

165 FERC ¶ 61,229
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 14, 2018

In Reply Refer To:
Columbia Gas Transmission, LLC
Docket No. RP19-298-000

Columbia Gas Transmission, LLC
700 Louisiana Street
Suite 700
Houston, TX 77002-2700

Attention: John A. Roscher, Director
Rates & Tariffs

Dear Mr. Roscher:

1. On November 16, 2018, Columbia Gas Transmission, LLC (Columbia Gas) filed, pursuant to section 4 of the Natural Gas Act (NGA), updated non-conforming negotiated rate agreements and a new non-conforming negotiated rate agreement, to reflect cost overruns for service on its WB XPress Project (Project). In addition, Columbia Gas filed corresponding revisions to the tariff provisions listing such agreements.¹ Columbia Gas states that the updated service agreements reflect revisions to three negotiated rate agreements that were originally filed as part of the Project in Docket No. RP18-1217-000 and accepted by the Commission on October 25, 2018 (October 25 Order).² As discussed below, we accept the proposed tariff records listed in the Appendix to be effective November 16, 2018.

2. Columbia Gas states that it is updating the service agreements approved in the October 25 Order to implement provisions included in the agreements providing for the negotiated rates to be increased to recover cost overages experienced during construction of the Project. According to Columbia Gas, the reservation charge in the three agreements for eastbound transportation service under the Project will increase to account for those cost overages as follows: Noble Energy, Inc. (Noble) from \$0.75 per dekatherms (Dth) per day to \$0.78717 per Dth per day (Contract No. 176680);

¹ See Appendix.

² *Columbia Gas Transmission, LLC*, 165 FERC ¶ 61,042 (2018) (October 25 Order).

Washington Gas Light Company (Washington Gas) from \$0.65 per Dth per day to \$0.6822 per Dth per day (Contract No. 176681); and Antero Resources Corporation (Antero) from \$0.50 per Dth per day to \$0.5248 per Dth per day (Contract No. 176701). Additionally, Columbia Gas states that due to system limitations it has shifted 60,000 Dth of contract quantities for Washington Gas from the previously-accepted Contract No. 176681 to new Contract No. 210090, and that the new contract contains a non-conforming provision in section 2 (Term) identical to the previously-approved non-conforming provision in Contract No. 176681. Columbia Gas states that no undisclosed agreements are linked to the filed agreements.

3. Public notice of the filing was issued on November 19, 2018. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2018)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2018)), all timely filed motions to intervene and any unopposed motions to intervene filed out-of-time before the issuance date 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. Washington Gas filed a protest to the filing on November 28, 2018. On December 7, 2018, Columbia Gas filed an answer to the protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority.³ The Commission accepts Columbia Gas' answer because it provides information that assists us in our decision-making process.

4. In its protest, Washington Gas reiterates many of the arguments made in a protest it previously submitted in Docket No. RP18-1217-000.⁴ Specifically, Washington Gas continues to assert that Columbia Gas unduly discriminated against Washington Gas by charging it a usage charge for service under the Project while Antero was granted a \$0.00 usage charge under its agreements. Washington Gas argues that it is similarly situated to Antero with respect to eastbound transportation services of the Project, and therefore, should be entitled to the same reservation charge and zero usage charge that Columbia Gas negotiated with Antero. Washington Gas asserts that the transportation path for the majority of its contract quantities is identical to that of Antero's contract quantities (Braxton to Loudoun), and in a November 8, 2018 letter (November 8 Letter), informed Columbia Gas that it would accept Braxton as its primary receipt point for all Project contract quantities and agree to the same contract term that Antero and Columbia Gas negotiated.⁵ Washington Gas further asserts that because no Project shipper qualified for anchor shipper status, there is no recognized factual distinction between Project shippers

³ 18 C.F.R. § 385.213(a)(2) (2018).

⁴ Washington Gas Protest at 8. Washington Gas states that it incorporates by reference the arguments it made in its protest in Docket No. RP18-1217.

⁵ Washington Gas Protest Attachment 1.

that would allow Columbia Gas to legitimately discriminate against or prefer any Project shipper. Therefore, it argues, all Project shippers are similarly situated. Washington Gas also challenges Columbia Gas' assertion that Antero and Washington Gas have different competitive profiles, but does acknowledge that Antero subscribes to greater eastbound transportation quantities than Washington Gas.

5. Washington Gas also takes issue with Columbia Gas' statement that Columbia Gas advises that no undisclosed agreements are linked to the filed agreements. Washington Gas notes that a November 15, 2018 email (November 15 Email) from a Columbia Gas representative states that the signing of the revised service agreements for Project services would be "without prejudice with respect to the pending protest(s) before FERC."⁶ Washington Gas argues that because Columbia Gas filed the revised service agreements and rate attachments in the instant proceeding one day after Washington Gas received the assurance email from Columbia Gas, nothing in the executed agreements should be construed as resolving or affecting any position that Washington Gas has taken in connection with the Project negotiated rates.

6. Finally, Washington Gas raises several issues in regards to the Project cost overruns. Specifically, Washington Gas asserts that with an increase of \$0.0322 per Dth per day to its negotiated reservation charge as compared to an increase of only \$0.0248 per Dth per day for Antero, the difference in cost responsibility for the same set of facilities designed to serve eastbound shippers represents undue discrimination. Washington Gas also protests the fact that only eastbound shippers are held financially responsible for Project cost overruns. Washington Gas contends that since the Project is one, unified pipeline expansion project, excusing westbound shippers from bearing any portion of the Project cost overruns is a further example of undue discrimination in the setting of negotiated rates.

7. Washington Gas states that the October 25 Order rejected Washington Gas' prior protest and accepted the proposed tariff records, indicating that Washington Gas could pursue a complaint with the Commission to remedy any unduly discriminatory treatment if it first asked Columbia Gas to correct the rate. Washington Gas states that in its November 8 Letter, it asked Columbia Gas to revise the Project rate to correct the alleged undue discrimination and was subsequently rejected by Columbia Gas in the November 15 Email.⁷ Washington Gas asserts that this rejection satisfied the purported precondition set forth in the October 25 Order, and thus the Commission should "initiate a NGA

⁶ Washington Gas Protest Attachment 2.

⁷ Washington Gas Protest Attachment 2.

section 4 investigation in this docket to review the Project rates for potential undue preference and undue discrimination.”⁸

8. In its answer, Columbia Gas provides a brief summary of the various issues previously raised by Washington Gas in filings associated with the Project. Columbia Gas states that the Commission issued a certificate approving the Project on November 17, 2017.⁹ Columbia Gas states the Certificate Order approved a single incremental recourse reservation charge for service across the entire Project, including both eastbound and westbound services. Columbia Gas states that, in compliance with the Certificate Order, it filed tariff records to implement a recourse daily reservation charge and recourse usage charge as part of new Rate Schedule FTS-WBX for service on the Project.¹⁰ Columbia Gas states it subsequently filed, and the Commission approved, four non-conforming negotiated rate agreements for service on the Project: the Antero West Agreement for westbound service in Docket No. RP18-1065-000¹¹ and service agreements for eastbound service for Antero, Noble, and Washington Gas in Docket No. RP18-1217-000.¹² Columbia Gas notes that Washington Gas has filed requests for rehearing in Docket Nos. RP18-1063-001 and RP18-1065-001¹³ and submitted a motion to intervene and protest in Docket No. RP18-1217-000.¹⁴ Columbia Gas states that Washington Gas’ protest was denied and the three eastbound service agreements were accepted by the Commission in the October 25 Order. Furthermore, Columbia Gas states that the October 25 Order directs Washington Gas to pursue a remedy through the Commission’s complaint procedures if Washington Gas believes it is similarly situated to Antero and thus entitled to the same negotiated rate.

9. Columbia Gas asserts that Washington Gas has ignored many of the explanations made by the Commission in the October 25 Order as to why it is not similarly situated to Antero and also failed to respond to the analysis submitted by Columbia Gas in its answer to Washington Gas’ protest in Docket No. RP18-1217-000.¹⁵ Columbia Gas

⁸ Washington Gas Protest at 7.

⁹ *Columbia Gas Transmission*, 161 FERC ¶ 61,200 (2017) (Certificate Order).

¹⁰ Columbia Gas Transmission, LLC, Compliance Filing, Docket No. RP18-1063-000 (filed August 17, 2018).

¹¹ Columbia Gas Answer at 3, n.8.

¹² Columbia Gas Answer at 3, n.9.

¹³ Columbia Gas Answer at 4, nn.12&14.

¹⁴ Columbia Gas Answer at 4, n.13.

¹⁵ Columbia Gas Answer at n.36.

further asserts that the instant docket is an extremely narrow proceeding to implement the cost overrun provision included in negotiated rate agreements that the Commission has already approved in the October 25 Order. Columbia Gas also asserts that the Commission should reject Washington Gas' attempts to inject unrelated issues concerning the Project's negotiated rate agreements into this limited proceeding. Columbia Gas argues that if Washington Gas believes it has suffered undue discrimination it may file a formal complaint, as held in the October 25 Order.

10. In addition, Columbia Gas states it rejects Washington Gas' unilateral offer to modify its negotiated rate agreement. Columbia Gas argues Washington Gas' offer to revise its contract length, renewal rights, and primary receipt point to make them identical to the Antero East Agreement does not transform Washington Gas into a similarly situated shipper to Antero. Furthermore, Columbia Gas argues that Washington Gas' request to shift all of its primary receipt point capacity to Braxton is impossible as there is no unsubscribed capacity at Braxton. Columbia Gas argues that Washington Gas' offer is based on a misreading of both the October 25 Order and Commission precedent. For example, Columbia Gas argues that Washington Gas' belief that pipelines may not offer volume-based discounts is incorrect, arguing that there is longstanding precedent allowing such rate differentials, and of rejecting protests that volume-based discounts are inappropriate.¹⁶

11. Columbia Gas states that, as it demonstrated in Docket No. RP18-1217-000, Washington Gas is not similarly situated to Antero. Columbia Gas states that Antero's early commitment to the Project made the Project viable and that Washington Gas did not contract for capacity until after the Open Season ended and after the Project was cleared to go forward. Columbia Gas further asserts that Antero subscribed to over fifteen times the volume of Project capacity that Washington Gas did, and that the larger contracted Project capacity and early commitment to the Project provide an appropriate basis for granting a lower rate than shippers that obtained capacity later and at a lower volume. Columbia Gas further asserts that without Antero's participation in the Project, Washington Gas' rates would be at least 50 percent higher for eastbound transportation in order to maintain the Project's viability. Therefore, Columbia Gas argues that based on the significant differences in contract volume and the time of contracting, Washington Gas and Antero are not similarly situated.

12. Columbia Gas also clarifies that, despite Washington Gas' statements interpreting an email exchange, "there were no 'side agreements' ... that affected parties' substantive rights."¹⁷ Columbia Gas agrees that it stated that execution of the negotiated rate contract filed in this docket "would not affect either party's rights in matters pending before the

¹⁶ Columbia Gas Answer at 9-10 (citations omitted).

¹⁷ Columbia Gas Answer at 14.

Commission,” but argues that this assurance does not rise to the level of a related agreement requiring the Commission’s attention.¹⁸

13. As an initial matter, we acknowledge Washington Gas’ argument that, in agreeing to execute the revised service agreement now on file before us, Washington Gas did not waive any rights on matters pending before the Commission. However, such a statement of rights is not required to be on file with the Commission as part of Columbia Gas’ tariff. We also note that addressing Washington Gas’ protest requires us to rule on issues similar to those for which Washington Gas has sought rehearing in other Columbia Gas proceedings. Our ruling here does not prejudge the Commission’s eventual determination on those requests for rehearing.

14. As Columbia Gas asserts, the issue before us in this proceeding is a narrow one: whether Columbia Gas is properly implementing provisions in previously approved negotiated rate agreements. As discussed below, we find that it is. As Columbia Gas points out, the Commission accepted three of the four contracts filed in the instant docket in the October 25 Order. Further, Washington Gas acknowledges that the new, fourth contract is simply a restatement of portions of a prior contract, filed as “an administrative change that was required to ensure that the pipeline could properly accommodate” the contract through its online nomination system.¹⁹ While Washington Gas protested the filing of those contracts in Docket No. RP18-1217-000, it did not seek rehearing of the Commission’s October 25 Order accepting them pursuant to section 4 of the NGA. Washington Gas does have pending requests for rehearing on other orders involving Columbia Gas in Docket Nos. RP18-1063-001 and RP18-1065-001, but in its request for rehearing in Docket No. RP18-1063-001, Washington Gas states it does not “by this request for rehearing seek to undo its own negotiated rate, a rate it believes to be reasonable under the circumstances subject to ... the protests that Washington Gas has filed in related proceedings.”²⁰

15. Commission policy discourages overturning filed negotiated rates under section 4.²¹ As the Commission explained in *Alliance*, so long as all shippers have the opportunity to either seek a negotiated rate or resort instead to the recourse rate, then the Commission generally will not review the design of the negotiated rate, nor second-guess

¹⁸ Columbia Gas Answer at 15.

¹⁹ Washington Gas Protest at 3.

²⁰ Washington Gas, Request for Rehearing, Docket No. RP18-1063-001, at 21 (filed October 11, 2018).

²¹ October 25 Order, 165 FERC ¶ 61,042 at PP 19-21.

the shippers' willingness to agree to that rate.²² As Columbia Gas noted in Docket No. RP18-1217-000, if Washington Gas had "been dissatisfied with the rate it was offered, it could simply have waited until the eastbound portion of the Project was placed into service and elected to pay Columbia's filed recourse rate for service on the Project."²³

16. Washington Gas nevertheless urges the Commission to suspend the proposed rates subject to refund and to establish a hearing pursuant to section 4 of the NGA to preserve it a full potential remedy. Washington Gas' arguments, however, are legally infirm. The Commission lacks authority under NGA section 4 to prevent a pipeline from implementing the terms of a previously approved service agreement. The negotiated rate agreements protested by Washington Gas have already been accepted in Docket No. RP18-1217-000, and the Commission may only act under section 5 of the NGA to overturn an approved rate. The Commission is thus, despite Washington Gas' arguments, "handcuffed by that statutory limitation."²⁴

17. Washington Gas also protests that cost overruns were allocated to eastbound Project shippers but not westbound Project shippers, arguing that this is an instance of undue discrimination. Again, we need not reach this issue here because we have already approved the agreements in question, including the cost overrun provisions contained therein in the October 25 Order. The instant filing merely implements the provisions of those agreements according to their terms. Furthermore, Washington Gas did not protest the cost overrun allocation provisions of its agreement though it had the opportunity to do so in Docket No. RP18-1217-000.

18. Likewise, the question of whether Washington Gas' eastbound service is similarly situated to Antero's eastbound service and therefore deserving of an identical negotiated rate (whether for the usage charge, the reservation charge, or the cost overrun rate) are outside the scope of this proceeding. The approved existing negotiated rate agreements between the parties provide for the increase of reservation charges to the extent actual projects costs exceed estimated project costs.²⁵ Thus Columbia Gas is merely

²² *Alliance Pipeline L.P.*, 122 FERC ¶ 61,250, at P 9 (2008) (citing *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241 (1996), and *Columbia Gulf Transmission Co.*, 78 FERC ¶ 61,263, at 62,124 (1997)).

²³ Columbia Gas, Answer, Docket No. RP18-1217-000, at 12 (filed October 19, 2018).

²⁴ Washington Gas Protest at 8.

²⁵ See Appendix B to FTS Service Agreement Nos. 176680, 176681, and 176701 in Docket No. RP18-1217-000.

implementing the already agreed upon negotiated rate (with applicable overage cost) as it is required to by the terms of the agreement.

19. As noted in the October 25 Order, the question of whether a shipper is similarly situated is an intensely fact specific question best dealt with through complaint procedures. Indeed, in this proceeding, Washington Gas again has made numerous factual assertions suggesting that it is similarly situated to Antero, and Columbia Gas has, through its answer, continued to refute those assertions. Reviewing these contesting claims, we find that Washington Gas simply has not presented a sufficient record to justify the Commission acting of its own accord under section 5 of the NGA.

20. As we noted in the October 25 Order, if Washington Gas believes that it is similarly situated to Antero and thus entitled to the same rate, it may pursue a remedy by means of the Commission's complaint procedures. Otherwise, we reach the same finding as the October 25 Order that "the Commission sees no reason to withhold approval of the subject negotiated rate agreement[s]."²⁶ Accordingly, we accept the proposed tariff records listed in the Appendix to be effective November 16, 2018.

By direction of the Commission. Commissioner McIntyre is not voting on the letter order.
Commissioner McNamee is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ October 25 Order, 165 FERC ¶ 61,042 at P 22.

Appendix

Columbia Gas Transmission, LLC
FERC NGA Gas Tariff
Baseline Tariffs

Tariff Records Accepted Effective November 16, 2018:

[Service Agreement Forms, Non-Conforming Service Agreements, 39.0.0](#)

[Table of Contents, , 56.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.39 Noble Energy, Inc. Contract No. 176680, 1.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.40 Washington Gas Light Co Contract No. 176681, 1.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.41 Antero Resources Corp Contract No. 176701, 1.0.0](#)

[Non-Conf Neg Rate Svc Agm, Section 4.42 Washington Gas Light Co Contract No. 210090, 0.0.0](#)