

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Columbia Gas Transmission Corporation

Docket No. RP03-491-002

ORDER ON REHEARING

(Issued December 24, 2003)

1. On June 30, 2003, the Commission issued an order in this proceeding¹ accepting Columbia Gas Transmission Corporation's (Columbia Gas) proposal to permit Columbia Gas and Local Distribution Company shippers (LDCs) meeting certain criteria to mutually agree to include in their service agreements contract demand reduction rights in the event of regulatory unbundling or restructuring. The Process Gas Consumers Group (PGC) and ProLiance Energy, LLC (ProLiance) have requested rehearing of the June 30, 2003 Order. For the reasons discussed below, the Commission denies rehearing. This determination adds customer flexibility in making contracting decisions while protecting the pipeline's right to reasonably limit contract demand reductions.

Background

2. On May 30, 2003, Columbia Gas made a tariff filing to include a provision to permit Columbia Gas and eligible shippers to mutually agree to include in their service agreements contract demand reduction rights. Under the proposal, eligible shippers may request the right to include a Regulatory Unbundling Contract Demand Reduction Option in their service agreements at the time they request service from Columbia Gas or during the term of an existing service agreement. The initial or remaining term of the applicable service agreement must have a term of at least five years.

3. Proposed Section 42 of Columbia Gas' General Terms and Conditions (GT&C) provides that an LDC may reduce its maximum daily quantity (MDQ) if it is: (1) required by a state regulatory agency to unbundle its merchant and transportation functions; (2) denied by the state regulatory agency the ability to fully recover its costs incurred

¹ 103 FERC ¶ 61,388 (2003).

under its service agreement(s) with Columbia Gas, notwithstanding shipper's reasonable efforts to seek the state agency's approval to recover such costs; and (3) unable to fully recover all of its costs by releasing such service agreement(s), including any existing discounted or negotiated rate agreements. The contract demand of a service agreement subject to reduction is that portion for which the state agency denies shipper cost recovery and which cannot be released or assigned at the rates under the agreements. If an LDC is served by other natural gas pipelines as well as Columbia Gas, the contract demand subject to reduction shall be prorated based on the respective levels of firm transportation service that shipper holds on Columbia Gas and other natural gas pipelines.

4. The proposed tariff provision requires that a shipper establish its eligibility for a contract reduction by providing substantive evidence that it has been subjected to regulatory unbundling and demonstrating that the capacity has been posted on Columbia Gas' EBB for thirty (30) days and that no shipper has agreed to purchase the capacity at the rate provided for under the relevant service agreement(s). For transportation agreements not associated with storage agreements, Columbia Gas states that the effective date of the reduction option will be the later of the effective date of the regulatory unbundling or sixty (60) days after written notice has been provided to Columbia Gas. Columbia Gas states that it will utilize the sixty (60) days to verify that a shipper is entitled to the reduction option. For storage service and associated storage transportation service agreements, unless otherwise agreed to by Columbia Gas and shipper, Columbia Gas states that a shipper must provide written notice to Columbia Gas no less than sixty (60) days prior to March 31 of any service agreement year of its intent to exercise its Reduction Option as of the upcoming March 31. If Columbia Gas determines that the shipper is not entitled to a contract reduction, it will provide written notice as soon as possible, but in no event later than five business days after the end of the initial sixty day period.

5. The LDC must reduce its contract demand quantities under a firm storage service agreement(s) and a related firm transportation service agreement(s) on a proportionate basis to ensure that storage service quantities, including storage capacity and deliverability quantities, and transportation capacity available to deliver such quantities, remain the same. Reductions in contract demand for storage service agreements under Rate Schedule FSS, which have Storage Contract Quantity (SCQ) and Maximum Daily Storage Quantity (MDSQ) will be on a proportionate basis. Thus, if a shipper is entitled to a 10% contract demand reduction right, a 10% reduction will occur for both SCQ and MDSQ so that the relationship between daily and seasonal entitlements remains proportional to the original service agreement. The LDC must also reduce its contract demand under Rate Schedule SST so that the maximum quantity that may be withdrawn from storage remains equal to the transportation capacity available to deliver it.

6. Unless otherwise agreed, the reduction options for a firm storage service agreement(s) and a related firm transportation service agreement(s) may only be

exercised as of March 31 of any service agreement year because storage service and related storage transportation service on Columbia Gas are provided on an annual basis with seasonal injection and withdrawal periods. The injection season commences on April 1. Columbia Gas' firm storage service provides a seasonal supply to Columbia Gas' LDC shippers, and is normally at its lowest inventory level at the end of the winter heating season. A shipper therefore must purchase storage service and related storage transportation service as of April 1 of any given service agreement year in order to ensure a shipper that 100% of the storage injection season is available.

7. Six parties, including PGC and ProLiance, filed protests or comments. In response, Columbia Gas filed an answer on June 20, 2003. Four additional parties filed comments in support of Columbia Gas' proposal. On June 30, 2003, the Commission issued an order accepting the tariff sheets effective July 1, 2003, subject to conditions. The order directed Columbia Gas to file revised tariff sheets to reflect certain clarifications Columbia Gas agreed to in its June 20, 2003 answer.

Discussion

Failure to Offer Reduction Option to Industrial End User Shippers

8. On rehearing, PGC requests that the Commission condition acceptance of Columbia Gas' proposal upon Columbia Gas offering a similar MDQ reduction right to industrial end user shippers closing or scaling down plants. PGC claims that LDCs and industrial end user shippers are similarly situated for purposes of the proposed MDQ reduction. Therefore, PGC contends that Columbia Gas' proposal discriminates against end users contrary to Commission policy, Section 4(b) of the Natural Gas Act, and Section 284.7(b) of the Commission's regulations.² PGC argues that the Commission used an impermissibly narrow interpretation of the undue discrimination and similarly situated standards in permitting Columbia Gas to limit the MDQ reduction rights to LDCs. PGC objects that the proposal gives an unjustified preference to one customer class, since end users, like LDCs, face intense competitive and economic pressures that may result in plant closures or permanent plant reductions (thus eliminating or reducing their need for firm transportation capacity. Citing a February 9, 2000 Order in Panhandle Eastern Pipe Line Corp. (Panhandle),³ as well as Order Nos. 436 and 636, PGC argues that Commission precedent requires that service enhancements and options that create flexibility should be made available to all shippers. PGC also argues that the driving

² 18 C.F.R. § 284.7(b) (2003).

³ 90 FERC ¶ 61,119 at 61,362 (2000). PGC also cites Reliant Energy Gas Transmission Co., 94 FERC ¶ 61,220 at 61,805 (2001) and Midwestern Gas Transmission Co., 103 FERC ¶ 61,259 at P 4 (2003) (Midwestern).

factor behind Order Nos. 636 and 637 was to create non-discriminatory open access opportunities for all shippers, which requires that biases favoring pipelines be removed and all shippers have reasonably comparable service. PGC objects that the June 30, 2003 Order permits a preference for LDCs without stating a substantial policy goal.

9. PGC claims that industrial end user shippers are similar to LDCs in several ways. PGC notes that, since industrial end user shippers (like LDCs) often hold firm capacity in their own name, the pipeline can trace their capacity use, and that it is unlikely that a plant closure or production outage is subject to abuse. PGC states that (similar to the fact LDCs serve specific territories) industrial end user shippers' services are generally targeted to particular plant locations, so their capacity uses are not fluid or easily redirected. Additionally, PGC asserts that, since most industrial end user shippers are LDC customers, it is inconsistent to find that LDCs are affected by state required unbundling or restructuring and industrial end user shippers are not. PGC claims that industrial end user shippers have a greater need for MDQ reduction rights than LDCs, because they have no service territory protections or rate and rate of return approvals. PGC argues that the distinction whether the need for capacity may be affected by the actions of a regulatory agency is arbitrary. PGC argues that the risk of Columbia Gas losing revenue and cost shifting to other customers is greater from LDCs' contract reductions than industrial end user shippers' reductions, since LDCs hold a far greater quantity of Columbia Gas' firm capacity than industrial end user shippers.

10. PGC contends that the cited cases indicating that Columbia Gas is not obligated to grant any MDQ reduction request are not dispositive with regard to undue discrimination issues. PGC maintains the cases indicate that, if provided, reduction rights must be provided on a not unduly discriminatory basis⁴ and they do not address whether LDCs and industrial end user shippers are similarly situated for purposes of contract demand reduction rights. PGC argues that in the ANR Pipeline Co. (ANR) proceeding the pipeline filed to allow both LDCs and industrial end user shippers to reduce MDQ,⁵ and in the Gulf South Pipeline Company, L.P. (Gulf South)⁶ and Midwestern, supra, proceedings discrimination against industrial end user shippers was not raised as an issue.

11. Additionally, PGC argues that MDQ reduction rights are valuable options and Columbia Gas' proposal would favor LDCs and discriminate against other shippers in the evaluation of capacity bids. For example, PGC contends LDCs with reductions rights may be able to bid longer terms or higher prices when they enter into re-contracting

⁴ Citing Midwestern, 103 FERC ¶ 61,259 at P 4 (2003).

⁵ 99 FERC ¶ 61,310 at p. 62,321 (2002), reh'g, 101 FERC ¶ 61,246 at P 5 (2002).

⁶ 101 FERC ¶ 61,019 at P 12 (2002).

negotiations with the pipeline. PGC claims that the contract reduction rights can be agreed to and placed into the service agreement prior to the agreement's execution, so an LDC may well consider the MDQ reduction option when bidding the price and quantity of capacity. PGC also claims that the contract reduction option has value even if it is never exercised, since the value is in the right to exercise the option. PGC asserts that a shipper that can reduce its MDQ can avoid the substantial reservation charge which has a value in dollar amounts and flexibility and the flexibility gives a bidding advantage.

12. On rehearing, ProLiance contends that the Commission should require Columbia Gas to grant shippers that provide all or part of the system supply for a particular LDC rights similar to the rights granted LDCs. ProLiance asserts that Columbia Gas' proposed LDC-only contract reduction option will unduly discriminate against Columbia Gas shippers who provide all or part of system supply for LDCs. ProLiance argues that without offering such contract reduction rights to other shippers who are similarly situated to LDCs regarding the sales of supplies for system supply, Columbia Gas' tariff may be unduly discriminatory and therefore in violation of Section 284.7(b) of the Commission's regulations. ProLiance claims that if a shipper's service to an LDC is directly impacted it is unreasonable to not offer a similar service to the shippers. ProLiance insists that the Commission should not make any distinction regarding economic impact on the two types of customers. ProLiance states that the Commission has provided that the conditions placed on contract reduction rights must not be unreasonably discriminatory.⁷

13. The Commission denies PGC's request that the Commission require Columbia Gas to offer a similar MDQ reduction right to industrial end user shippers closing or scaling down plants. The Commission also denies ProLiance's request that the Commission require Columbia Gas to offer MDQ reduction rights to shippers providing system supply to an LDC. We do not believe that the filing unduly discriminates against industrial end user shippers or shippers that provide system supply to an LDC.

14. As the June 30, 2003 Order stated, the Commission does not require pipelines to permit customers to terminate or reduce their contractual obligations to pay for reserved capacity before the end of their contract terms. Rather pipelines may offer such a right on a voluntary basis, so long as there is no undue discrimination among shippers. This is consistent with prior Commission orders.⁸ We recognize that contract reduction is a

⁷ ANR Pipeline Company, 103 FERC ¶ 61,223 (2003). Citing TransColorado Gas Transmission Company, 103 FERC ¶ 61,317 (2002) and Horizon Pipeline Company, 103 FERC ¶ 61,281 (2003), ProLiance states that the Commission, in dealing with the rights of shippers to receive discounts, has stressed its concern that pipelines not engage in undue discrimination.

⁸ See Florida Gas Transmission Co., 101 FERC ¶ 61,401 at P 10 (2002); ANR

valuable right and must be given on a not unduly discriminatory basis. However, as more fully discussed below, we find that in the circumstances here Columbia Gas is not granting the right on an unduly discriminatory basis.

15. PGC argues that Columbia Gas' failure to offer MDQ rights to industrial end user shippers is unduly discriminatory since they should be considered similarly situated to LDCs for purposes of contract reduction rights. We disagree. It is reasonable for Columbia Gas to grant the rights only to LDCs adversely affected by regulatory unbundling. The Commission has specifically stated that it may be reasonable for a pipeline to tie contract demand reductions rights to certain events, one of which is retail unbundling.⁹ PGC's concerns are all about the economic risk faced by industrial end user shippers of potential changes in their markets. Because of a loss of business their plants might have to reduce operations or close, thereby reducing their need for gas and transportation of that gas. Columbia Gas may reasonably distinguish between such ordinary business risks, and the risk faced by a regulated LDC, if its regulatory agency changes the regulatory structure under which it operates. This is a different risk than that which any business entity faces in a competitive market.

16. LDCs, unlike industrial end user shippers, are subject to state agency regulation of their rates, business practices, and business decisions. LDCs also have a regulatory obligation to serve high priority captive customers. Therefore, regulatory unbundling changes the amount of risk an LDC assumes under its contracts with a pipeline to a greater degree than it changes the risks for other shippers. Unlike other shippers, LDCs may be required to unbundle their merchant and transportation functions, which could result in stranded capacity on their upstream pipelines. Also, as a regulated entity, an LDC has less ability to protect itself from the risks of regulatory unbundling than other shippers, since state agencies require LDCs to make capacity purchasing decisions based on the needs of their existing customers. Columbia Gas is only offering MDQ reductions if a state agency does not permit an LDC to recover its stranded costs. Thus, Columbia Gas is only offering LDCs an MDQ reduction option to protect against the risk they incur due to their regulated status, and not to protect against ordinary business risks, such as the loss of customers, including industrial end users. PGC contends that, as LDC customers, industrial end user shippers are affected by state required unbundling or restructuring, but it does not explain how a non-regulated entity can be affected to the same extent as a regulated entity. It is also reasonable for Columbia Gas to be concerned about additional

Pipeline Co., 99 FERC ¶ 61,310 at p. 62,321 (2002), reh'g, 101 FERC ¶ 61,246 (2002);

⁹ See ANR Pipeline Co., 97 FERC ¶ 61,223 at p. 62,017, fn. 10 (2001); Tennessee Gas Pipeline Co., 97 FERC ¶ 61,225 at p. 62,030, fn. 14 (2001); and Midwestern Gas Transmission Co., 103 FERC ¶ 61,259 at P 4 (2003).

potential revenue loss to it and adverse impacts on its remaining customers if it expands the proposed MDQ reduction right.

17. We also reject ProLiance's contention that shippers providing system supply are similarly situated to LDCs. As we found in ANR, 99 FERC ¶61,310 at 62,323, by aggregating their supplies and serving a diverse group of shipper, marketers and producers already have the ability to minimize their risk of unanticipated load loss. They have less need for contract demand reduction options than LDCs. Also, there is no reason why the LDC's unbundling should necessarily lead to lost load by shippers providing system supply for LDCs, since the LDCs' customers will still need to obtain gas and may now purchase directly from the shippers who formerly supplied the LDC's system supply.

18. Columbia Gas has also explained in its June 20, 2003 answer that it is offering MDQ reduction right to LDCs because the vast majority of its near-term contracting issues are with LDCs for whom regulatory unbundling is a concern. It is reasonable for Columbia Gas to make a proposal that would allow it to respond to possible regulatory unbundling on its system and meet specific contracting needs of its customers. The circumstances in this case are similar to the circumstances in other cases where the Commission has permitted the pipeline to limit proposed contract reduction rights. The Commission must balance its wish to create a nondiscriminatory open access environment for all shippers, set forth in Order Nos. 436, 636 and 637, with the need to maintain contract integrity and allow a pipeline to respond to specific shipper needs in the unique circumstances of regulatory unbundling. We find that Columbia Gas' proposal, achieves that balance since Columbia Gas is addressing issues created by regulatory action over which the LDCs and pipeline have little control.

Impact on Secondary Market

19. PGC contends that the secondary market is negatively impacted by Columbia Gas' intent to take back capacity from LDCs if it is not purchased at the rate provided under the service agreement (or a greater rate) and for the full remaining term of the service agreement, even if the release capacity is purchased for a reasonably long term, such as one year, or is a barely discounted rate (even if such discounts are given for the shipper's agreement to peak shave or return capacity to the LDC to help the LDC deal with unusual demand). PGC claims that industrial end user shippers are uniquely harmed, because the LDCs may return capacity rather than release the capacity at prices and terms reflecting the capacity market and other shippers must rely upon the capacity release market to mitigate the price of holding firm capacity. PGC is concerned that Columbia Gas' proposal will diminish the number of sellers of capacity and all but eliminate competition among sellers of capacity at particular delivery points.

20. To protect open access transportation, market competition, the secondary market and avoid affiliate abuse, PGC requests that the Commission at least modify the Columbia Gas' proposal to so that an LDC can only reduce its MDQ if it has first offered unbundled open access transportation services and capacity release to its own customers free of any obligation to purchase gas or other services from the LDC (or from an affiliated gas marketer or asset manager). PGC also requests that LDCs not be permitted use of the CD reduction option to turn back any capacity that can be released for a substantial period (such as six months or one year) at the maximum rate, or at a discount through which the LDC recovers most of its costs, or when the capacity released is recallable by the LDC. Further, PGC asks that LDCs only be permitted to reduce their MDQ if they have first tried to release the capacity for a period of time longer than 30 days – at least one year - and demonstrated to the state regulatory agency that the capacity offered for release is not necessary and it cannot adequately recover the cost of the capacity.

21. PGC's assertion that the secondary market will be harmed by Columbia Gas taking back capacity from LDCs if it is not purchased at the rate provided under the LDC's service agreements, or a greater rate, and for the full remaining term of the service agreement, is rejected as speculative. Further, we reject PGC's claim that industrial end user shippers will be uniquely harmed because the LDCs may return capacity rather than release the capacity at prices and terms reflecting the capacity market. If Columbia Gas takes back capacity, it too will be subject to market forces and will have to sell at terms that reflect the capacity market. This may mean that Columbia Gas will have to sell the capacity at less than the LDC contract price, but this is a risk that Columbia Gas is willing to bear. It is not at all clear from the evidence that the turn back of LDC capacity will result in Columbia Gas selling the capacity at greater than market value. Neither is there evidence that Columbia Gas will withhold the turned back capacity.

22. It is also unnecessary to modify Columbia Gas' proposal to obligate an LDC to first try to release the capacity for a period of time longer than 30 days and demonstrate to the state regulatory agency that the capacity offered for release is not necessary and it cannot adequately recover the cost of the capacity. The proposed tariff provision requires that a shipper (1) be denied by a state regulatory agency the ability to fully recover its costs incurred under its service agreement(s) with Columbia Gas and (2) establish its eligibility for a contract reduction by demonstrating that the capacity has been posted on Columbia Gas' EBB for thirty (30) days and that no shipper has agreed to purchase the capacity at the rate provided for under the relevant service agreement(s). Thirty days is a reasonable length of time to offer the capacity for release. Having to post the capacity for a year would not allow the LDC to react to the changes in the market due to unbundling in a timely fashion.

Columbia Gas' Risk of Revenue Loss

23. Finally, PGC contends that Columbia Gas should be at risk for any revenue loss resulting from the MDQ reductions. PGC requests that the Commission order Columbia Gas to hold its remaining customers harmless from the rate impacts of any decision it makes to permit the early termination of a firm contract. The Commission rejects PGC's request as premature, since it is uncertain any customers will make a request for MDQ reductions. In any event, in the June 30, 2003 Order, the Commission stated that, in its next rate case, Columbia Gas will bear the burden to prove that any rate effect resulting from Columbia Gas extending a reduction option to any of its customers is just and reasonable, providing that Columbia Gas and any of its customers even avail themselves of this option. PGC has advanced no new arguments that warrant a different conclusion here.

The Commission orders:

PGC's request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.