154.4(a) and (c) (2010) (requiring the electronic filing of "tariffs, rate schedules, service agreements, and contracts, or parts thereof.... The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form").

<sup>14</sup> The Implementation Guide states that a tariff record is "the actual 'text' or 'content' of the tariff, rate schedule, or service agreement along with its associated metadata." Office of the Secretary of the Commission, *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings*, at 14, 20, available at <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>.

11. In the instant filing, Columbia has filed a revised tariff record in conformity with these requirements that lists these new and amended service agreements as non-conforming. Although Columbia included the non-conforming agreements themselves as attachments to its electronic filing, it did not comply with the requirement to file these agreements as tariff records, so that the agreements would appear in the Columbia database as jurisdictional agreements. The purpose of Order No. 714 was to ensure that all such jurisdictional agreements would appear in the pipeline's electronic tariff so that they would be transparent to the public and could be easily searched. Therefore, we condition our acceptance on Columbia filing these agreements along with any transactions related to the agreements as tariff records within 30 days of the date of this order.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.