

102 FERC ¶ 61, 090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Columbia Gas Transmission Corporation

Docket No. RP03-222-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS
SUBJECT TO REFUND AND CONDITION, AND
ESTABLISHING HEARING PROCEDURES

(Issued January 30, 2003)

1. On December 31, 2002, Columbia Gas Transmission Corporation (Columbia) filed a tariff sheet to increase its transportation retainage charge from 2.398 percent to 2.417 percent.¹ Columbia requests an effective date of February 1, 2003 for its filing. The instant filing raises complex factual issues. Therefore, the Commission will accept and suspend this tariff sheet to be effective July 1, 2003 subject to refund and the outcome of a hearing. Given the limited nature of this proposed charge, however, the Commission will hold the hearing proceedings in abeyance so that the parties may engage in settlement negotiations. This order benefits the public because it ensures Columbia's transportation customers will be charged a just and reasonable rate for its transportation retainage charge.

I. Background

2. The transportation retainage charge is a part of Columbia's overall retainage charge assessed to transportation shippers. The other components of the overall retainage charge are gathering, storage gas loss and processing. Columbia's overall retainage charges are assessed through the Retainage Adjustment Mechanism (RAM) contained in Section 35 of the General Terms and Conditions of Columbia's FERC Gas Tariff. These overall retainage charges are assessed in addition to reservation and usage charges.

¹Thirteenth Revised Sheet No. 44 to Columbia's FERC Gas Tariff, Second Revised Volume No. 1.

3. On April 17, 1997, the Commission approved an Offer of Settlement (Settlement) that established rates for all services provided by Columbia.² The Settlement also provided for the unbundling of Columbia's gathering costs and a complete transition by Columbia out of the products extraction function. The unbundling and termination of products extraction service was accomplished by Columbia selling its interests in the Boldman, Cobb and Kenova products extraction facilities to MarkWest Hydrocarbon, Inc. (MarkWest). As part of the Settlement, for the period of February 1, 1997 through January 31, 2003, Columbia retained from its transportation customers, and provided to MarkWest, an annual quantity of 650,000 Dth. This fixed quantity was collected through the RAM provisions of Columbia's tariff. According to Columbia, this quantity represented "the final subsidy of products extraction rates by transportation customers."³ Finally, Article III, Section I(5) of the Settlement specified that Columbia could file to recover from its jurisdictional customers, effective February 1, 2003, "the actual quantities of fuel used on and after that date to compress dry gas at the Boldman, Cobb and Kenova extraction plants." The Settlement did not prohibit any party from contesting any such proposal.

II. Proposal

4. Columbia submits the proposed tariff sheet pursuant to the terms of its tariff and the Settlement. Columbia states that the revised tariff sheet adjusts the RAM provision to increase the transportation retainage percentage from 2.398 percent to 2.417 percent. Columbia states that because MarkWest is required by the nature of the extraction process to compress and treat all gas – both wet and dry – that is in the pipeline, and because the transportation customers benefit by such compression and treatment, it is appropriate for the transportation customers to furnish the quantities of fuel attributable to the compression and treatment of dry gas. Therefore, in the instant filing, Columbia proposes to collect from its transportation customers and furnish to MarkWest the equivalent quantities of fuel used by MarkWest to compress and treat dry gas.

5. Columbia computes its proposed transportation retainage rate using MarkWest's actual fuel costs and volumes for the period of November 2001 through October 2002. (Certain volumes have been included twice because the gas is routed through both the Boldman and Kenova processing plants.) The gas fuel costs are based on the Inside FERC Gas Market Report prices of spot gas at Columbia's receipt points in Appalachia.

²Columbia Gas Transmission Corp., 79 FERC ¶ 61,044 (1997).

³Transmittal letter, p. 3.

The costs of electricity used to fuel MarkWest's electric compressors and treatment facilities are converted to "natural gas equivalents" using the spot market price. Finally, Columbia applies a ratio of "dry quantities to total quantities" to determine the amount of fuel usage attributable to compressing and treating dry gas.

6. Columbia states that its proposed transportation retainage charge will only be effective for the months of February and March, 2003 because it is required to make its annual RAM filing to be effective April 1, 2003. However, Columbia states that in its annual RAM filing, it will propose the same projected annual quantities and the same methodology, although the annual filing will include a true-up.

III. Public Notice, Interventions and Protests

7. Public notice of Columbia's filing was issued on January 8, 2003. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214), any timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Any motions to intervene out-of-time filed before the date of this order are granted pursuant to 18 C.F.R. § 214(d), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

8. Protestors⁴ oppose Columbia's proposed transportation retainage charge. Some protestors contend that Columbia has not shown why any processing costs should be allocated to transportation shippers who tender pipeline-quality gas. Indeed, these protestors contend that it is unduly discriminatory for such transportation shippers to pay costs associated with MarkWest's processing plant. Other protestors contend that Columbia's filing does not show the extent to which MarkWest's operation of the compressors affect Columbia's transportation of dry gas or the pressure needed for operating Columbia's transmission system. Many protests challenge the "dry" volumes used to determine the allocation of costs to the retainage charge, especially given the fact that certain quantities pass through two plants. The protestors propose a range of

⁴Allegheny Power; Cities of Charlottesville and Richmond, Virginia; Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Ohio, Inc., and Columbia Gas of Virginia, Inc.; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; Piedmont Natural Gas Company, Inc.; PSEG Energy Resources & Trade LLC; ProLiance Energy, LLC; Virginia Power Energy Marketing, Inc.; and Washington Gas Light Company.

procedural methodologies for addressing Columbia's filing including summary dismissal, the institution of technical conference proceedings, and/or a five month suspension period.

9. The Coalition for Energy Market Integrity and Transparency (EMIT), which states it comprises over 250 companies, organizations and individuals representing a broad cross-section of the natural gas and electric industries, filed a limited protest concerning Columbia's proposed use of Inside FERC's Gas Market Report for calculating the fuel retainage factor although it did not intervene in the instant proceeding. EMIT contends that any pipeline's use of published index prices in connection with the pricing of a component of jurisdictional transportation services should be made subject to prospective amendment or adjustment based upon the Commission's consideration of generally applicable protocols. EMIT explains that its mission is to reform energy markets to ensure their fairness, transparency and openness in order to provide adequate, reliable and affordable energy supplies for America.⁵ EMIT asserts that the use of published index prices is not confined to Columbia's filing, but is pervasive throughout the gas industry. EMIT, therefore proposes that the Commission approve and adopt a list of protocols that private energy industry publishers must follow in obtaining, compiling, deriving, reporting and publishing prices before they may be used in any FERC Gas Tariff, negotiated rate agreement or other FERC-approved document.

IV. Discussion

10. The Commission finds that Columbia has not met its burden of showing that its proposed transportation retainage charge is just and reasonable. In fact, Columbia's filing raises factual issues concerning whether the type of transportation retainage charge is appropriate, and if so, how the costs should be allocated and how the fee should be calculated. The factual issues are complex and include the relationship between MarkWest's processing facilities and the operational requirements of Columbia's transmission system, as well as other concerns raised by protesters. The Commission will, therefore, establish a hearing to explore the issues relating to Columbia's proposed transportation retainage charge. Columbia's proposed Thirteenth Revised Sheet No. 44 is accepted, subject to refund and subject to the outcome of the hearing to be held in this proceeding. However, in order to explore the possibility of a settlement among the parties, the Commission will hold the hearing in abeyance and direct the Chief Administrative Law Judge to appoint a settlement judge pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.

⁵EMIT's protest, p. 4.

11. The concerns raised by EMIT are very timely. Indeed, at the last Commission meeting on January 15, 2003, the Commission discussed the use of natural gas price indices. It appears that EMIT filed its limited protest in the instant filing only because this case provided an appropriate venue for expressing its concerns, since EMIT is not requesting intervenor status and states it does not wish to cause regulatory delay in the consideration of Columbia's filing. The Commission will address the issue of the use of price indices in the future in a yet to be determined forum and expects that EMIT and its members will avail themselves of that forum to present their issues.

V. Suspension

12. Based on a review of the filing, the Commission finds that the proposed tariff sheet has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheet for filing, and suspend its effectiveness for the period set forth below, subject to the conditions in this order.

13. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. See, Great Lakes Gas Transmission Co., 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. See, Valley Gas Transmission, Inc., 12 FERC ¶ 61,197 (1980) (minimum suspension). Such circumstances do not exist here. Therefore, the Commission will accept and suspend the proposed tariff sheets to be effective July 1, 2003, subject to refund and conditions.

The Commission orders:

(A) Columbia's proposed Thirteenth Revised Sheet No. 44 is accepted and suspended, to be effective July 1, 2003, subject to refund, and the outcome of a hearing.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in this Docket No. RP03-222-000 concerning Columbia's filing. However, the hearing will be held in abeyance while the parties attempt to settle this matter, as discussed in Paragraphs (C) and (D) below.

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(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. To the extent consistent with the order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(D) Within forty-five (45) days of the date of this order, the settlement judge shall issue a report to the Commission and the Chief Judge on the status of the settlement discussions. The settlement judge shall issue a report at least every thirty (30) days thereafter, apprising the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If the settlement discussions fail, a presiding administrative law judge, to be selected by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the settlement judge's report to the Commission and the Chief Judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.