

147 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Columbia Gas Transmission, LLC

Docket No. RP14-393-000

ORDER APPROVING SETTLEMENT AND GRANTING CERTIFICATE
AUTHORIZATION

(Issued May 15, 2014)

1. On January 24, 2014, Columbia Gas Transmission, LLC (Columbia) filed a Stipulation and Agreement of Settlement (Settlement) outside the context of an existing proceeding,¹ including supporting documentation and tariff records.² Columbia states that the Settlement represents the product of negotiations between Columbia and the former customers of Commonwealth Gas Pipeline Corporation (Commonwealth),³ regarding the restructuring of historic non-conforming service agreements between them that stem from Columbia's 1990 acquisition of facilities through merger with

¹ Columbia states that Rule 207(a)(5) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.207 (2013)) and the procedures set forth in Commission's orders provide authority for its filing. *Dominion Transmission Inc.*, 111 FERC ¶ 61,285 (2005) (*Dominion*).

² See Appendix for a list of tariff records filed in this proceeding. On February 19, 2014, Columbia filed an informational letter in this docket stating its intention that the tariff records filed with the application should be treated as *pro forma* tariff records, not actual tariff records, to be consistent with the application and terms of the Settlement. Accordingly, the Commission will address the tariff records filed in this proceeding as *pro forma* tariff records.

³ These former customers are Columbia Gas of Virginia, Inc., (CGV), the City of Richmond, Virginia (COR), and Virginia Natural Gas, Inc. (VNG) (collectively, Commonwealth Customers).

Commonwealth.⁴ As discussed below, the Settlement is uncontested and the Commission finds that the Settlement appears to be fair and reasonable, and in the public interest, and therefore, the Commission approves the Settlement to become effective pursuant to its terms. In addition, the Commission grants Natural Gas Act (NGA) certificate and abandonment authority necessary to implement the Settlement.

Background

2. Columbia states that in the 1990s, Commonwealth sought to merge its facilities into Columbia's system. However, the Commonwealth Customers required assurances that the merger would not adversely affect them. In particular, the Commonwealth Customers sought assurances that they would continue to have direct access to Transcontinental Gas Pipe Line Company (Transco), without becoming subject to Columbia's system-wide rates. Columbia states that in view of these concerns, the parties agreed to a 1990 Settlement pursuant to which Commonwealth would convey undivided interests equal to 54,632 Dth per day of its capacity on the Commonwealth facilities to the Commonwealth Customers before the merger, thereby giving the Commonwealth Customers "capacity rights" on the subject facilities which they could use to access Transco after the merger without the need to obtain transportation service from Columbia.

3. The Commission granted a certificate authorizing Columbia's acquisition of the Commonwealth facilities by merger.⁵ However, the Commission found that all of the Commonwealth facilities would be interstate transportation facilities subject to our NGA jurisdiction following the merger. Therefore, the Commission did not approve the "capacity rights" aspect of the merger, finding that it would improperly give the Commonwealth Customers an ownership interest in the capacity of jurisdictional facilities while remaining non-jurisdictional companies. In order to effectuate the merger in a manner consistent with the public convenience and necessity, the Commission provided an alternative to the "capacity rights" mechanism. Under that alternative, the Commonwealth Customers would be deemed to be transportation customers under Columbia's Part 284 blanket open access transportation certificate. To that end, the Commission granted waiver of its regulations to permit the Commonwealth customers to ship natural gas up to the volume of the capacity reserved on their behalf without waiting in a queue and to allow the purchase price paid by the parties reserving the capacity on Commonwealth's system and the costs of maintaining and operating this capacity to serve as a lump sum payment of the rate for service from Columbia.

⁴ *Columbia Gas Transmission Corp.*, 53 FERC ¶ 61,347 (1990), *order on reh'g and clarification*, 56 FERC ¶ 61,126 (1991), *order on reconsideration*, 60 FERC ¶ 61,187 (1992) (*Columbia Gas* or *Merger Orders*).

⁵ *Id.*

4. Columbia entered into firm transportation service agreements with the Commonwealth Customers at rates and terms consistent with the parties' Merger Agreements and the Commission's Merger Orders. As such, each of the Commonwealth Contracts has a provision which does not conform with Columbia's *pro forma* FT service agreement. Specifically, that non-conforming provision provides that the service agreement "is being executed by the parties hereto as part of the Commission's decision in the "Merger Orders," the parties' agreement as reflected in the "Merger Agreements," and the Capacity Agreement between the parties dated November 1, 1999."

5. Columbia states that the instant Settlement proposal is intended to be a successor contractual arrangement to replace these non-conforming contracts while maintaining the essential economic balance and capacity availability of the original Capacity Agreement in an efficient and transparent manner consistent with the Commission's current policies.⁶ Columbia maintains that the instant Settlement represents a negotiated set of compromises that implements the actions taken in the 1990 Merger to conform with the Commission's post-Order No. 636 regulatory requirements. Columbia submits that by replacing the non-conforming contracts with service agreements under a new Rate Schedule FT-C and requiring the Commonwealth Customers to lease their capacity interests back to Columbia for its administration of that capacity pursuant to its tariff, the Settlement resolves issues with respect to non-conforming contracts without the need for

⁶ Columbia asserts that Article I, of the proposed Settlement states that:

Columbia currently provides transportation service to the Commonwealth Customers using the Commonwealth Capacity Facilities under Part 284 of the Commission's Regulations pursuant to historic service agreements that reflect the unique circumstances of the 1990 Commonwealth merger. As part of the Commonwealth merger, the Commonwealth Customers acquired undivided capacity interests in the portion of the Commonwealth Footprint upon which Columbia provides an aggregate of 54,632 Dth/day of firm transportation service to the Commonwealth Customers (referred to as "Commonwealth Capacity"). In connection with the Commission's authorization of the merger of Commonwealth into Columbia in 1990, the Commission recognized that the Commonwealth Customers' payments for acquiring the Commonwealth Capacity could be treated as lump-sum payments for Part 284 firm service to transport the Commonwealth Customers' aggregate firm contractual entitlement of 54,632 Dth/day. (footnote omitted)

additional proceedings, thereby preserving resources of the Commission and the settling parties.

6. Columbia asserts that the Settlement clarifies the respective rights and obligations of Columbia and the Commonwealth Customers relating to 54,632 Dth per day of Commonwealth Capacity. Columbia states that the Settlement: (1) confirms the Commonwealth Customers' undivided ownership interests in the Commonwealth Capacity through Capacity Assignment agreements between Columbia and each of the Commonwealth Customers under which Columbia confirms each Commonwealth Customer's undivided proportionate share in the intangible right to the Commonwealth Capacity through assignment, to the extent necessary, of any such interest possessed by Columbia (Capacity Assignment Agreements); (2) establishes a capacity lease arrangement pursuant to which the Commonwealth Customers will lease to Columbia the Commonwealth Capacity (Capacity Lease) and Columbia will administer that capacity under its FERC Gas Tariff; (3) establishes a new Columbia rate schedule (Rate Schedule FT-C) to provide for firm transportation service; and (4) establishes new long-term FT-C Rate Schedule transportation service agreements for each of the Commonwealth Customers, at negotiated rates (Negotiated Rate FT-C Agreements), which supersede and cancel the current Commonwealth Contracts, except for each Deed and Bill of Sale of Capacity Interest executed between Columbia and each of the Commonwealth Customers, which will be modified by this Settlement to remove all non-conforming provisions.⁷

Description of Settlement

7. Article I to the Settlement provides an introduction, background, and details regarding the effectiveness of the Settlement. Article II describes the Capacity Assignment agreements through which Columbia confirms each Commonwealth Customer's rights to the Commonwealth Capacity. Article III describes the Capacity Leases, under which each of the Commonwealth Customers leases its undivided capacity interest in the Commonwealth Capacity to Columbia for a primary twenty year lease term, while Columbia continues to operate the facilities. Article IV provides for implementation of the proposed rate schedule upon a final order approving the Settlement. Article V provides that the tariff records and Negotiated Rate FT-C Agreements included in the appendices cancel and supersede the non-conforming

⁷ Columbia states that Columbia, CGV, and VNG have executed the Settlement, the Capacity Assignment Agreements, and Capacity Leases, as they apply to each Party. Columbia states COR will undertake execution of the Stipulation, Capacity Assignment agreement, and Capacity Lease upon obtaining necessary approvals and will submit executed copies of the Stipulation, Capacity Assignment agreement, and Capacity Lease in this docket once such approvals are obtained. *See* Columbia Gas Transmission, LLC January 24, 2014, Transmittal at 2.

agreements between Columbia and each Commonwealth Customer associated with the 1990 merger. Article VI provides that each Commonwealth Customer will enter into a Negotiated Rate FT-C Agreement for a twenty year term, with limited contractual rights of renewal for additional five year terms. Article VII provides that Columbia is entitled to recover certain Extraordinary Expenditures from the Commonwealth Customers. Article VIII states that if certain circumstances are met, the Commonwealth Customers shall have the option to convert their capacity ownership interests into facility ownership interests, subject to any necessary further Commission or other governmental approvals.⁸ Article IX provides for the filing of the tariff records to implement the Settlement. Article X sets forth a severability clause for the terms of the Settlement.

8. Article XI describes various reservations associated with the Settlement and sets forth the following standard of review in section 11.2:

[t]he standard of review for any changes to the terms of this Stipulation during the term of this Stipulation for Columbia and the Settling Parties shall be the *Mobile-Sierra* standard, and the standard of review for the Commission acting sua sponte or any other person shall be the just and reasonable standard.

Public Notice, Interventions, and Comments

9. Public notices of the Settlement were issued on January 27 and 28, 2014. Comments were due February 13, 2014, and reply comments were due February 24, 2014. Pursuant to Rule 214,⁹ all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. COR and VNG filed comments supporting the Settlement. Requests for clarifications were filed by Antero Resources Corporation (Antero) and indicated Shippers.¹⁰ Columbia filed an answer providing clarifications, as discussed below. COR, VNG, and CGV filed reply comments joining in Columbia's answer and supporting the Settlement.

⁸ Columbia states this alternative was specifically recognized by the Commission in the Merger Orders as a permissible alternative structure for Columbia and the Commonwealth Customers to use to effectuate the goals of their original agreement. *Columbia Gas*, 56 FERC at 61,478 and n.14.

⁹ 18 C.F.R. § 385.214 (2013).

¹⁰ Indicated Shippers are Chevron U.S.A. Inc., Hess Corporation, and Noble Energy, Inc.

10. In its request for clarification, Antero states that it does not oppose the Settlement. However, it states that it is concerned with Columbia's contracts that are not subject to the CCRM calculation (Capital Cost Recovery Mechanism) in place on Columbia's system pursuant to the settlement approved by the Commission in Docket No. RP12-1021-000.¹¹ Antero requests that Columbia clarify that the Commonwealth Customers are unique and that, except for contracts expressly excluded from the billing determinants for the CCRM, there are no other contracts on Columbia's system that will be excluded from the billing determinants for the CCRM calculation.

11. In its answer, Columbia provides the requested clarification. Columbia states that the Commonwealth Customers' contracts are unique legacy contracts that provide for firm transportation services in a very limited geographic footprint under a separate Rate Schedule FT-C pursuant to a unanimous and uncontested Settlement and that, except for the Commonwealth Customers' Rate Schedule FT-C contracts that are addressed in the Commonwealth Settlement and those contracts expressly excluded from the billing determinants for the CCRM calculation pursuant to the CCRM Settlement, there will be no other contracts excluded from the billing determinants for the CCRM calculation.

12. In their request for clarification, Indicated Shippers state that they do not oppose the Settlement, but request that the Commission clarify that secondary service under Rate Schedule FT-C, outside the Commonwealth Capacity, will be charged a daily rate based on the 100 percent load factor derivative of the Rate Schedule FTS maximum recourse rate, including Reservation and Usage Charge components, the CCRM rate, and applicable surcharges.

13. In its answer, Columbia provides the requested clarification. Columbia states that the rates set forth in the Settlement apply only when the Commonwealth Customers utilize the specific facilities associated with the Commonwealth Capacity. Columbia also states that under Section 3(f) of Rate Schedule FT-C, the rates applicable under the new Rate Schedule FT-C do not apply when a Commonwealth Customer utilizes points outside the Commonwealth Facilities on a secondary basis. Columbia explains that any such secondary service is subject to a daily rate based on the 100 percent load factor derivative of the FTS maximum recourse rate, including Reservation and Commodity components, the CCRM Rate, and applicable surcharges. Specifically, Columbia points out that Section 3(f) of Rate Schedule FT-C, provides: "[f]or secondary service outside of the Commonwealth Facilities, Shipper will be subject to all rates and surcharges associated with Rate Schedule FTS service."

¹¹ Antero Comments at 1 (citing *Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062 (2013) (CCRM Settlement)).

Discussion

14. The Commission finds that the clarifications provided by Columbia adequately address the requests by Indicated Shippers and Antero. Therefore, the Commission finds the proposed Settlement to be supported or unopposed by the parties.¹²

15. Columbia's Settlement consists of two components that are used to preserve the historical arrangement between Columbia and the Commonwealth Customers. First, are the Capacity Assignment Agreements, under which Columbia "confirms each Commonwealth Customer's proportionate and undivided interest in the intangible right to the Commonwealth Capacity through assignment, to the extent necessary, to each Commonwealth Customer of any such interest possessed by Columbia."¹³ Second are the Capacity Leases, pursuant to which Columbia will lease the Commonwealth Capacity from the Commonwealth Customers and administer that capacity under its tariff. In reviewing these transfers of rights and capacity, the Commission must evaluate the applicability of the various sections of the NGA to determine what, if any, authorizations the Commission must grant in order for the parties to implement the Settlement.

16. The historical arrangement between Columbia and the Commonwealth Customers informs the Commission's analysis. At the time of the 1990 merger, the Commonwealth Customers required assurances that once the Commonwealth facilities were merged with Columbia's system, the Commonwealth Customers would not suffer rate impacts and would continue to have access to the Transco system.

17. The Commission authorized Columbia to acquire Commonwealth with recognition of the capacity rights of the Commonwealth Customers.¹⁴ Specifically, the Commission found "that Columbia's proposed merger with Commonwealth, involving the acquisition of Commonwealth's facilities and the provision of services by Columbia to Commonwealth's former customers is required by the public convenience and necessity."¹⁵ However, as described above, the Commission found that the Commonwealth Customers could not remain non-jurisdictional while owning a capacity interest in jurisdictional capacity. Recognizing that the proposal for the Commonwealth

¹² *Dominion*, 111 FERC ¶ 61,285 at PP 28-29 (finding that Dominion had adequately explained its intentions regarding issues raised by other parties in the proceeding, which allowed the Commission to approve the Settlement as supported or unopposed).

¹³ Columbia Gas Transmission, LLC, Petition for Approval of Settlement at 2.

¹⁴ *Columbia Gas*, 53 FERC at 62,261-62.

¹⁵ *Id.*

Customers to own the subject capacity was an attempt to secure the capacity necessary to obtain service from the Transco pipeline system, the Commission designed a mechanism whereby the Commonwealth Customers could be shippers on the Columbia system while retaining their priority for transportation of gas that they received from Transco over the former Commonwealth facilities. The Commission also found that the purchase price paid by the Commonwealth Customers for such capacity could be treated as a lump sum prepayment of the open access transportation rate to be paid to Columbia.¹⁶ The Commission required Columbia to operate the Commonwealth capacity under the terms and conditions of its Part 284 blanket certificate but granted Columbia waiver of its “tariff and of Section 284.7 of the Commission regulations to the extent necessary: 1) to allow the Commonwealth customers to ship gas up to the volume of the capacity reserved on their behalf without waiting in a queue; and, 2) to allow the purchase price paid by the parties for reserving the capacity on Commonwealth’s system and the costs of maintaining and operating this capacity to serve as a lump sum payment of the rate for service from Columbia under Part 284.”¹⁷ Further, the Commission stated the Commonwealth Customers “may not broker or otherwise sell or assign their capacity on Columbia without proper authorization.”¹⁸

18. Columbia states that the Capacity Assignment Agreements proposed in conjunction with the instant Settlement are intended to “confirm[] each Commonwealth Customer’s proportionate and undivided interest in the intangible right to the Commonwealth Capacity through assignment, *to the extent necessary*, to each Commonwealth Customer of *any such interest* possessed by Columbia.”¹⁹ As described above, the Merger Orders required that the Commonwealth Customers be shippers on Columbia, and not owners of the Commonwealth Capacity. Therefore, in order to implement the lease arrangement provided for in the instant Settlement it is necessary for Columbia first to assign its existing interest in that capacity to the Commonwealth Customers, so that they can then lease that capacity back to Columbia. Because the Capacity Assignment Agreements are part of an overall transaction that is meant to preserve the Commonwealth Customers’ existing rights to use the Commonwealth Capacity without the need for non-conforming service agreements, the inclusion of this transfer of rights is an acceptable term for inclusion in the Settlement. The Commission will discuss the necessary NGA section 7 certificate and abandonment authorizations below.

¹⁶ *Columbia Gas*, 53 FERC at 62,262, *on reh’g*, 56 FERC at 61,472-73.

¹⁷ *Columbia Gas*, 53 FERC at 62,262.

¹⁸ *Id.*

¹⁹ *Columbia Gas Transmission, LLC, Petition for Approval of Settlement* at 2 (emphasis added).

19. The proposed Settlement envisions that simultaneously with Columbia's assignment of its interest in the Commonwealth Capacity the Commonwealth customers will lease the assigned interest in the subject capacity back to Columbia. Because the proposed leased capacity is used to provide interstate natural gas transportation, the lease proposal is subject to the Commission's jurisdiction under section 7 of the NGA. The Certificate Policy Statement provides guidance concerning how the Commission will evaluate proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.²⁰ A proposal to lease capacity with no related construction of facilities, such as the proposal in this proceeding, eliminates the Certificate Policy Statement's concerns with overbuilding, disruptions of the environment, and the exercise of eminent domain.²¹ However, the dual requirements that the proposal must not be subsidized by or adversely affect existing shippers, existing pipelines in the market, or their captive customers continues to be relevant to the Commission's evaluation of leases.²²

20. The Commission finds that the proposed lease provides benefits to all concerned parties. For instance, Columbia states that the lease agreement with the Commonwealth Customers recognizes the benefits of the 1990 merger between Columbia and Commonwealth and the 1990 settlement entered into among Columbia, Commonwealth, and the Commonwealth Customers. Columbia also states that the lease resolves issues with respect to non-conforming contracts without the need for additional proceedings, thereby preserving resources of the Commission and the settling parties. Columbia states the Settlement restructures the parties' agreements with respect to the Commonwealth Capacity to conform to the Commission's policies with respect to capacity leases, avoids potential litigation over the meaning of the terms of the 1990 Merger, and thus allows the parties to move forward with certainty regarding each party's rights and responsibilities with respect to the Commonwealth Capacity and Commonwealth facilities. The Commission notes that Columbia's responses adequately address Antero's and Indicated Shippers' concerns, allowing the Commission to find that none of Columbia's customers oppose the lease arrangement. Accordingly, the Commission finds that the lease proposed in the Settlement meets the requirements of section 7 of the NGA.

21. In order to implement the instant Settlement, the Commission finds that several authorizations pursuant to section 7 of the NGA are necessary, and as discussed above,

²⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

²¹ *See Gulf South Pipeline Co.*, 146 FERC ¶ 61,149, at P 17 (2014) (*Gulf South*).

²² *Id.*

the Commission finds that the public convenience and necessity requires that such authorizations be granted. First, the Commission, pursuant to sections 7(b) and (c) of the NGA, grants abandonment authority to Columbia to transfer capacity rights to the subject capacity to the Commonwealth customers and certificate authority to reacquire those capacity rights by lease and to operate the capacity. Second, the Commission grants certificate authority for the Commonwealth Customers to acquire capacity rights to the subject capacity from Columbia and abandonment authority to transfer such rights by lease to Columbia. The parties are reminded that they must apply for the requisite abandonment and certificate authorizations to terminate the Capacity Leases.²³

22. The Commission finds that the instant Settlement maintains the rights and obligations of the Commission's merger orders issued in the early 1990s while bringing the regulatory manner in which such rights are implemented into a closer alignment with the Commission's current regulatory policies. Given the support of all parties to this Settlement and the Settlement's attempt to more closely align the unique historical agreements based upon the particular requirements and limitations of the Columbia system with today's regulatory climate, the Commission finds that the instant Settlement appears to be fair and reasonable and in the public interest. It is therefore approved, to become effective as set forth in the Settlement.

23. The tariff records listed in the Appendix are rejected, without prejudice, consistent with Columbia's intention that the instant tariff records be treated as *pro forma* tariff records. Consistent with the terms of the Settlement, the Commission directs Columbia to electronically file revised tariff records in the Commission's eTariff system to implement the Settlement, to be effective pursuant to the Settlement. To the extent a waiver of the Commission's notice requirement is required for Columbia's tariff record compliance filing, the Commission grants waiver of the notice requirement to allow the tariff records and supporting documents to be filed according to the terms of the Settlement.

The Commission orders:

(A) The Settlement is approved as fair and reasonable and in the public interest, to be effective as set forth in the Settlement.

(B) Columbia and the Commonwealth Customers are granted abandonment and certificate authority under section 7 of the NGA to implement the capacity lease arrangement consistent with this order.

(C) The tariff records in the Appendix are rejected, without prejudice, and

²³ See, e.g., *Gulf South*, 146 FERC ¶ 61,149 at P 37; *Islander East Pipeline Co.*, 102 FERC ¶ 61,054, at P 35 (2003).

Columbia is directed to file tariff records implementing the Settlement, with proposed effective dates, pursuant to the terms of the Settlement.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Columbia Gas Transmission, LLC FERC NGA Gas Tariff Baseline Tariffs

Rejected Tariff Records

[Table of Contents, Table of Contents, 6.0.0](#)
[Currently Effective Rates, FT-C Rates, 5.0.0](#)
[Rate Schedules, Rate Schedule FT-C, 0.0.0](#)
[Gen. Terms & Conditions, Definitions, 4.0.0](#)
[Gen. Terms & Conditions, Capacity Allocation, 3.0.0](#)
[Gen. Terms & Conditions, Operating Conditions, 2.0.0](#)
[Gen. Terms & Conditions, Interruptions of Service, 2.0.0](#)
[Gen. Terms & Conditions, Operational Flow Orders, 2.0.0](#)
[Gen. Terms & Conditions, Inventory Transfers, 1.0.0](#)
[Gen. Terms & Conditions, Penalties, 6.0.0](#)
[Gen. Terms & Conditions, Annual Charge Adjustment, 2.0.0](#)
[Gen. Terms & Conditions, Reservation Charge Credits, 5.0.0](#)
[Service Agreement Forms, FT-C, 0.0.0](#)
[Service Agreement Forms, Appendix A for FT-C, 0.0.0](#)