

140 FERC ¶ 61,198
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 17, 2012

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP12-952-000

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

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

Reference: Request for Waiver of Capacity Release Regulations

Dear Mr. Downs:

1. On August 17, 2012, Columbia Gas Transmission, LLC (Columbia), on behalf of its shipper Northeast Natural Energy LLC (NNE), requested a waiver of section 284.8(a)(2) of the Commission's regulations¹ to allow NNE to release a portion of its capacity to EXCO Resources (PA), LLC (EXCO) for a term of three years at a rate that exceeds Columbia's maximum recourse rate. As discussed below, the Commission denies the requested waiver of its regulations.

2. Public notice of the filing was issued on August 23, 2012. Interventions and protests were due on or before August 29, 2012, as provided by the notice. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), all timely motions to intervene and any unopposed 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 this proceeding

¹ 18 C.F.R. § 284.8(a)(2) (2012).

or place additional burdens on existing parties. On August 29, 2012, Indicated Shippers filed a protest to Columbia's waiver request.²

3. On September 10, 2012, Columbia filed an answer to the Indicated Shippers' protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Columbia's answer because it has provided information that assisted us in our decision-making process.

4. In its protest, Indicated Shippers argue that granting a waiver to allow a releasing shipper to release capacity at a rate higher than the pipeline's maximum applicable rate would undermine longstanding, fundamental Commission regulations and policies. Specifically, Indicated Shippers argue that in Order No. 712, the Commission did not remove the price cap for releases of more than one year in order to prevent releasing shippers from exercising market power.³ Indicated Shippers aver that the Commission has emphasized the importance of safeguarding necessary consumer protections, which are provided by the price ceiling on long term transactions. Further, Indicated Shippers argue that the Commission has only previously waived the maximum rate ceiling for permanent releases where the pipeline is economically indifferent to the release and disallowing the release would inhibit the permanent release of the capacity.⁴ Finally, Indicated Shippers argue that the Commission should reject Columbia's request in any event because Columbia failed to provide sufficient information to justify the requested waiver.⁵

² Indicated Shippers are Anadarko Energy Services Company, Chevron U.S.A. Inc., ConocoPhillips Company, Hess Corporation, Interstate Gas Supply, Inc., and SWEPI LP.

³ *Promotion of a More Efficient Capacity Release Market*, Order No. 712, *FERC Statutes and Regulations* ¶ 31,271, at P 48 (2008), *order on reh'g*, Order No. 712-A, *FERC Statutes and Regulations* ¶ 31,284 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

⁴ Indicated Shippers' Protest at 4 (citing *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086, at PP 6-8 (2009); *Northern Natural Gas Co.*, 125 FERC ¶ 61,149 (2008); and *Northern Natural Gas Co.*, 117 FERC ¶ 61,354 (2006)).

⁵ For example, Indicated Shippers allege that Columbia's Filing states that NNE has entered into an agreement to release "a portion of" its capacity to EXCO for a three-year term. Indicated Shippers state that while the above description indicates that the

(continued...)

5. In reply, Columbia argues that Indicated Shippers' protest - rather than identifying the specific harm that could result from granting a waiver on this limited set of facts - is based on the general policy concern that granting a waiver of the rate cap in this instance could result in a flood of waiver requests. Columbia states that no specific shipper has identified any actual harm that would occur if the waiver is granted. Columbia also asserts that Indicated Shippers contend that it has not provided enough information regarding the release; Columbia notes, however, that other than the volume of the release (i.e. 5,000 Dth/day) inadvertently omitted from the original filing, Indicated Shippers have not identified any additional information required to evaluate the waiver request on its merits. Moreover, Columbia claims that the proposed rate, only 3/100 of a penny more than Columbia's current total effective recourse rate, is a nominal difference and not an attempt to exercise market power. Finally, Columbia notes that the obligation to request a waiver from the Commission before proceeding with the release provides further protection for shippers against the exercise of market power.

6. The Commission denies the request for a waiver of section 284.8(a)(2) of the Commission's regulations to allow NNE to release capacity for a term of three years at a rate that exceeds Columbia's maximum recourse rate. As Indicated Shippers note, the Commission has previously limited grants of waiver of the price ceiling on long-term releases to permanent releases of negotiated rate agreements where the pipeline was willing to terminate the contract entirely because the replacement shipper agreed to pay the same negotiated rate and thus the pipeline was financially indifferent.⁶ In those instances, the Commission determined that allowing the release at the negotiated rate would avoid inhibiting the permanent release of capacity.⁷ In this instant case, NNE is seeking to release its capacity on a long-term but temporary basis. Accordingly the Commission's orders granting waivers for permanent transfers of capacity above the rate cap are inapplicable to the instant request, and Columbia does not cite to any Commission precedent in its favor on this point.

quantity of the NNE capacity release is less than the full underlying contract quantity, the exact amount is unknown.

⁶ See *Big Sandy Pipeline LLC*, 135 FERC ¶ 61,225, at P 7 (2011); see also *BHP Billiton Petroleum (Fayetteville) LLC*, 135 FERC ¶ 61,088, at P 8 (2011); *Transcontinental Gas Pipe Line Co.*, 134 FERC ¶ 61,184, at P 6 (2011); *Midcontinent Express Pipeline LLC*, 124 ¶ 61,089, at P 123 (2008).

⁷ *Id.*

7. Moreover, Columbia fails to provide justification in its original filing or its answer, much less a compelling one, as to why the Commission should grant the waiver in this case. In Order No. 712 the Commission specifically retained the maximum rate cap for long-term capacity releases as rate protection for replacement shippers and to prevent releasing shippers from withholding capacity. Columbia offers no explanation as to why the replacement shipper is agreeing to pay above the maximum recourse rate other than stating that “EXCO, is agreeable to paying this fixed rate, because it will provide rate stability over the term of the release.”⁸ Columbia provides virtually no support for its waiver request aside from its claims that the rate at which the capacity to be released is only slightly above the pipeline’s maximum rate, and that it is not aware that any other party is interested in this capacity. These statements only serve to raise questions as to why EXCO would agree to pay more than even NNE is paying for the capacity, how Columbia gauged the interest of other potential shippers, and whether it would be more efficient to post the capacity for bidding. The argument that the waiver is justified because the certainty of a fixed rate was a critical element of the deal also fails because the same rate certainty could be established by establishing a fixed rate equal to the currently applicable maximum rate.

8. Finally, Columbia fails to provide sufficient information required to justify a waiver of the capacity release rules.⁹ Columbia does not make any effort to fully describe the transaction between NNE and EXCO nor does it explain why the waiver is necessary to consummate that transaction. Finally, Columbia does not state any potential benefits of the arrangement that would enable the Commission to determine whether the grant of waiver would be in the public interest. Accordingly, Columbia’s request for a waiver of section 284.8(a)(2) on behalf of NNE is denied.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁸ Columbia Answer at 5-6.

⁹ *See Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,070, at P 10 (2009).