

133 FERC ¶ 61,097
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 29, 2010

In Reply Refer To:
Columbia Gulf Transmission
Company
Docket No. RP11-12-000

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

Attention: James R. Downs
Vice President, Rates & Regulatory Affairs

Reference: Tariff Sections and Non-Conforming Negotiated Rate Agreement

Ladies and Gentlemen:

1. On October 1, 2010, Columbia Gulf Transmission Company (Columbia Gulf) filed a non-conforming negotiated rate agreement (FTS-1 Service Agreement No. 20568) with CenterPoint Energy Gas Transmission Company (CenterPoint) and associated tariff record changes. Columbia Gulf is also submitted a proposed FERC Gas Tariff, Original Volume No. 1.1,¹ which will be the tariff record for non-conforming service agreements. We accept the non-conforming negotiated rate agreement and the proposed tariff records, effective November 1, 2010, as requested, subject to the conditions discussed below.

2. The service agreement provides that Columbia Gulf will provide backhaul service to CenterPoint from Columbia Gulf's interconnect with CenterPoint at Perryville to Columbia Gulf's interconnect with CenterPoint at CenterPoint's Line CP. Both interconnects are located upstream of Columbia Gulf's Delhi compressor station. CenterPoint has agreed to pay a usage charge for service under the agreement of \$0.18 per Dth/day for the first five years of service. For the remaining five years of the agreement, CenterPoint will pay a usage charge of \$0.167 per Dth/day. The agreement also has a negotiated fuel retention rate of 4.67 percent.

¹ See Appendix for all of Columbia Gulf's proposed tariff record changes.

3. Prior to this agreement, CenterPoint had not been able to deliver gas from its Line CP into Columbia Gulf's system consistently.² At two of the three interconnects between CenterPoint's Line CP and Columbia Gulf's system, Columbia Gulf has been operating at higher pressures than what is currently compatible with CenterPoint's Line CP. Accordingly, CenterPoint has limited its shippers' deliveries to the CGT-CP Delivery Point.³

4. Columbia Gulf states that the filed service agreement will benefit shippers on both systems because it includes a provision that pressure will not exceed 750 PSI, and this "will make access to Columbia Gulf's system more reliable for [CenterPoint] shippers at those two interconnecting points."⁴ Columbia Gulf asserts that the above-recourse fuel retention rate of 4.67 percent "is designed to compensate Columbia Gulf for the additional fuel costs associated with the pressure guarantee, and will ensure that these fuel costs are not borne by Columbia Gulf's shippers."⁵ Section 13(c) of Columbia Gulf's General Terms and Conditions allows the parties to agree, on a not unduly discriminatory basis, to an alternative maximum or minimum pressure at any point of receipt or delivery, so long as it is operationally feasible.

5. Under the non-conforming term clause of the agreement, Columbia Gulf may terminate the agreement after five years instead of the full ten years, if Columbia Gulf determines that the arrangement is not operationally feasible. Under the negotiated rate provisions of the agreement, if CenterPoint does not nominate service under the agreement, Columbia Gulf will have the right to convert the rate to a reservation-based charge. Columbia Gulf asserts that the negotiated fuel retention rate provision will prevent its other shippers from bearing any additional fuel costs. Columbia Gulf states it will include all fuel received associated with the agreement in its annual Transportation Adjustment Mechanism (TRA) filing.

6. Notice of Columbia Gulf's filing issued on October 4, 2010. Interventions and protests were due October 13, 2010, as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214, 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

² See *CenterPoint Gas Transmission Company*, 130 FERC ¶ 61,157, at P 1 (2010).

³ *Id.* P 3-4.

⁴ Columbia Gulf Initial Filing at 2.

⁵ *Id.*

additional burdens on existing parties. On October 13, 2010, the City of Charlottesville, Virginia and the City of Richmond, Virginia (collectively, Cities) jointly filed a Motion to Intervene and Comments. Also on October 13, 2010, Orange and Rockland Utilities, Inc. (O&R) filed a Motion to Intervene, Protest, and Request for Clarification.

7. Cities, in their comments, note that Columbia Gulf filed revised tariff provisions in Docket No. RP10-1332-000 that would allow the pipeline to seek a discount-type adjustment related to discounted negotiated rate agreements in future rate proceedings. Cities contend the negotiated rate set out in the instant agreement appears to exceed the current maximum tariff rate for Columbia Gulf's FTS-1 Rate Schedule. Cities state they addressed the proposed tariff language in Docket No. RP10-1332-000 in their protest for that proceeding and do not oppose the negotiated rate agreement in the instant filing. Cities continue that if the Commission does not reject the proposed tariff language in Docket No. RP10-1332-000, the Cities reserve their rights to participate in the upcoming rate proceeding⁶ and to oppose any discount adjustment related to the agreement filed in this docket should the filed rates exceed the negotiated rates.

8. O&R protests the 4.67 percent fuel retention percentage, which it contends Columbia Gulf does not sufficiently support. O&R notes that Columbia Gulf admits that service to CenterPoint will result in additional costs, and admits that other shippers should not bear any fuel costs associated with the service to CenterPoint. However, O&R continues, Columbia Gulf does not attempt to demonstrate that the negotiated fuel retention percentage will hold other shippers harmless. O&R reports that, in private discussions, Columbia Gulf stated that it does not intend to separately account for the fuel received under the CenterPoint agreement in its TRA filings, or show how much additional fuel was actually used to maintain pressures to existing customers as a result of the CenterPoint agreement. Instead, O&R claims, Columbia Gulf intends to aggregate the CenterPoint fuel usage with the total fuel retained by Columbia Gulf from all other service agreements. O&R argues that this violates Commission policy, which is that other shippers should not subsidize services provided under negotiated rates.⁷ Accordingly, O&R argues, the Commission should require that Columbia Gulf absorb any shortfalls.

9. In addition, O&R states Columbia Gulf's filing fails in that it does not attempt to demonstrate how Columbia Gulf would meet the maximum pressure ceiling guarantee to

⁶ Columbia Gulf provided notice to its customers on September 22, 2010 that it intends to file a general Section 4 rate case in late October 2010.

⁷ O&R Protest at 4 & n.6 (citing *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281, at P 40 (2007)).

CenterPoint. O&R is concerned as to whether additional facilities will need to be constructed to maintain pressures to existing customers. O&R asserts Columbia Gulf should be required to reveal the cost of any such facilities, and to make clear that existing shippers will not be required to absorb those costs.⁸

10. On October 15, 2010, Columbia Gulf filed an answer to Cities' comment and O&R's protest. Although the Commission's Rules of Practice and Procedure do not permit answers to protests,⁹ the Commission may, for good cause, waive this provision.¹⁰ The Commission finds good cause to do so in this instance because Columbia Gulf's answer provides information that assists us in our decision-making process.

11. In its answer, Columbia Gulf argues that the comments raised by Cities do not object to the substantive terms of the CenterPoint agreement, but rather raise questions of how the CenterPoint agreement will be evaluated in future rate proceedings. Columbia Gulf requests that the Commission find that the instant proceeding is not the proper forum for addressing these issues.

12. In response to O&R, Columbia Gulf states its next annual TRA filing is the appropriate venue to address whether the CenterPoint agreement will have any adverse impact on Columbia Gulf's retainage rates. Furthermore, Columbia Gulf argues that service has not commenced under the agreement, and therefore it is speculative to state that the negotiated retainage rate inaccurately reflects the actual fuel used. Columbia Gulf claims that it is not required to impose an incremental fuel rate for each such contract. It further claims that if Columbia Gulf and CenterPoint had not negotiated a higher retainage rate, an evaluation of the fuel usage in the instant non-conforming agreement would not be warranted or ripe for review at this time under Commission policy.

13. Further, Columbia Gulf argues that whether other shippers might subsidize the facilities built for CenterPoint is an issue that is best addressed in Columbia Gulf's upcoming general Section 4 rate case. At that time, Columbia Gulf asserts, cost and revenue impacts can be evaluated in connection with all of its costs and revenues,

⁸ O&R Protest at 5 & n.7 (citing *Certification of New Interstate Natural Gas Pipeline Facilities, Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000); *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299, at P 57 (2004), *aff'd*, *Transcontinental Gas Pipe Line Corp. v. FERC*, 518 F.3d 916 (D.C. Cir. 2008)).

⁹ 18 C.F.R. § 385.213(a)(2) (2010).

¹⁰ 18 C.F.R. § 385.101(e) (2010).

including the benefits associated with the increased billing determinants associated with the CenterPoint agreement.

14. The Commission approves the negotiated rate agreement and non-conforming provision. Columbia Gulf and CenterPoint have agreed to a fuel retention percentage that is much higher than the current recourse percentage¹¹ in order to compensate for the additional fuel costs associated with Columbia Gulf guaranteeing CenterPoint the maximum limit on operational pressures that it requires. Section 3 of Columbia Gulf's *pro forma* FTS-1 Service Agreement specifically provides that the pipeline and shipper may negotiate rates, including the fuel retention rate, that vary from recourse rate. Further, section 13(c) of Columbia Gulf's General Terms and Conditions allows the parties to agree, on a not unduly discriminatory basis, to an alternative maximum or minimum pressure at any point of receipt or delivery, so long as it is operationally feasible. This agreement helps address an operational problem that has prevented CenterPoint from delivering gas into Columbia Gulf's system at the interconnection points that its shippers prefer. The non-conforming provision, allowing Columbia Gulf to terminate the contract early, addresses the unique situation concerning Columbia Gulf's operational ability to meet the pressure provision and is not unduly discriminatory.

15. O&R protests that Columbia Gulf did not demonstrate in the instant filing that the fixed 4.67 percent fuel retainage percentage would be adequate to cover these additional fuel costs. We deny O&R's protest. The Commission "require[s] that a pipeline's negotiated rate proposal protect the recourse rate-paying shippers against inappropriate cost-shifting."¹² This negotiated rate agreement appears to be a just and reasonable way to meet this standard while addressing the unique operational concerns of a shipper. Nothing in this order approving the negotiated rate agreement prejudices any issue regarding the accounting of fuel use or facilities built for CenterPoint in Columbia Gulf's annual TRA filings or in Columbia Gulf's upcoming section 4 rate proceeding.

¹¹ Days before filing the present agreement with CenterPoint, Columbia Gulf filed pursuant to section 32.2 of its General Terms & Conditions to decrease the Mainline Zone forwardhaul fuel retention percentage from 2.345 percent to 1.944 percent, effective November 1, 2010. The Commission approved the reduction, which was unopposed. *Columbia Gulf Transmission Co.*, Docket No. RP10-1348-000 (October 19, 2010) (unpublished letter order). Columbia Gulf's Mainline backhaul fuel retention percentage remains zero. *Columbia Gulf Transmission Co.*, 132 FERC ¶ 61,134, at P 25 (2010).

¹² *Wyoming Interstate Company, Ltd.*, 117 FERC ¶ 61,150, at P 10 (2006) (quoting, among other orders, *Columbia Gulf Transmission Co.*, 81 FERC ¶ 61,206, at 61,876 (1997)).

16. In the case of variable costs like fuel retainage rates, the Commission protects shippers paying the recourse rate by reviewing the pipeline's annual fuel retainage tracker filings to ensure that the pipeline does not engage in inappropriate cost-shifting. Accordingly, the Commission reminds Columbia Gulf that it must keep separate accounting and fuel use records for agreements with negotiated fuel use clauses, such as the proposed CenterPoint agreement, and provide these in future TRA filings. Further, approval of the instant filing is without prejudice to Cities' and O&R's rights in the upcoming Columbia Gulf section 4 rate proceeding to raise the issue of whether other shippers on Columbia Gulf's system are subsidizing the cost of the additional facilities associated with the CenterPoint agreement.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties

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Appendix

Columbia Gulf Transmission Company

Conditionally Accepted, Effective November 1, 2010, as proposed.

Third Revised Volume No. 1

FERC NGA Gas Tariff

<u>Part</u>	<u>Version</u>	<u>Title</u>
VIII.1	2.0.0	Non-Conforming Service Agreements

Original Volume No. 1.1

FERC NGA Gas Tariff

<u>Section</u>	<u>Version</u>	<u>Title</u>
		Original Volume 1.1 – Title Page
1.	0.0.0	Table of Contents
2.	0.0.0	Non-Conforming Svc Agmts
2.1	0.0.0	CEGT Contract No. 20568