

127 FERC ¶ 61,055
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 17, 2009

In Reply Refer To:
Columbia Gulf Transmission Company
Docket No. RP96-389-091

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

Attention: James R. Downs, Director of Regulatory Affairs

Reference: Amendment to Negotiated Rate Agreement with JP Morgan Ventures
Energy Corporation

Dear Mr. Downs:

1. On March 18, 2009, Columbia Gulf Transmission Company (Columbia Gulf) filed an amendment to its FTS-1 Service Agreement No. 68346 between Columbia Gulf and JP Morgan Ventures Energy Corporation (JP Morgan).¹ The filing reflects that, for the contract year beginning June 1, 2009, and continuing year to year thereafter, Columbia Gulf and JP Morgan agreed to a new negotiated rate of \$0.08 (eight cents) per Dth for transportation demand of 145,000 Dth per day. In addition, the parties have agreed to a new Annual Minimum Pay Obligation of 12,000,000 Dth per year beginning June 1, 2009. Columbia Gulf requests waiver of the 30-day notice period to place the tariff sheets into effect effective March 1, 2009. Waiver of the 30-day notice period is granted, and the negotiated rate agreement is accepted effective March 1, 2009, as proposed, subject to the conditions described below.

¹ The original agreement was between Columbia Gulf and Williams Energy Market and Trading Company dated December 5, 2000. JP Morgan is the predecessor in interest.

2. Columbia Gulf states that the subject agreement was filed with and approved by the Commission on June 5, 2000, in Docket No. RP96-389-006.² The Commission also approved an amendment to this agreement in an unpublished letter order dated January 6, 2009 in Docket No. RP96-389-090, which revised the primary receipt points.

3. Public notice of Columbia Gulf's filing was issued on March 23, 2009, with comments due by March 30, 2009. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), 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 interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Orange and Rockland Utilities, Inc. (O&R) and Washington Gas Light Company (Washington Gas) filed comments in this proceeding. On March 31, 2009, Columbia Gulf filed an answer to address O&R's request for condition and Washington Gas' comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Columbia Gulf's answer because it provides information that will assist us in our decision-making process.

4. Washington Gas and O&R's comments concern section 3.b. of the service agreement which provides, in pertinent part, that the "currently effective fuel rate shall not be applicable to mainline transportation services provided from the primary receipt points to the primary delivery point, as specified in Appendix A to the extent that no compression is required."

5. Washington Gas states that it is its understanding that, consistent with Commission policy and Columbia Gulf's recent fuel filings, Columbia Gulf charges its backhaul shippers for LAUF. Therefore, it states, the negotiated rate shipper, here JP Morgan, when shipping on a backhaul basis using its primary points, should be charged the LAUF portion of the overall fuel retainage.³ However, Washington Gas states that that Columbia Gulf's negotiated rate agreement is silent on what quantities will be retained, and that Columbia Gulf must charge JP Morgan when shipping on a backhaul basis for lost and unaccounted for gas (LAUF), as it charges its other backhaul shippers,

² *Columbia Gulf Transmission Co.*, Docket No. RP96-389-006, unpublished letter order issued June 5, 2000 (approving a contract between Columbia Gulf and Williams Energy Marketing and Trading Company, JP Morgan's predecessor in interest).

³ Pursuant to section 1.33 of the General Terms and Conditions (GT&C) of Columbia Gulf's tariff the term "Retainage" is defined to include both company use and LAUF gas.

consistent with Commission policy. Washington Gas requests that the Commission require Columbia Gulf and JP Morgan to clarify their agreement to explicitly require the retention of LAUF when the shipper is using its primary points.

6. O&R requests that the Commission require Columbia Gulf to impute JP Morgan's volumes in Columbia Gulf's filings under its fuel recovery mechanism to insure that O&R and other Columbia Gulf customers are not required to subsidize Columbia Gulf's services for JP Morgan. O&R asserts that there is nothing in Columbia Gulf's tariff generally exempting shippers from fuel retention if there is no compression between specific mainline receipt and delivery points, and, in any case, Columbia Gulf should be required to absorb the LAUF and fuel use for compressors costs if JP Morgan is not required to provide fuel.⁴ O&R states that, in the event that Columbia Gulf's services for JP Morgan are backhauls, Columbia Gulf should be required to impute JP Morgan's volumes for purposes of the calculation of LAUF.⁵

7. Columbia Gulf, in its answer, asserts that receipt and delivery points specified in Appendix A to the service agreement provide JP Morgan backhaul transportation and that, on Columbia Gulf's mainline, backhauls are made without the use of compression. Columbia Gulf further asserts that, although the service agreement does not expressly state that LAUF will be assessed, consistent with Commission policy Columbia Gulf assesses LAUF for all transactions, including those for which fuel (company use gas) is not required, such as backhauls. Columbia Gulf argues that Washington Gas's comments should be rejected since Sheet No. 18 separately states the retainage rates for "Unaccounted For" gas rate separately from the combined "Company Use and Unaccounted For" rate so that all shippers can readily know the LAUF rate that will apply to backhaul transactions for which compression is not used. Consequently, Columbia Gulf contends that there is no need to expressly state in the service agreement Columbia Gulf's application of this Commission policy.

8. Columbia Gulf argues that O&R's request to require Columbia Gulf to impute JP Morgan's volumes in Columbia Gulf's filing under its fuel recovery mechanism should be rejected. Columbia Gulf asserts that it assesses only LAUF for backhauls in keeping with the Commission's policy that LAUF is applicable to all transportation even if fuel is not used. Columbia Gulf further asserts that its annual Transportation Retainage Adjustment (TRA) filing made pursuant to section 33 of its GT&C determines the fuel or

⁴ O&R cites *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 45 (2003) (*Dominion*).

⁵ O&R Comments at 3, n.2.

company use portion of its retainage rate by excluding backhaul volumes⁶ and that the backhaul quantities are included in the calculation of the LAUF⁷ consistent with longstanding Commission accepted practice.

9. The Commission accepts Columbia Gulf's filing, subject to the conditions discussed below. Section 3.b. of the negotiated rate agreement with JP Morgan provides that, during each contract year commencing with the contract year beginning June 1, 2009, the "fuel rate" included in the Retainage charge will not apply to transactions from primary receipt points to primary delivery points to the extent that no compression is required, i.e., backhauls for JP Morgan. As Columbia Gulf recognizes, Commission policy requires that the LAUF rate to be assessed for all transactions,⁸ including those where the Commission allows a fuel charge of zero because no fuel is used.⁹ Columbia Gulf argues that, since its Sheet No. 18 for FTS-1 service separately states the retainage rates for LAUF and the combined Company Use and Unaccounted For rate, shippers can readily know that LAUF will apply to backhauls where compression is not used. However, as Columbia Gulf itself states (at Answer 3), there is no express provision in the service agreement that requires JP Morgan to be charged the LAUF retainage rate when transportation of gas is provided without compression, i.e., by backhaul. While Sheet No. 18 separately states the LAUF retainage rates and combined company use and LAUF retainage rates, section 3.b. of the instant negotiated rate agreement does not clearly state that LAUF retainage rates will be charged for backhauls for JP Morgan under the agreement. The exclusion of "fuel rates" in section 3.b. for mainline transportation from the primary receipt points to the primary delivery point also does not imply a requirement to pay LAUF charges for the transactions to which that exclusion applies. Therefore, Columbia Gulf is directed, within thirty days of the date of this order, to expressly state in the service agreement that JP Morgan will be charged the LAUF retainage rate for transactions excluded from "fuel rate" charges by section 3.b.¹⁰

⁶ *Citing*, Columbia Gulf's February 27, 2009 annual TRA filing in Docket No. RP09-423-000, Appendix A, at 3, lines 25-28.

⁷ *Citing, Id.*, Appendix A, at 3, lines 29-33.

⁸ *See, e.g., Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119, at 61,353 (2002).

⁹ *See, e.g., Gulf South Pipeline Co., LP*, 111 FERC 61,463, at P 14 (2005).

¹⁰ Columbia Gulf is directed to make the same changes with respect to section 3.a. of the service agreement or explain why it should not be revised since that section, which applies until superseded by section 3.b. on June 1, 2009, provides that the currently effective fuel shall not apply to mainline transportation service between the primary receipt points and primary delivery point.

10. The Commission denies O&R's request that Columbia Gulf be required to impute JP Morgan's volumes in future fuel recovery filings in order to prevent subsidization of the costs by its customers.¹¹ However, Columbia Gas explains that these transactions are backhauls on its mainline made without the use of compression. Therefore, there is no fuel cost. Further, Columbia Gulf states that it charges the LAUF rate for these transactions consistent with Commission policy. Accordingly, O&R's assertion of the need to prevent subsidization of these costs is unsupported. Finally, contrary to O&R's assertion (Protest at 3), as Columbia Gulf states (Answer at 4), Columbia Gulf's Rate Schedule FTS-1, section 3(e), and Rate Schedule ITS-1, section 4(d), provide that Columbia Gulf may not retain gas from any of its shippers under those rate schedules utilizing facilities where no compression is required.

11. However, as discussed above, Columbia Gulf's Rate Schedule FTS-1, section 3(e), and Rate Schedule ITS-1, section 4(d), do not expressly provide that Columbia Gulf may retain gas from shippers utilizing facilities where no compression is required to compensate for LAUF. Accordingly, similarly to the clarification to the service agreement required above, Columbia Gulf is directed to clarify these tariff provisions and all other relevant tariff provisions, within thirty days of the date of this order, to expressly state that the LAUF retainage rate will be charged for such transactions consistent with Commission policy.

12. Therefore, waiver of the 30-day notice period is granted and the negotiated rate agreement is accepted to be effective March 1, 2009, subject to the conditions set forth in this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹¹ O&R cites *Dominion* for support. However, in *Dominion*, the Commission found that the pipeline did not explain, in supporting its precedent agreement, why there was no incurrence of the fuel costs at secondary receipt points during the summer period and that it was unlikely such costs would not be incurred. The Commission required that if the pipeline chose to enter a negotiated rate agreement and not assess those charges it must impute the billing determinants based on those transactions in its annual tracking filing. *Dominion* at P 43-45. In contrast, in this case, Columbia Gulf has explained that the subject transactions are backhauls on its mainline which require no compression and how these costs are treated in its TRA.