

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 Nos. RP04-255-005
RP04-255-004

ORDER ON CLARIFICATION/REHEARING AND COMPLIANCE FILING

(Issued May 10, 2005)

1. On January 26, 2005, the Commission issued an order on clarification and rehearing in this proceeding clarifying that Columbia Gas Transmission Corporation (Columbia) may not unilaterally impose new contractual pressure and/or hourly flow conditions on a shipper exercising its right of first refusal (ROFR).¹ Columbia requests clarification/rehearing of the January 26, 2005 Order.
2. In addition, on February 10, 2005, Columbia made a filing in compliance with the January 26, 2005 Order.² On February 24, 2005, Columbia submitted an amendment to the proposed compliance filing. As discussed below, the Commission will grant the request for clarification/rehearing and accept Columbia's compliance filing, as amended, subject to Columbia filing a revised tariff sheet. This order benefits customers because it protects existing shippers' ROFR rights and provides clarity to the parties.

Background

3. Columbia's tariff permits it to negotiate minimum pressure and hourly flow rate provisions with particular customers that vary from the general provisions in its tariff on those subjects. For example, section 9.2 of Columbia's GTC states that, "Shipper shall: (i) tender gas or arrange to have gas tendered on its behalf in quantities that conform to

¹ *Columbia*, 110 FERC ¶ 61,063 (2005).

² Seventh Revised Sheet No. 320 and Fifth Revised Sheet No. 345 to FERC Gas Tariff Second Revised Volume No. 1.

its Scheduled Daily Receipt Quantity and that flow at uniform hourly rates throughout the Day....” However, section 9.3 of Columbia’s GT&C provides that Columbia may “mutually agree with any Shipper to an hourly flow rate for a stated period at any receipt and/or delivery point(s) identified in the applicable service agreement....” Section 13 of Columbia’s GT&C also permits it to negotiate minimum pressure levels.

4. On April 8, 2004, Columbia filed to revise section 9.3 and section 13 of its General Terms and Conditions (GT&C) to provide that when Columbia mutually agrees with its shipper on a minimum pressure and/or hourly flow rate, Columbia may also agree with the shipper on specified conditions to those minimum pressure and/or hourly flow rate agreements to ensure that such agreements do not have any adverse effects on Columbia’s system. On May 7, 2004, the Commission issued an order accepting Columbia’s tariff filing, subject to Columbia filing revised tariff language to state that Columbia will not enter into minimum pressure or hourly flow rate obligations or conditions that would adversely affect an existing firm shipper’s service.³ The order also denied a request for clarification that pressure or hourly flow commitments in existing service agreements that are not currently subject to conditions may not be conditioned when the service agreements are renewed pursuant to a ROFR. Eight requests for clarification/rehearing of the May 7, 2004 Order were filed.

5. On January 26, 2005 the Commission issued an order granting rehearing of the May 7, 2004 Order and directed Columbia to revise its tariff to clarify that Columbia may not impose new contractual minimum pressure or hourly flow conditions on an existing long-term firm shipper’s service under a service agreement executed with that shipper pursuant to the shipper’s ROFR. The January 26, 2005 Order found that Columbia interpreted its proposed language as giving Columbia the unilateral right to impose new contractual pressure and/or hourly flow conditions on a shipper exercising its ROFR. After reviewing the regulatory ROFR, the order stated that allowing a pipeline such a unilateral right may impair the shipper’s ability to use pipeline capacity it is entitled to under the ROFR or allow the pipeline to exercise market power.

6. On February 10, 2005, Columbia made a filing to comply with the January 26, 2005 Order. On February 24, 2005, Columbia submitted an amendment to the proposed compliance filing. On the same date, Columbia filed a request for clarification, or in the alternative rehearing, seeking clarification that the January 26, 2005 Order permitted

³ *Columbia*, 107 FERC ¶ 61,130 (2004). Columbia filed revised tariff language on May 24, 2004. The Commission accepted the filing as in compliance with the May 7, 2004 Order in an unpublished delegated letter order issued in Docket No. RP04-255-001 on August 23, 2004.

certain proposed language in its compliance filing. Columbia's compliance filing and its request for clarification/rehearing are discussed below.

Compliance Filing

7. On February 10, 2005, Columbia filed in compliance with the January 26, 2005 Order. On February 24, 2005, Columbia filed an amendment to correct the February 10, 2005 Compliance Filing's provision regarding hourly flow rate obligations.

8. Notice of Columbia's compliance filing was issued February 15, 2005, providing for the filing of protests by February 28, 2005 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.211 (2004). No protests were filed.

9. In the February 10, 2005 Compliance Filing, Columbia proposed to revise section 13(c) of its GT&C regarding minimum pressure by adding the sentence, "In addition Transporter will not unilaterally impose new contractual minimum pressure conditions when an existing Shipper exercises its right of first refusal in accord with Section 4 of the General Terms and Conditions."

10. Columbia also proposed to revise section 9.3 of its GT&C regarding hourly flow rate commitments by adding the sentence:

In addition, Transporter will not unilaterally impose new contractual hourly flow rate conditions when an existing Shipper exercises its right of first refusal in accord with Section 4 of the General Terms and Conditions: provided, however, if a Shipper exercising its right of first refusal does not retain one-hundred percent (100%) of its Transportation Demand in its new Service Agreement, there will be a proportionate reduction in the hourly flow rate in that Shipper's new Service Agreement.

11. In its February 10, 2005 Compliance Filing, Columbia stated it added revised language in section 9.3 to ensure that a shipper exercising a ROFR for less than the full transportation demand (TD) retains the same proportionate level of flexibility reflected in its original service agreement. Columbia argued that, absent an adjustment to the hourly flow rate in the shipper's ROFR service agreement, the shipper would be able to flow gas at an hourly rate that would not be reflective of Columbia's operations when granting the original hourly flow commitment. Columbia contended that Columbia's operations at the time of the exercise of a ROFR may not be equipped to compensate for this unintended and increased demand on its system.

12. Columbia asserted that maintaining the original flow rate when the ROFR shipper has reduced its TD would increase Columbia's hourly flow obligation as a proportion of

the shipper's deliveries into Columbia's pipeline system. Columbia claimed that a failure to permit an adjustment during the ROFR process would be unfair to existing shippers on Columbia's system because it would reduce operational flexibility on Columbia's system otherwise available for service to other shippers and would likely relegate those other shippers to less favorable service options.

13. In the February 24, 2005 amendment to its February 10, 2005 Compliance Filing, Columbia states that the language providing for a proportionate reduction in the hourly flow rate should only apply when the hourly flow rate is stated as a numerical Dth per hour amount versus being stated as a percent or fraction of transportation demand. Columbia accordingly stated that its proposed tariff language regarding the hourly flow rate should be revised to read:

In addition, Transporter will not unilaterally impose new contractual hourly flow rate conditions when an existing Shipper exercises its right of first refusal in accord with Section 4 of the General Terms and Conditions; provided, however, if a Shipper with a Service Agreement containing an hourly flow rate stated as a numerical Dth per hour amount and exercising its right of first refusal does not retain one-hundred percent (100%) of its Transportation Demand in its new Service Agreement, there will be a proportionate reduction in the numerical Dth per hour hourly flow rate amount in that Shipper's new Service Agreement.⁴

However, Columbia did not file a revised tariff sheet reflecting this change in its proposal.

Request for Clarification/Rehearing

14. In its February 24, 2005 request for clarification/rehearing, Columbia states that in its February 10, 2005 Compliance Filing, Columbia added a provision to its hourly flow rate tariff revision to permit Columbia to proportionately adjust the hourly flow rate in a new service agreement arising from the ROFR process when the shipper with an ROFR exercises its ROFR for an amount less than the full TD set forth in the existing service agreement. Columbia incorporates by reference its arguments from its compliance filing in support of the provision. Columbia requests that the Commission clarify that the January 26, 2005 Order permits acceptance of Columbia's proposed hourly flow rate proviso in its compliance filing. Alternatively, Columbia requests that the Commission

⁴ February 24, 2005 amendment to compliance filing at 2.

grant rehearing of the January 26, 2005 Order to permit Columbia to implement the proposed proviso.

Discussion

15. The Commission grants Columbia's request for clarification of the January 26, 2005 Order and conditionally accepts Columbia's February 10, 2005 Compliance Filing, modified as Columbia proposed in the February 24, 2005 amendment. Columbia's revision to section 13(c) of its GT&C is in compliance with the January 26, 2005 Order.

16. Columbia's revision to section 9.3 of its GT&C, as modified in the February 24, 2005 amendment, includes the language required by the January 26, 2005 Order. In addition, when a shipper chooses during the ROFR process to reduce its contract demand it is reasonable for a corresponding proportional adjustment to an hourly flow rate stated as a numerical Dth per hour amount to be made. Otherwise the shipper would obtain greater hourly flexibility as a percentage of its contract demand than Columbia had originally agreed to give it. Therefore, language providing for this adjustment is acceptable. However, Columbia did not file a revised tariff sheet to reflect the February 24, 2005 amendment to its proposal including this adjustment. Accordingly, Columbia is directed to file a revised tariff sheet to include the amended proposal, within 15 days of the issuance of this order.

The Commission orders:

(A) Columbia's request for clarification is granted as discussed above. The request for rehearing is denied as moot.

(B) Columbia must file a revised tariff sheet within 15 days of the issuance of this order, to include the proposed language in the February 24, 2005 amendment in its tariff.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.