

168 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Columbia Gas Transmission, LLC

Docket No. RP18-1065-001

ORDER DENYING REHEARING

(Issued July 30, 2019)

1. On September 4, 2018, the Director of the Office of Energy Market Regulation issued an unpublished letter order accepting tariff records filed by Columbia Gas Transmission, LLC (Columbia) containing a new negotiated rate agreement with Antero Resources Corporation (Antero). On October 4, 2018, Washington Gas Light Company (Washington Gas) filed a request for rehearing of the order. For the reason discussed below, we deny Washington Gas' request for rehearing.

Background

2. On December 30, 2015, in Docket No. CP16-38-000, Columbia filed an application for a certificate of public convenience and necessity for approval to construct and operate the WB Xpress Project. Columbia proposed incremental recourse rates in the certificate application. Columbia also indicated that it had executed precedent agreements with Antero, Noble Energy, Inc. (Noble), and Washington Gas for service on the project under negotiated rate agreements. No shippers protested the certificate application.

3. The Commission granted Columbia a certificate of public convenience and necessity approving the project on November 17, 2017.¹ In the November 2017 Order, the Commission approved Columbia's proposed recourse rates for the project. These recourse rates included an incremental reservation charge and Columbia's system surcharges and usage charges, excluding the Capital Cost Recovery Mechanism (CCRM) surcharge. The November 2017 Order required Columbia to file the actual tariff records

¹ *Columbia Gas Transmission, LLC*, 161 FERC ¶ 61,200 (2017) (November 2017 Order).

relating to the project, including the negotiated rate agreements for service on the project, 30 to 60 days prior to the placement of the project facilities into service. No shippers sought rehearing of the Commission's approval of the project's recourse rates.

4. On August 17, 2018, in Docket No. RP18-1063-000, Columbia filed tariff records in compliance with the November 2017 Order adding Rate Schedule FTS-WBX incremental recourse rates to its tariff comprised of a daily reservation charge of \$0.2622 per Dekatherm per day (Dth/d) and a usage charge of \$0.0189 per Dth/d. Also on August 17, 2018, in Docket No. RP18-1065-000, Columbia filed a new non-conforming negotiated rate service agreement under Rate Schedule FTS, providing 800,000 Dth/d of firm capacity to Antero on western delivery points located on the project facilities (Antero West Agreement) at a negotiated daily reservation charge of \$0.14 per Dth/d and a usage charge of \$0.00 per Dth/d. Washington Gas intervened in both proceedings. Neither filing was protested. The Antero West Agreement was accepted on September 4, 2018, in the unpublished letter order noted above, and Rate Schedule FTS-WBX was accepted in an unpublished letter order issued on September 11, 2018, in Docket No. RP18-1063-000.

5. On September 25, 2018, in Docket No. RP18-1217-000, Columbia filed negotiated rate agreements with Antero (Antero East Agreement), Noble, and Washington Gas for eastbound service on the project. Washington Gas protested Columbia's negotiated rate agreements for eastbound service on the project, asserting that Washington Gas had suffered undue discrimination because the rate for service under its negotiated rate agreement is higher than the rate for service under the Antero East Agreement. On October 25, 2018, the Commission issued an order accepting the negotiated rate agreements for eastbound service, and denying the Washington Gas protest.² The Commission stated that Washington Gas did "not aver that it requested this same negotiated rate from Columbia Gas or that the pipeline refused."³ The Commission stated that if Washington Gas believes it has suffered undue discrimination, it may file a complaint under Rule 206 of the Commission's regulations.⁴

6. On October 4, 2018, Washington Gas filed a request for rehearing of the September 4, 2018 unpublished letter order. On November 14, 2018, Columbia filed a motion for leave to answer and answer to Washington Gas' request for rehearing. Pursuant to Rule 713(d)(1) of the Commission's Rules of Practice and Procedure,

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

³ *Id.* P 20.

⁴ *Id.* PP 21-22.

Columbia's motion is denied and its answer will not be accepted because "[t]he Commission will not permit answers to requests for rehearing."⁵

Washington Gas' Request for Rehearing

7. On rehearing, Washington Gas raises concerns about the fact that the Antero West Agreement has a negotiated usage charge of \$0.00 per Dth/d. Washington Gas asserts that it seemed apparent to all concerned that all shippers on the WB Xpress Project would be paying the current base usage charge for FTS service when they shipped quantities using the project capacity. Washington Gas submits that the Commission made explicit findings that existing customers would not subsidize the project shippers with respect to Columbia's fuel Retainage Adjustment Mechanism (RAM), its Electric Power Cost Adjustment (EPCA), its Transportation Cost Rate Adjustment (TCRA), and its Operational Transaction Rate Adjustment (OTRA) costs.⁶ Washington Gas contends the Commission did not do a similar analysis for base usage costs, presumably because the application indicated that the pipeline would be charging system-wide FTS usage charge to incremental shippers, so as not to create a subsidy.

8. Washington Gas argues that it now appears that one shipper was excused from having to pay the base usage charge (though it will still pay surcharges). Washington Gas asserts that the lack of consistency between the representation in the certificate application and the actual negotiated rate filing raises issues of material fact. Washington Gas contends that if charging the project shippers the base usage charge will preclude existing shippers from subsidizing the project, the opposite may also be true. Washington Gas submits that by not charging the usage charge or by not imputing those foregone usage revenues to the overall cost of service allocable to non-incremental system shippers, the existing non-incremental shippers may be subsidizing the project.

9. Washington Gas thus argues that the Commission should reopen the record to receive evidence regarding the representations that Columbia made in the certificate application and the negotiated rate that was filed in this docket and in Docket No. RP18-1217-000. Washington Gas submits that Columbia should be required to demonstrate that non-incremental system shippers will not be subsidizing the project given that one shipper has been excused from paying a usage charge.

⁵ 18 C.F.R. § 385.713 (d)(1)(2018).

⁶ *Columbia Gas Transmission, LLC*, 161 FERC ¶ 61,200 at P 37.

Discussion

10. Washington Gas raises two issues on rehearing. First, Washington Gas contends that certain statements made by Columbia in its certificate application⁷ and the Commission in its certificate order⁸ prevent Columbia from agreeing to negotiated usage charges for service on the project. Second, Washington Gas further asserts that because one project shipper has agreed to a negotiated usage charge of \$ 0.00 per Dth/d, existing system shippers will be forced to subsidize the project.

11. We disagree with Washington Gas that Columbia's certificate application or the November 2017 Order prevent Columbia from negotiating usage charges for firm service on the project. The various statements referred to by Washington Gas in the certificate application and the November 2017 Order apply to the recourse rates for service on the project, and are unrelated to negotiated rates that may be agreed to as an alternative to the recourse rates. The Commission permits pipelines and shippers to use negotiated rates as an alternative to recourse rates that are based on the pipeline's cost of service.⁹ Under the negotiated rate program, a pipeline and shipper may negotiate rates that vary from the pipeline's otherwise applicable cost-of-service tariff rate and are not confined by either the pipeline's maximum or minimum recourse rates.¹⁰ Thus, a pipeline may negotiate a usage charge of zero, despite the fact the usage charge is included in the minimum recourse rate of pipelines with straight fixed-variable rates, such as Columbia.¹¹ As provided in Columbia's tariff and in Commission orders, Columbia may negotiate its usage charge just like any other "rates, rate components, fees, charges, surcharges, credits, retainage percentages, or formula pertaining to the same."¹² Accordingly, Washington Gas' request for rehearing is denied.

⁷ Columbia's December 30, 2015 Certificate Application in Docket No. CP16-38-000 at 16.

⁸ *Columbia Gas Transmission, LLC*, 161 FERC ¶ 61,200 at PP 10, 33, 37.

⁹ See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241-42 (1996), *order on clarification*, 74 FERC ¶ 61,194, *order on reh'g*, 75 FERC ¶ 61,024 (1996).

¹⁰ 74 FERC ¶ 61,076 at 61,238-42.

¹¹ See, e.g., *Texas Gas Transmission, LLC*, 161 FERC ¶ 61,121, at P 7 (2017) and *Columbia Gas Transmission, LLC*, 127 FERC ¶ 61,084, at P 33 (2009).

¹² *Columbia Gas Transmission, LLC*, FERC Gas Tariff, Fourth Revised Vol. No. 1, Definitions § 1.33, (defining "Negotiated Rate"). See also *Columbia Gas*

12. We also disagree with Washington Gas that Antero's negotiated usage charge might cause the existing, non-incremental shippers to subsidize the project. Commission policy expressly ensures that Columbia, and not its shippers, is at risk for any under-recovery associated with its granting of a negotiated usage charge of \$0.00 to Antero.¹³ In any event, Columbia's tariff does not include any mechanism for truing up under-recoveries of the variable costs reflected in Columbia's usage charge. As a result, there is no means by which any under-recovery of those costs could be shifted to Columbia's existing non-incremental shippers between rate cases. Furthermore, as required by the November 2017 Order, Columbia will maintain separate books and accounting of costs attributable to the incremental services provided on the project, thus enabling parties to guard against cost shifting in any general NGA section 4 rate case. Finally, we note that the Commission has previously rejected a protest by Washington Gas against Columbia's negotiated rate in the Antero East Agreement where Washington Gas asserted that Antero was being subsidized because it was receiving a \$0.00 usage charge.¹⁴ Accordingly, Washington Gas' request for rehearing is denied.

The Commission orders:

Washington Gas' October 4, 2018 request for rehearing is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Transmission, 127 FERC ¶ 61,084 at P 33 (noting that Columbia has "authority to enter into negotiated rate agreements providing for fuel retention rates (and usage charges) that vary from those in its tariff").

¹³ See, e.g., *East Tennessee Natural Gas, LLC*, 133 FERC ¶ 61,080, at P 16 (2010); *Rockies Express Pipeline LLC*, 138 FERC ¶ 61,241, at PP 32-33 (2012) and *Florida Gas Transmission Co.*, 163 FERC ¶ 61,017, at P 41 (2018).

¹⁴ *Columbia Gas Transmission, LLC*, 165 FERC ¶ 61,042 (2018).