

130 FERC ¶ 61,135
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Columbia Gulf Transmission Company
Columbia Gas Transmission, LLC

Docket Nos. RP10-381-000
RP10-382-000

ORDER DENYING REQUESTS FOR WAIVER OF TARIFF PROVISIONS

(Issued February 25, 2010)

1. On February 16, 2010, Columbia Gulf Transmission Company (Columbia Gulf) filed a petition for waiver of the requirement in section 33.2 of the General Terms and Conditions (GT&C) of its tariff¹ to file its annual Transportation Retainage Adjustment (TRA) by March 1, 2010 to become effective April 1, 2010. Also on February 16, 2010, Columbia Gas Transmission, LLC (Columbia Gas) filed a petition for waiver of the requirement in section 35.2 of the GT&C of its tariff² to file its annual Retainage Adjustment Mechanism (RAM) by March 1, 2010 to become effective April 1, 2010. For the reasons discussed below, we deny Columbia Gulf's and Columbia Gas's requests for waiver. Accordingly, by March 1, 2010, Columbia Gulf is required to submit its 2010 TRA filing and Columbia Gas is required to submit its 2010 RAM filing, each in accordance with its tariff.

I. Background

2. Columbia Gulf currently recovers its system's fuel requirements and lost and unaccounted for gas (LAUF) by retaining in-kind a percentage of gas tendered by customers. Section 33 of the GT&C of Columbia Gulf's tariff governs how Columbia Gulf's retainage percentages are established and annually updated. Columbia Gulf

¹ Fourth Revised Sheet No. 268 to Columbia Gulf's FERC Gas Tariff, Second Revised Volume No. 1.

² First Revised Sheet No. 381 to Columbia Gas's FERC Gas Tariff, Third Revised Volume No. 1.

adjusts its retainage percentages annually by filing with the Commission on or before March 1, with such adjustment to become effective April 1.

3. Columbia Gas currently recovers its system's fuel requirements and LAUF by retaining in-kind a percentage of gas tendered by customers. Section 35 of the GT&C of Columbia Gas's tariff governs how Columbia Gas's retainage percentages are established and annually updated. Columbia Gas adjusts its retainage percentages annually by filing with the Commission on or before March 1, with such adjustment to become effective April 1.

4. On February 25, 2009, in Docket No. RP09-393-000, Columbia Gas submitted its annual RAM filing, as modified on March 9, 2009 in Docket No. RP09-393-001, to revise its fuel retainage factors effective April 1, 2009. On March 31, 2009, the Commission accepted and suspended Columbia Gas's proposed RAM rates, subject to further Commission review.³ On April 9, 2009, Columbia Gas filed responses in compliance with the Commission's March 31, 2009 Order and a revised tariff sheet. On May 8, 2009, Columbia Gas's proposed tariff sheet was accepted, subject to further Commission action with respect to Columbia Gas's responses to the March 31, 2009 Order,⁴ and on February 19, 2010, the Commission found the additional information provided by Columbia Gas complied with the Columbia Gas March 31 Order.⁵

5. On February 27, 2009, in Docket No. RP09-423-000, Columbia Gulf submitted its annual TRA filing. Columbia Gulf requested waivers to permit a July 1, 2009 effective date, and later an August 1, 2009 effective date, instead of the tariff prescribed April 1 effective date, to allow it to continue discussions with its customers regarding an alternative fuel retainage recovery mechanism. Unable to finalize an alternative fuel retainage recovery mechanism, Columbia Gulf filed revised tariff sheets on July 1, 2009 to implement revised retainage percentages. On July 30, 2009, the Commission accepted and suspended the tariff sheets filed on July 1, 2009, to be effective August 1, 2009, subject to refund and the outcome of a technical conference.⁶ Commission staff convened a technical conference on September 24, 2009 to discuss the issues raised by

³ *Columbia Gas Transmission, LLC*, 126 FERC ¶ 61,318 (2009) (March 31, 2009 Order).

⁴ *Columbia Gas Transmission, LLC*, Docket No. RP09-393-002 (May 9, 2009) (unpublished letter order).

⁵ *Columbia Gas Transmission, LLC*, Docket No. RP09-393-002 (Feb. 19, 2009) (unpublished letter order).

⁶ *Columbia Gulf Transmission Co.*, 128 FERC ¶ 61,105 (2009).

the protests to Columbia Gulf's July 1, 2009 TRA filing, as well as explore the causes of the increased LAUF on Columbia Gulf's system and the steps it has taken to address the problem.

6. On November 9, 2009, Columbia Gulf filed *pro forma* tariff sheets in Docket No. RP10-134-000, proposing an incentive fuel savings sharing program utilizing fixed fuel retention percentages (Incentive Fixed Fuel (IFF) filing). On December 10, 2009, the Commission directed Commission Staff to convene a technical conference to address the issues raised by Columbia Gulf's filing in Docket No. RP10-134-000, as well as the issues raised in Docket Nos. RP09-423-000 and RP09-423-002 that relate to the IFF proposal.⁷ On January 19, 2010, Commission Staff convened a technical conference to consider the issues raised by Columbia Gulf's IFF proposal and what changes, if any, might be necessary or appropriate.

7. On February 16, 2010, Columbia Gulf and Columbia Gas each filed requests for waiver of the upcoming annual fuel filing deadlines set forth in each of their tariffs, as described in more detail below.

II. Waiver Requests

8. Columbia Gulf requests waiver of GT&C section 33.2 to permit Columbia Gulf an extension to file its 2010 TRA filing until the Commission issues a decision on: (a) Columbia Gulf's 2009 TRA filing in Docket No. RP09-423; (b) Columbia Gulf's pending IFF filing in Docket No. RP10-134; and (c) Columbia Gas's 2009 RAM filing in Docket No. RP09-393. Likewise, Columbia Gas requests waiver of GT&C section 35.2 to permit Columbia Gas an extension to file its 2010 RAM filing until the Commission issues a decision in the same three proceedings.

9. Columbia Gulf states that its currently effective retainage rates have been in place since August 1, 2009 and were adjusted to exclude the calculated unrecovered surcharge component for each zone. Columbia Gas states that its currently effective retainage rates have been in place since August 1, 2009 and included Operational Balancing Agreement adjustments between Columbia Gas and Columbia Gulf resulting from third party measurement investigations on Columbia Gulf. Columbia Gulf and Columbia Gas state that the unrecovered surcharge component in their next annual filings cannot be finalized until the Commission issues its order approving the adjustments resulting from the third party investigations on Columbia Gulf, which adjustments are pending in both Columbia Gulf's Docket No. RP09-423 and in Columbia Gas's last annual RAM in Docket No. RP09-393 and reflect calculations carried through September of 2008. Columbia Gulf and Columbia Gas state that additional adjustments for the period covering October

⁷ *Columbia Gulf Transmission Co.*, 129 FERC ¶ 61,214 (2009).

2008 through the effective date of the Incentive Fixed Fuel mechanism will need to be effectuated if the IFF, TRA, and RAM adjustments are approved in order to reflect an accurate retainage rate for each pipeline. Columbia Gulf and Columbia Gas state that whether the adjustments proposed in Docket Nos. RP09-423, RP09-393 or in RP10-134 are approved or rejected, the TRA rates will be materially impacted.

10. Rather than go forward with new annual filings that continue to rely upon those adjustments, and given Columbia Gulf's pending IFF proposal, Columbia Gulf and Columbia Gas each propose to keep their current retainage rates in effect as they are until orders in the above referenced dockets are issued. Columbia Gulf and Columbia Gas state that leaving current rates in effect avoids multiple rate changes which would be difficult for customers to administer and unnecessarily add uncertainty to the market. Columbia Gulf and Columbia Gas state that by granting these waivers, customers will not be subjected to yet another proceeding pancaked upon two outstanding proceedings. After the orders are issued in the IFF, TRA, and RAM proceedings, Columbia Gulf and Columbia Gas state that they will promptly follow the directives of the orders and make necessary changes to the retainage rates.

III. Public Notice, Intervention, and Comments

11. Notice of Columbia Gulf's filing was issued on February 17, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2009). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Baltimore Gas and Electric Company (Baltimore Gas), Piedmont Natural Gas Company, Inc. (Piedmont), Sequent Energy Management, L.P. (Sequent), Washington Gas Light Company (Washington Gas), and the City of Charlottesville, Virginia and the City of Richmond, Virginia (collectively, Cities)⁸ filed protests. On February 22, 2010, Columbia Gulf and Columbia Gas each filed an answer to the protests of Baltimore Gas, Piedmont, Sequent and Washington Gas. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), answers to protests are prohibited unless otherwise ordered by the decisional authority. We will accept Columbia Gulf's and Columbia Gas's answers because they provide information that will assist us in our decision-making process.

⁸ The Cities filed their motion to intervene out of time and protest on February 23, 2010.

12. The Cities, Washington Gas, Sequent, Baltimore Gas, and Piedmont oppose Columbia Gulf's and Columbia Gas's waiver requests. Several of the opposing parties argue that, on balance, they would rather pay up-to-date and accurate retention rates, regardless of the administrative inconvenience of future adjustments to those rates. Baltimore Gas argues that Columbia Gulf's and Columbia Gas's waiver requests defeat the purpose of the fuel tracker mechanism which is to keep fuel retention percentages current and to keep the Commission and customers informed of Columbia Gulf's and Columbia Gas's current throughput, fuel use, and LAUF. Baltimore Gas, along with Sequent, states that it is essential to operations and business planning to have the benefit of updated throughput, fuel use, and LAUF information. Baltimore Gas also points out that there is nothing unusual about cases before the Commission being protracted, with orders of acceptance being made subject to further adjustment upon action taken in other Commission dockets.

13. Several of the protesting parties also contend that without updated fuel use and LAUF information the parties will be unable to properly evaluate the pending filings, in particular, Columbia Gulf's IFF proposal. They state that Columbia Gulf has failed to provide updated fuel use and LAUF information despite multiple requests. They contend that, without such information, the parties to the IFF proceeding will be unable to evaluate whether Columbia Gulf has proposed a fixed fuel rate that is fair and reasonable.⁹ Washington Gas also points out that, in Docket No. RP09-423, Columbia Gulf agreed that it would update the third-party investigative report as part of its 2010 TRA filing.

14. In their answers, Columbia Gulf and Columbia Gas maintain that they cannot file accurate numbers for a new TRA and a new RAM, respectively, until the earlier proceedings are decided. Columbia Gulf and Columbia Gas claim that it is not the IFF proceeding that is the primary driver behind the request for waiver. Rather, they state that it is the lack of decisions in Columbia Gulf's 2009 TRA proceeding in Docket No. RP09-423 and Columbia Gas's 2009 RAM proceeding in Docket No. RP09-393 that is central reason why Columbia Gas and Columbia Gulf seek waiver of the March 1, 2010 deadlines. Columbia Gulf states that the fact that a new TRA filing will result in new retainage rates that could be compared to the IFF proposed rates has nothing to do with the request for a waiver.

⁹ Washington Gas states that recent operational changes on Columbia Gulf, including the installation of a new compressor station and repairs to its system, may have reduced fuel requirements and LAUF on the pipeline.

IV. Determination

15. As discussed below, because Columbia Gulf and Columbia Gas have not shown good cause as to why they should be permitted an indefinite extension to file their annual fuel filings, we deny their requests for waiver. Accordingly, by March 1, 2010, Columbia Gulf is required to submit its 2010 TRA filing and Columbia Gas is required to submit its 2010 RAM filing, each in accordance with its tariff.

16. As the Commission stated in *Colorado Interstate Gas Company*, granting waiver of a pipeline's existing tariff is within the discretion of the Commission and is not automatic.¹⁰ A pipeline must show good cause to support its request for a waiver and "good cause for waiver of existing tariff mechanisms cannot be demonstrated if the waiver unreasonably upsets the balance of expectations of the parties subject to those provisions."¹¹ Columbia Gulf and Columbia Gas state that the central reason why they seek waiver of the March 1, 2010 deadlines is the lack of a decision in the 2009 TRA filing and 2009 RAM filing. However, since the waiver requests were filed, the Commission has acted on the pending matters in those proceedings. As mentioned above and noted by the Cities, on February 19, 2009 in Docket No. RP09-393, the Commission issued an order on Columbia Gas's 2009 annual RAM filing, without any changes¹² and contemporaneously with this order, the Commission has issued an order on Columbia Gulf's annual 2009 TRA filing in Docket No. RP09-423, without any changes other than requiring Columbia Gulf to file an updated investigative report by March 10, 2010 in the same docket as it make its 2010 TRA filing.¹³ Thus, the central reason for the pipelines' waiver requests no longer exists.

17. In addition, as pointed out by Baltimore Gas, one of the purposes of requiring Columbia Gulf and Columbia Gas to make an annual fuel retainage adjustment filing is to keep the pipeline's fuel retainage percentages current and to keep the Commission and the pipeline's customers informed of the pipeline's current throughput, fuel use, and LAUF volumes. As indicated by several parties, shippers rely upon this information to inform their future operational and business decisions.

¹⁰ 124 FERC ¶ 61,192, at P 9 (2008) (citing *Wyoming Interstate Co., Ltd.*, 122 FERC ¶ 61,299, at P 17 (2008)). See also *Calif. Independent System Operator*, 118 FERC ¶ 61,226, at P 24 (2007) (elements of waiver for good cause include no undesirable consequences, and resultant benefits to customers that are evident).

¹¹ *Colorado*, 122 FERC ¶ 61,299 at P 9.

¹² Discussed *supra* P 4.

¹³ *Columbia Gulf Transmission Co.*, 130 FERC ¶ 61,136 (2010).

18. Columbia Gulf and Columbia Gas have been aware of the March 1 filing deadline for some time. Columbia Gulf has also been aware of its shippers' desire to have updated throughput, fuel use and LAUF information in order to more fully evaluate Columbia Gulf's IFF proposal. Allowing Columbia Gulf and Columbia Gas to indefinitely delay the filing of such information in order to avoid future "adjustments" does not outweigh the value of updated information, as well as updated fuel rates, to Columbia Gas's and Columbia Gulf's customers. For example, with this information, Columbia Gulf's shippers will learn to what extent the facility modifications Columbia Gulf has made to its system have affected the 2010 TRA percentages.¹⁴ Also with this information, parties to Columbia Gulf's IFF proceeding will be able to more fully evaluate Columbia Gulf's IFF proposal and proposed fixed fuel rates.

19. Accordingly, we agree with the protestors and find there has been an insufficient showing to justify waiving the terms of Columbia Gulf's and Columbia Gas's tariffs, which at present require each pipeline to make an annual fuel retainage adjustment filing by March 1. Therefore, for the reasons discussed above, we deny Columbia Gulf's and Columbia Gas's waiver requests.

The Commission orders:

(A) Columbia Gulf's request for waiver is denied, as discussed in the body of this order, and accordingly, Columbia Gulf is required to make its 2010 TRA filing on March 1, in accordance with its tariff.

(B) Columbia Gas's request for waiver is denied, as discussed in the body of this order, and accordingly, Columbia Gas is required to make its 2010 RAM filing on March 1, in accordance with its tariff.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ Columbia Gulf reported that it has undertaken a comprehensive review of its system, making facility modifications, process changes and adjustments in excess of 5 Bcf that benefited its customers. *See* Columbia Gulf's Initial Comments filed October 8, 2009 to Docket No. RP09-423-000 at 1 and Appendix A at 4.