

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 5, 2007

In Reply Refer To:
Columbia Gulf Transmission Company
Docket No. RP07-412-000

Columbia Gulf Transmission Company
5151 San Felipe
Suite 2500
Houston, TX 77056

Attention: James R. Downs
Director of Regulatory Affairs

Reference: Parking and Lending Service

Dear Mr. Downs:

1. On April 27, 2007, Columbia Gulf Transmission Corporation (Columbia Gulf) filed revised tariff sheets¹ proposing to revise the Parking and Lending (PAL) Service Rate Schedule and the PAL *pro forma* Service Agreement. Columbia Gulf states that the service being provided is subject to the terms and conditions of the Master PAL Agreement and to provide for a new Appendix A. Appendix A will be incorporated by reference into the Master PAL Agreement and will reflect all of the specific details of each PAL transaction. Several sections of the tariff are being revised to delete blank fields for rates, service dates, and other conditions of service that will now be contained in the newly established Appendix A. The tariff will also include a reference to a "Schedule for Service" which is being included in Appendix A. In addition, Columbia Gulf proposes to streamline the contracting procedures for

¹ First Revised Sheet No. 85, First Revised Sheet No. 86, Second Revised Sheet No. 333, Original Sheet No. 333A, Original Sheet No. 333B, and Original Sheet No. 333C to FERC Gas Tariff, Second Revised Volume No. 1.

shippers under the PAL rate schedule. The tariff sheets are accepted, effective August 1, 2007, subject to the condition set forth below.²

2. Except for one ministerial change, Columbia Gulf asserts that its proposed changes were previously approved by the Commission when proposed by Columbia Gulf's sister pipeline Columbia Gas Transmission Corporation (Columbia) in Docket No. RP06-311.³

3. Like Columbia, which has submitted its own revised tariff sheets to further streamline its PAL service procedures in a parallel proceeding,⁴ Columbia Gulf will also require a shipper to execute a Master PAL Agreement, along with separate Transaction Confirmation Sheets known as "Appendix A," when necessary. Columbia Gulf states that as a shipper from time to time desires to enter into new individual PAL transactions with Columbia Gulf, those transactions will be memorialized in Appendix A to the Master PAL Agreement. Columbia Gulf states that a separate Appendix A to the Master PAL Agreement will be used for each transaction and each will bear the relevant Master PAL Agreement number and a unique Transaction Confirmation identification (ID) number. Columbia Gulf further states that, on the shipper's behalf, it will complete the rate, quantity, and other terms required by the Transaction Confirmation Sheet consistent with the agreed-upon transaction.⁵ Columbia Gulf states that the completed Transaction Confirmation Sheet will be automatically e-mailed to the shipper and will be deemed executed if not disputed in writing within two Business Days.⁶

4. Columbia Gulf states that by eliminating the existing requirement that the current PAL *pro forma* service agreement be executed for each individual PAL transaction, an unnecessary step is eliminated, and an inherently more efficient and reliable electronic contracting process is implemented. Further, Columbia Gulf states

² On May 17, 2007, Columbia Gulf filed a request to change the proposed effective date from June 1, 2007 to August 1, 2007.

³ *Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,181 (2006), *order on reh'g*, 117 FERC ¶ 61,054 (2006).

⁴ See Columbia's filing of April 27, 2007 in Docket No. RP07-413-000.

⁵ See section 6 of the Master PAL Agreement (Sheet No. 538).

⁶ *Id.*

that its proposed Master PAL Agreement/multiple Appendix A(s) approach is similar to the PAL tariff provisions of other interstate gas pipeline companies.⁷

5. Public notice of the filing was issued on May 2, 2007. Interventions and protests were due as provided in section 154.210, 18 C.F.R. § 154.210 (2006), of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this state of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Virginia Power Energy Marketing, Inc. (VPEM), Baltimore Gas and Electric Company (BGE), and Piedmont Natural Gas Company, Inc. (Piedmont) filed protests. Piedmont also filed a request for clarification. On May 16, 2007, Columbia Gulf filed an answer to the protests and request for clarification and BGE filed a reply to Columbia Gulf's answer. The Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers.⁸ In this case, the Commission will accept Columbia Gulf's answer and BGE's reply to Columbia Gulf's answer as they provide information that may assist the Commission in its decision-making process.

6. VPEM, BGE, and Piedmont challenge one aspect of Columbia Gulf's proposal: that Appendix A to the Master PAL Agreement, upon being emailed to the shipper, will be deemed executed if not disputed by the Shipper in writing within two business days. BGE and Piedmont argue that holding shippers to terms they do not expressly assent to can lead to countless errors and is inconsistent with the basic tenets of contract law, that require evidence of acceptance of the terms of a commercial offer before a contract can be deemed to exist. Additionally, Piedmont argues that the length of time specified in Columbia Gulf's proposal (*i.e.*, two business days) is too short and does not provide a reasonable opportunity for a shipper's employees to receive, review, and route Transaction Confirmations for necessary management approvals. VPEM and BGE claim that Columbia Gulf's

⁷ See, *e.g.*, Sheet No. 425 of Southern Natural Gas Company's tariff ("Company and Shipper shall execute a new Exhibit A for each park and loan service agreed to hereunder. Each Exhibit A shall set forth a deal number for each transaction, which Shipper will use when nominating its service thereunder."); Sheet No. 466 of Northern Border Pipeline Company's tariff ("Buyer shall initiate a request for interruptible park and loan service by executing and delivering to Company one or more Exhibit A(s). Upon execution by Company, Buyer's Exhibit(s) A shall be incorporated and made a part hereof.")

⁸ 18 C.F.R. § 385.213(a)(2) (2006).

proposal is virtually identical to a proposal that was rejected by the Commission in *Northern Natural Gas Company*.⁹

7. In its answer, Columbia Gulf claims that BGE and VPEM ignore the Commission's later September 22, 2004 Order on Northern's compliance filing in that same proceeding.¹⁰ Columbia Gulf contends that Northern argued that a shipper can agree in advance on the terms under which a service agreement will be binding, including agreeing that a service agreement will be binding if the shipper does not decline the service agreement within two business days. Columbia Gulf asserts that the Commission, in accepting Northern's compliance filing in that proceeding, stated that "acceptance of a contract requires an act of affirmation from the shipper, and that Northern's proposed agreement in advance qualifies as such an act."¹¹

8. Columbia Gulf argues that section 6 of its proposed Master PAL Agreement fully comports with the Commission's September 22, 2004 Order on Northern's compliance filing by including a proposed agreement in advance, which constitutes the proactive action by shippers that the Commission requires. Columbia Gulf's Master PAL Agreement states that a:

Shipper must execute an Appendix A in order to receive service under this Agreement. On the Shipper's behalf, Transporter will complete the rate, quantity, and other terms required by the Appendix A consistent with the agreed upon transaction. The completed Appendix A will be automatically e-mailed to the Shipper and will be deemed executed if not disputed in writing within 2 business days. The Appendix A after execution shall be incorporated in and made a part hereof.

9. Further, Columbia Gulf argues that its proposal mirrors the North American Energy Standards Board (NAESB) Base Contract for Sale and Purchase of Natural Gas, which includes a provision whereby the nomination, scheduling and confirmation of volumes are made via an Exhibit A (transaction confirmation sheets) under an already existing contract. Columbia Gulf asserts that the NAESB Exhibit A includes a provision that deems the confirmation accepted if not disputed in writing within two business days. Columbia Gulf argues that, like the NAESB Transaction

⁹ *Northern Natural Gas Co.*, 107 FERC ¶ 61,217 (2004) (*Northern Natural*).

¹⁰ *Northern Natural Gas Co.*, 108 FERC ¶ 61,287 (2004) (*Northern Natural II*).

¹¹ *Id.* at P 7.

Confirmation process, it will require that the Shipper execute a service agreement – the Master PAL Agreement – before it can nominate, schedule, and confirm volumes under one or more Appendix A Transactions Confirmations and that, like the NAESB Confirmation form, Appendix A is binding unless disputed within two business days.

10. In its reply to Columbia Gulf’s answer, BGE renews its protest against being held to the terms of a Transaction Confirmation Sheet prepared and e-mailed by Columbia Gulf, absent a reply by BGE within two days of Columbia Gulf’s e-mail. BGE states that it has not “agreed in writing in advance” to follow the procedure that Columbia Gulf is requesting the Commission to approve. BGE asserts it filed its protest specifically to inform the Commission that it disagrees with this procedure. BGE characterizes Columbia Gulf’s proposal as binding customers to documents that have never been executed, and for which an acknowledgement or receipt has not been given. BGE requests that the Commission find that Transaction Confirmation Sheets not confirmed in writing within a specified time frame be deemed as void.

11. We find that Columbia Gulf’s streamlined procedures, a Master PAL Agreement with multiple Appendix A(s) for rendering service under Rate Schedule PAL, is generally reasonable. The revised procedures, including Columbia Gulf’s proposal to deem the Transaction Confirmation Sheet, Appendix A, as binding and executed unless disputed in writing within two business days, should enable shippers to transact business in a more timely and efficient manner in a rapidly evolving energy marketplace. However, we recognize that some shippers, for various reasons, may not wish to follow this process. For example, a shipper requesting PAL service may need more than two business days to review the completed Appendix A.

12. In *Northern Natural II*, we approved the following language for Northern’s tariff:

If Northern and Shipper have agreed in writing in advance, this Service Agreement shall be deemed to be executed and shall be binding for all purposes if (1) Shipper nominates under this Service Agreement; or (2) Shipper has not notified Northern in writing that it declines this Service Agreement within two (2) business days of the date of the Service Agreement. (emphasis added)

Northern’s tariff language thus gives the shipper the option of agreeing in writing in advance that the agreement will be considered executed if the shipper does not object within two days. However, this language does not foreclose the shipper’s option of declining to follow that procedure. Should the shipper choose not to execute a written agreement in advance agreeing to that procedure, it would then need to execute the service contract in the normal course of business with Northern. Columbia Gulf, however, does not provide shippers with such flexibility in its proposal. Section 6 of

the Master PAL Agreement requires the shipper to execute a written agreement in advance agreeing to the listed procedure in order to receive service (“Shipper *must* execute an Appendix A in order to receive service under this Agreement . . . The completed Appendix A . . . *will be deemed executed* if not disputed in writing within 2 business days” (emphasis added)). Consistent with the *Northern Natural* decisions, we find that shippers must have an option as to whether or not to follow this procedure. Columbia Gulf is directed to revise its tariff accordingly.

13. Piedmont seeks clarification that the requirement to dispute Transaction Confirmations “in writing” includes documents in electronic file formats such as faxes, immediate messages, or electronic mail transmissions. In its answer, Columbia Gulf clarifies that the requirement to dispute Transaction Confirmations “in writing” includes faxes and electronic mail transmissions to Columbia Gulf’s offices, but does not include immediate messages.¹²

14. The Commission accepts Columbia Gulf’s tariff sheets to be effective August 1, 2007, subject to Columbia Gulf filing revised tariff sheets, within 15 days of the date of this order, consistent with the discussion above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹² Columbia notes that it does not include immediate messages in the category of acceptable writings, because they are not provided via nor saved within a supported IT function in its corporate IT network.