

143 FERC ¶ 61,081
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 30, 2013

In Reply Refer To:
Carolina Gas Transmission Corporation
Docket No. RP13-734-000

Carolina Gas Transmission Corporation
220 Operation Way, Mail Code J50
Cayce, SC 29033

Attention: Michael P. Wingo, Director
Rates, Regulatory and Gas Control

Dear Mr. Wingo:

1. On March 28, 2013, Carolina Gas Transmission Corporation (CGT) filed revised tariff records¹ reflecting a non-conforming service agreement that it entered into with Rainbow Energy Marketing Corporation (Rainbow) and to add the non-conforming service agreement to the list of non-conforming agreements set forth in its tariff. The Commission will accept the contract and the associated tariff records, effective May 1, 2013, subject to conditions, as discussed below.
2. CGT states that section 24 of the General Terms and Conditions of its tariff, entitled Summer Mitigation, provides certain Firm Transportation (FT) customers a reduction in their Maximum Daily Transportation Quantity (MDTQ) during the months of May through October each year. Further, CGT states that section 2.7 of Rate Schedule FT provides authority for CGT to sell to interested shippers the capacity made available each month of May through October by Summer Mitigation, and provides that such capacity may be sold on a multi-year basis.

¹ Carolina Gas Transmission Corporation, FERC NGA Gas Tariff, CGT Tariff and Rate Filings, [GT&C - Section 42, Non-Conforming Agreements, 1.0.0](#); [Section 700, Non-Conforming Service Agreements, 1.0.0](#); [Contract: BH10288.01, Rainbow Energy Marketing Corporation, 0.0.0](#).

3. CGT explains that when CGT added its firm displacement backhaul service to the tariff (via Rate Schedule Backhaul Transportation Service (BH)), it did not anticipate that a shipper interested in service under Rate Schedule BH would request the seasonal service made possible by Summer Mitigation. Accordingly, it states that it did not include the seasonal service provisions found in section 2.7 of Rate Schedule FT in Rate Schedule BH.

4. CGT states that it entered into a long-term agreement under Rate Schedule BH with Rainbow for seasonal transportation service made available as a result of Summer Mitigation MDTQ reductions, and corresponding Maximum Daily Receipt Quantity reductions during the months of May through October. CGT states that to accomplish this result, it included in Rainbow's Rate Schedule BH transportation service agreement non-conforming language designed to achieve the same purpose found in section 2.7 of Rate Schedule FT.

5. Public notice of the filing was issued on March 29, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.² Pursuant to Rule 214,³ all timely filed motions to intervene and any unopposed motions to intervene 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. No protests or adverse comments were filed.

6. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.⁴ In *Columbia*, the Commission clarified that a material deviation is any provision in a service agreement that: (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties.⁵ The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.⁶ However, not all material deviations are impermissible. As the Commission

² 18 C.F.R. § 154.210 (2012).

³ 18 C.F.R. § 385.214 (2012).

⁴ 18 C.F.R. § 154.1(d) (2012); 18 C.F.R. § 154.112(b) (2012).

⁵ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

⁶ *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

explained in *Columbia*,⁷ provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination.⁸

7. The Commission has held that the ability to obtain seasonal service is a valuable right, which must be offered to all shippers pursuant to not unduly discriminatory conditions.⁹ In the present case, section 2.7 of Rate Schedule FT provides CGT with authority to offer seasonal service by Summer Mitigation to all Rate Schedule FT shippers. However, Rate Schedule BH, under which CGT proposes to provide service here to Rainbow, does not provide like authority to all Rate Schedule BH shippers. The Commission finds that CGT's instant non-conforming proposal, under which CGT would provide seasonal service by Summer Mitigation only to Rainbow without offering it to other Rate Schedule BH shippers, presents a substantial risk of undue discrimination and therefore constitutes an impermissible material deviation from CGT's form of service agreement.

8. Accordingly, the Commission directs that, within 30 days of this order, CGT either eliminate the provisions of the agreement that offer Rainbow seasonal service by Summer Mitigation under Rate Schedule BH or revise its tariff and *pro forma* service agreement to offer seasonal service by Summer Mitigation to all shippers requesting service under Rate Schedule BH, pursuant to not unduly discriminatory conditions. The Commission accepts the proffered contract and tariff records subject to the above conditions.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁷ *Columbia*, 97 FERC at 62,003-04.

⁸ *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

⁹ *Granite State Gas Transmission Inc.*, 112 FERC ¶ 61,201, at P 4 (2005).