

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Columbia Gulf Transmission Company,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>RP04- __-000</b>
	)	
<b>Tennessee Gas Pipeline Company,</b>	)	<b>COMPLAINT REQUESTING</b>
	)	<b>FAST TRACK PROCESSING</b>
<b>Respondent</b>	)	

**COMPLAINT OF COLUMBIA GULF TRANSMISSION COMPANY  
AND REQUEST FOR PROCESSING UNDER FAST TRACK PROCEDURES**

Pursuant to Sections 4(a), 5(a), 7(c), and 16 of the Natural Gas Act (“NGA”), 15 U.S.C. §§ 717c(a), 717d(a), 717f(c), 717o (2000), and Rule 206 of Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. §385.206 (2004), Columbia Gulf Transmission Company (“Columbia Gulf”) hereby submits this Complaint against Tennessee Gas Pipeline Company (“Tennessee”).

As shown below, Tennessee is intentionally breaching the contractual arrangements that govern the operation of the South Pass 77 system by imposing additional transportation charges on shippers that use Columbia Gulf’s South Pass 77 capacity.<sup>1</sup> Tennessee is abusing its position as operator of the South Pass 77 system by refusing to confirm nominations made by Columbia Gulf’s South Pass 77 shippers unless the shipper has arranged for separate transportation on Tennessee’s mainline facilities.

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<sup>1</sup> As explained more fully below, Tennessee and Columbia Gulf are joint owners of the South Pass 77 system and each has capacity rights on that system which are used by shippers that contract individually with either Columbia Gulf or Tennessee.

Tennessee is taking this action in an attempt to eliminate Columbia Gulf as a competitor on the South Pass 77 system.

In the past few months, Tennessee has, for the first time since Tennessee and Columbia Gulf began operating under the contractual arrangements that were approved by the Commission in 1997, imposed incremental transportation charges on shippers using Columbia Gulf's South Pass 77 capacity. These additional transportation charges violate (1) the parties' Reciprocal Operating Lease Agreement ("Reciprocal Lease") for the South Pass 77 system, (2) the Commission order approving the Reciprocal Lease,<sup>2</sup> and (3) the NGA.

Columbia Gulf is suffering serious and ongoing economic harm due to Tennessee's anti-competitive behavior. In fact, as of July 1, 2004, approximately 75% of the volumes that were flowing on Columbia Gulf's South Pass 77 capacity are now being transported on Tennessee's South Pass 77 capacity in order to avoid the new Tennessee charges. *See* Affidavit of James W. Hart ("Hart Aff.") at ¶ 17 (Attachment A). In addition, Tennessee's actions are harming producers that need to use the South Pass 77 system to transport their gas to market, because the additional charges deprive the producers of a choice of transporters in that region and a choice of markets for their gas. Absent prompt intervention by the Commission, this situation is likely to deteriorate further rather than improve. For these reasons, Columbia Gulf requests Fast Track Processing of this complaint, as permitted by Rule 206(h).

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<sup>2</sup> The Commission approved the Reciprocal Lease in 1997 and therefore has continuing jurisdiction over the Reciprocal Lease. *Tennessee Gas Pipeline Co.*, 78 FERC ¶ 61,182.

In support of its Complaint and Request for Fast Track Processing, Columbia Gulf states as follows:

### **I. EXECUTIVE SUMMARY**

Columbia Gulf and Tennessee are joint owners of the South Pass 77 system and both pipelines have capacity entitlements to the South Pass 77 capacity. These facilities were first certificated in 1980 when Columbia Gulf and Tennessee were still gas merchants. After services were restructured pursuant to the directives of Order No. 636, problems arose with the rate structure that was in place for transporting South Pass 77 gas to the market. Because Columbia's mainline is not connected to the South Pass 77 system, Columbia's South Pass 77 shippers were required to pay an additional rate to Tennessee for transportation on its mainline to get their South Pass 77 gas supplies to the market. This placed Columbia Gulf at a significant competitive disadvantage and deprived Columbia Gulf's South Pass 77 shippers of access to the markets served off of Columbia Gulf's mainline. At the same time, Tennessee needed additional capacity rights on the South Pass 77 system to meet its customers' needs.

The parties addressed these (and other) issues by entering into a Reciprocal Lease arrangement that was filed with and approved by the Commission under Section 7 of the NGA. The Reciprocal Lease solved both parties' problems in the following manner: (1) Tennessee leased 72,500 Mcf/day of additional capacity entitlements in the South Pass 77 system from Columbia Gulf; and (2) Columbia Gulf leased 115,000 Mcf/day of capacity from Tennessee on its mainline facilities between the terminus of the South Pass 77 system and Egan, Louisiana (where Tennessee's system interconnects with Columbia Gulf).

However, because gas flows west to east on this part of Tennessee's mainline and Columbia Gulf's South Pass 77 gas needed to travel east to west, the deliveries to Columbia Gulf at Egan were effectuated by displacement or exchange. More precisely, Columbia Gulf's South Pass 77 shippers deliver their gas to Tennessee at the terminus of the South Pass 77 system near Venice, Louisiana and Tennessee delivers an equivalent amount of gas to Egan, Louisiana through its capacity entitlements on the Western Shore Line of the Blue Water system. *See* Maps attached hereto as Attachment B.

Importantly, for purposes of the current controversy, there is no charge by Tennessee for this exchange service because Tennessee has already been compensated by the increased South Pass capacity entitlements it leased from Columbia Gulf at no charge.

This arrangement was approved by the Commission in 1997 and worked well until April 2004, when Tennessee began informing Columbia Gulf's South Pass 77 shippers that they would be required to pay an additional charge to Tennessee to transport their gas on Tennessee's mainline from the terminus of the South Pass 77 system to the Yscloskey Processing Plant on Tennessee's 500 Line, just east of New Orleans. *See* Attachment B. Tennessee has claimed that the unprocessed gas must be processed to meet Tennessee's quality specifications and that it cannot be processed unless the shipper pays for transport on Tennessee's mainline. Columbia Gulf's shippers also were told that if they shipped their gas on Tennessee's South Pass capacity, no additional charges would be incurred.

Tennessee's actions violate the Reciprocal Lease, the Commission's order approving the lease, and the NGA. The Reciprocal Lease clearly provides that gas moving on Columbia Gulf's South Pass 77 capacity will be delivered to Egan by

displacement and that there will be no charge by Tennessee for the displacement service. Because the Reciprocal Lease provides for delivery to Egan by displacement, Tennessee's mainline facilities are not actually used to effectuate the delivery. This is, of course, the very essence of an exchange or displacement arrangement. In fact, in its order approving the Reciprocal Lease, the Commission expressly noted that this was a positive feature of the proposal because it left Tennessee's mainline capacity available for its customers. 78 FERC at p. 61,754.

Tennessee's unlawful imposition of new transportation charges in violation of the Reciprocal Lease cannot be justified on the pretext that the gas must be processed before it can be delivered to Egan or because processing is required to meet Tennessee's gas quality specifications. This is not a new situation. The gas delivered into Tennessee's mainline from the South Pass 77 system always has been unprocessed gas. This was the situation in 1997 when the Reciprocal Lease was approved and implemented.

Tennessee's conduct also is highly anticompetitive. A chief purpose of the Reciprocal Lease was to eliminate the "rate stacking" that Columbia Gulf's South Pass 77 shippers were subjected to in order to get their gas to the market. Tennessee's current attempt to re-impose a charge for transportation on its mainline (*i.e.*, "re-stack" the rates) subjects Columbia Gulf to the same competitive disadvantage it faced before the Reciprocal Lease was implemented. Columbia Gulf already has suffered economic harm due to Tennessee's actions in that several shippers have switched to using Tennessee's South Pass 77 capacity to avoid the extra charge.

Despite Columbia Gulf's repeated inquiries, Tennessee has offered no justification for this sudden imposition of a new transportation charge for the delivery of

gas to Egan by displacement. Under the terms of the Reciprocal Lease, no justification is possible. The Commission should issue an order prohibiting Tennessee from imposing any transportation charges on transactions that are governed by the Reciprocal Lease.

## II. PARTIES

1. The exact legal name of Complainant is Columbia Gulf Transmission Company. Columbia Gulf is a wholly owned subsidiary of Columbia Energy Group, which is a wholly owned subsidiary of NiSource Inc., organized under the laws of the state of Delaware, with its principle place of business in Houston, Texas. Columbia Gulf is engaged in the transportation of natural gas in interstate commerce pursuant to certificates issued by the Commission, is a "natural gas company" within the meaning of section 2(6) of the NGA, 15 U.S.C. §717a(6), and is subject to the Commission's jurisdiction under the NGA.

The names, titles, and mailing addresses of the persons who represent Columbia Gulf and to whom communications concerning this Complaint are to be addressed and upon whom service is to be made are as follows:

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2. The exact legal name of Respondent is Tennessee Gas Pipeline Company. Tennessee is a corporation organized under the laws of the state of Delaware, with its principle place of business in Houston, Texas. Tennessee is engaged in the transportation of natural gas in interstate commerce pursuant to certificates issued by the Commission, is a “natural gas company” within the meaning of section 2(6) of the NGA, 15 U.S.C. §717a(6), and is subject to the Commission’s jurisdiction under the NGA. A copy of this Complaint has been served on Tennessee in accordance with Rules 206(c), 2010(f) and 2010(i)(4) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§385.206(c), 385.2010(f) and 385.2010(i)(4), through its designated agent for service.

### III. STATEMENT OF FACTS

1. Columbia Gulf and Tennessee are joint owners of the South Pass 77 system, which is located offshore of southern Louisiana. *See* Attachment B (maps of the South Pass 77 system and adjacent areas). Tennessee is the operator of the South Pass 77 system. The South Pass 77 system consists of (a) 10.8 miles of 26-inch pipeline extending from a platform in the South Pass 77 Block to a platform jointly owned by Columbia Gulf and Tennessee located in the South Pass 55 Block; and (b) 17.5 miles of

36-inch pipeline extending from the South Pass 55 platform to an interconnection with Tennessee's wholly-owned mainline facilities in Plaquemines Parish. 78 FERC at pp. 61,751-52. The South Pass System is directly connected to Tennessee's mainline facilities, but does not directly interconnect with Columbia Gulf's mainline facilities. *Id.* at p. 61,752; *see also*, Hart Aff, ¶ 4.

2. The South Pass 77 system has a design capacity of 500,000 Mcf per day. The firm capacity was originally allocated as follows: Columbia Gulf – 187,500 Mcf/day, Tennessee – 187,500 Mcf/day, and Chevron – 125,000 Mcf/day. 78 FERC at p. 61,752. Hart Aff., ¶ 4.

3. The South Pass 77 facilities were first certificated by the Commission in Docket No. CP79-444, when both Columbia Gulf and Tennessee were still gas merchants. *Tennessee Gas Pipeline Co.*, 12 FERC ¶ 61,307 (1980). When the pipelines restructured their services and became transporters of natural gas pursuant to the directives of Order No. 636, certain difficulties arose concerning the rate structure that was in place for the transportation of South Pass 77 gas to the market. 78 FERC at pp. 61,752-53; Hart Aff., ¶ 5. Because the South Pass 77 system does not directly interconnect with Columbia Gulf's mainline facilities, shippers contracting with Columbia Gulf for transportation on the South Pass 77 system also had to enter into separate transportation arrangements with Tennessee (and pay additional transportation charges) to transport the gas on Tennessee's mainline to the desired market. 78 FERC at p. 61,752.

4. This situation led to multiple problems. As Tennessee and Columbia Gulf explained, the "rate stacking" that resulted from shippers' payment of transportation rates

to Columbia Gulf for transport on the South Pass system, and then to Tennessee for transport on its mainline, placed Columbia Gulf at a substantial competitive disadvantage and was reducing the level of new production being attached to the South Pass system. 78 FERC at p. 61,752. Columbia Gulf's South Pass 77 shippers also had the additional administrative burdens of duplicative nominations, balancing, and billings. Shippers understandably preferred to avoid both the extra charge and the extra burdens that were associated with using Columbia Gulf's South Pass capacity. Thus, if given the opportunity to choose which capacity they would use, shippers would necessarily opt for the lowest cost, easiest to implement option; *i.e.* – Tennessee's portion of the South Pass 77 system. Hart Aff., ¶ 6. Tennessee did not, however, have sufficient capacity entitlements on the South Pass 77 system to meet the needs of all the shippers interested in transporting their gas on Tennessee's capacity.

5. To resolve these issues, Tennessee and Columbia Gulf entered into the Reciprocal Lease and an accompanying Construction, Ownership, Operation & Maintenance Agreement ("COO&M Agreement") in September 1996. To implement these agreements, Columbia Gulf and Tennessee filed, pursuant to Section 7(c) of the NGA, a Joint Abbreviated Application for Authorization to Abandon, and to Acquire, Firm Capacity by Lease ("Joint Application") in FERC Docket No. CP96-806. *See* Attachment C, which includes the Joint Application, the Reciprocal Lease, and the COO&M Agreement.

6. As Columbia Gulf and Tennessee explained in the Joint Application, the Reciprocal Lease was designed to (a) provide Tennessee with the additional capacity on the South Pass 77 System that it needed, (b) provide Columbia Gulf with direct access

from the South Pass System to its mainline through the lease of a portion of Tennessee's mainline facilities; and (c) resolve the rate stacking problem explained above. Joint Application, pp. 5-8. The latter was to be accomplished by elimination of the additional transportation charge that Tennessee had been imposing on Columbia Gulf's South Pass 77 shippers for transportation service on Tennessee's mainline. Under the Reciprocal Lease, Tennessee would deliver the South Pass 77 volumes for Columbia Gulf's shippers to Egan, Louisiana by displacement.<sup>3</sup> There would be no charge for the exchange service because Tennessee was receiving the additional South Pass 77 capacity entitlements from Columbia Gulf at no charge. Hart Aff. ¶ 8.

7. By order dated February 26, 1997, the Commission approved the Reciprocal Lease. 78 FERC ¶ 61,182. In its order, the Commission specifically noted, *inter alia*, that the Reciprocal Lease was designed to put an end to rate stacking for the Columbia Gulf South Pass 77 shippers and that Tennessee was receiving additional capacity entitlements on the South Pass 77 system. *Id.* at pp. 61,752 and 61,754. In sum, the *quid pro quo* for the elimination of Tennessee's transportation charge was the additional capacity entitlements that Tennessee received on the South Pass 77 system. The only monetary payment under the Reciprocal Lease is the payment of one dollar (\$1.00) per year by each party to the other for their respective leases. Reciprocal Lease, §§ 3.4 and 4.4.

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<sup>3</sup> Egan, Louisiana is the western terminus of the Blue Water system, which is an offshore natural gas pipeline system jointly owned by Tennessee and Columbia Gulf. Tennessee has capacity entitlements on the Western Shore Line of the Blue Water System that permit it to make deliveries by displacement or exchange to Columbia Gulf at Egan. See map attached hereto as Appendix B.

8. Following entry of the Commission's Order, Columbia Gulf and Tennessee began operating pursuant to the terms of the Reciprocal Lease in March, 1997. Hart Aff., ¶ 11. For over seven (7) years, Tennessee delivered Columbia Gulf's South Pass 77 volumes to Egan by displacement, without imposing any additional charge for that service. *Id.* Affidavit of Stephen H. Wendel ("Wendel Aff."), ¶ 4 ("Attachment D"). Notably, during that seven year period, all of the natural gas produced in offshore Louisiana and transported on the South Pass 77 system was unprocessed when delivered into Tennessee's onshore system from the South Pass 77 system. This remains the case today. Hart Aff., ¶ 11.

9. A processing plant is located on Tennessee's 500-Line near Yscloskey, Louisiana ("Yscloskey Plant"), which is east of New Orleans. *See* Attachment B and Hart Aff., ¶ 13. The Yscloskey Plant is operated by Dynegy Midstream Services ("Dynegy"). The Yscloskey Plant was in operation when Columbia Gulf and Tennessee entered into the Reciprocal Lease.

10. In April 2004, Columbia Gulf began to receive reports from its South Pass 77 shippers that Tennessee was threatening to impose additional transportation charges for gas that was shipped on Columbia Gulf's South Pass 77 capacity. The shippers were further informed that Tennessee would not impose these additional charges if they used Tennessee's South Pass 77 capacity rather than Columbia Gulf's South Pass 77 capacity. Hart Aff., ¶ 12; Wendel Aff., ¶ 5. On April 9, 2004, Columbia Gulf lost its first shipper due to Tennessee's threat to impose an additional transportation charge. Wendel Aff., ¶ 6.

11. Also on April 9, 2004, another Columbia Gulf shipper received notification from Tennessee that an additional charge of 2 cents plus 1% fuel would be charged for all gas that flowed on Columbia Gulf's portion of the South Pass 77 capacity. *Id.* at ¶ 7.

12. On April 16, 2004, Columbia Gulf was contacted by Murphy Gas Gathering ("Murphy"), who is another one of Columbia Gulf's South Pass 77 shippers. Murphy had been told by Tennessee that if it continued to transport its gas on Columbia Gulf's South Pass capacity after May 1, 2004, it would be required to pay Tennessee for transport on Tennessee's mainline. *Wendel Aff.*, ¶ 8. Although Murphy asked Tennessee to provide this information in writing, Tennessee refused to do so. *Id.* Murphy stopped nominating gas on Columbia Gulf's South Pass capacity as of May 1, 2004. *Id.*<sup>4</sup>

13. On June 24, 2004, Columbia Gulf received a letter from Tennessee providing notice that Murphy was not meeting the gas quality requirements of Tennessee's tariff. *See Attachment F and Wendel Aff.*, ¶ 10. The letter contends that Murphy has not provided Tennessee with "proof of processing" because it has not made arrangements to have its gas transported to the Yscloskey plant for processing. Murphy had a gas processing agreement in place, but has never before been required to pay Tennessee for transport to Yscloskey. *Wendell Aff.*, ¶ 10.<sup>5</sup> Tennessee's June 24<sup>th</sup> letter states that Murphy's existing processing agreement is no longer acceptable because

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<sup>4</sup> Murphy again attempted to nominate gas on Columbia Gulf's South Pass capacity for June 2004, but Tennessee refused to confirm the nominations because Murphy supposedly did not have a processing agreement in place. *Wendel Aff.* at ¶ 9. Contrary to Tennessee's assertion, Murphy did have a processing agreement in place. *Id.*

<sup>5</sup> And, as noted above, all of the gas delivered out of the South Pass 77 system has always been unprocessed gas.

“neither Murphy, nor the processor nor [Columbia Gulf] have made the necessary transportation arrangement on Tennessee’s system.” Attachment F. Murphy has contacted the Commission’s Hot Line and lodged a complaint against Tennessee. It is Columbia Gulf’s understanding that the FERC staff is still investigating this complaint, but that the matter will be closed upon the filing of this Complaint by Columbia Gulf.

14. On June 18, 2004, one of Columbia Gulf’s shippers – Eni Marketing Inc. (“Eni”) - sent Columbia Gulf a copy of an amended natural gas processing agreement that it is being asked to sign by Dynegy with respect to gas supplies that Eni ships on Columbia Gulf’s South Pass 77 capacity. See Attachment E and Wendel Aff., ¶ 12. Section 10 of Exhibit A of this agreement addresses compensation and states: “Producer shall be responsible for the actual Interruptible Transportation Fee (“IT Fee”) charged by Tennessee Gas to Producer’s Committed Gas (if any).” Committed Gas refers to the gas that is described on page one of the agreement and covers gas shipped on Columbia Gulf’s South Pass 77 capacity. Based on this agreement, it appears that Dynegy may be collecting transportation charges on Tennessee’s behalf. *Id.* Columbia Gulf understands that Eni has executed the amendment and is now paying the extra transportation charges. Wendel Aff., ¶ 12.

15. As of July 1, 2004, 60% of the shippers that were shipping their gas on Columbia Gulf’s South Pass 77 capacity have responded to Tennessee’s anti-competitive and illegal actions by nominating and shipping their gas on Tennessee’s South Pass 77 capacity, rather than Columbia Gulf’s. Hart Aff., ¶ 17. This constitutes approximately 75% of the volumes that were flowing on Columbia Gulf’s South Pass 77 capacity. As a

result, Columbia Gulf has suffered significant economic harm and its customers have lost the flexibility to access Columbia Gulf's markets.

#### IV. COMPLAINT

16. Tennessee's attempts to impose, or have Dynegy impose on its behalf, additional transportation rates on gas shipped on Columbia Gulf's South Pass 77 capacity violate the NGA, Commission orders, and the Reciprocal Lease Agreement. Tennessee's actions also are highly anticompetitive and appear to be part of an effort to drive a pipeline competitor out of business and force shippers to transport their gas over Tennessee's system. The Commission must act quickly to ensure that Tennessee's efforts are not successful.

17. The terms of the Reciprocal Lease and the Commission orders approving the lease demonstrate that Tennessee is precluded from imposing a "stacked" transportation charge on shippers using Columbia Gulf's South Pass capacity. As a result, the Commission should issue an order prohibiting Tennessee from imposing, or having Dynegy collect on its behalf, a transportation charge on Columbia Gulf's South Pass 77 shippers for transportation to the Yscloskey Plant.

**A. The Reciprocal Lease and the Commission Orders Approving the Lease Prohibit Tennessee from Imposing Additional Transportation Charges on Columbia Gulf's South Pass 77 Shippers**

18. The Reciprocal Lease that was approved by the Commission under Section 7 of the NGA accomplished Columbia Gulf's and Tennessee's objectives by (a) allowing Tennessee to lease 72,500 Mcf/day of Columbia Gulf's South Pass 77 capacity, which increased Tennessee's capacity on the South Pass 77 system to 260,000 Mcf/day and left Columbia Gulf with only 115,000 Mcf/day of capacity on the South Pass 77 System, and

(b) allowing Columbia Gulf to lease 115,000 Mcf/day of capacity on Tennessee's Muskrat Line between the terminus of the South Pass 77 System and Egan, Louisiana. Joint Application, pp. 4-6; Reciprocal Lease §§3 and 4. Theoretically, the deliveries to Columbia Gulf at Egan were to be effectuated by transporting gas from the terminus of the South Pass System in an east to west direction on Tennessee's Muskrat Line. Joint Application, p. 6. However, since gas typically flows west to east on the Muskrat Line, the deliveries at Egan actually would be effectuated by displacement or exchange.<sup>6</sup> In other words, when gas transported on Columbia Gulf's South Pass 77 capacity reaches the terminus of the South Pass system, the gas is exchanged for an equivalent volume of Tennessee's gas on the Western Shore Line of the Blue Water system.<sup>7</sup>

19. This arrangement resolved the "rate stacking" problem, because gas that was transported over Columbia Gulf's South Pass capacity did not by the terms of the Reciprocal Lease flow on Tennessee's onshore facilities and, thus, was not subject to transportation charges under Tennessee's tariff. In fact, the Commission specifically required that each pipeline treat the leased capacity as if it were their own capacity. 78 FERC at p. 61,754. This further underscores the fact that there were to be no additional charges for transportation on Tennessee's mainline.

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<sup>6</sup> Reciprocal Lease, § 4.3.1 (Columbia Gulf will receive the gas at Egan "by backoff or offset natural gas quantities equivalent to the quantities delivered" by Columbia Gulf to Tennessee at the South Pass 77 terminus). *See also*, 78 FERC at p. 61,754 (acknowledging that Columbia Gulf's South Pass volumes would be delivered to Egan by displacement).

<sup>7</sup> This is, of course, the very essence of an exchange or displacement transaction. The contract and not the physical path controls. The Commission found this displacement feature to be a distinct benefit of the Reciprocal Lease since it left all of Tennessee's Muskrat Line capacity available for use by Tennessee's existing shippers. 78 FERC at p. 61,754.

20. In the Joint Application filed with the Commission, Columbia Gulf and Tennessee expressly noted that the Reciprocal Lease eliminated the rate stacking problem. Tennessee and Columbia Gulf also pointed out additional benefits of the lease, including Tennessee's increased capacity entitlements on the South Pass 77 system, and the fact that South Pass shippers were afforded, for the first time, direct access to Columbia Gulf's downstream markets at Egan. South Pass shippers also were relieved of the administrative burdens of multiple nominations, balancing, and billings that had been required prior to the effectiveness of the Reciprocal Lease. Joint Application, pp. 6-8, 10; Hart Aff. ¶ 9. In addition, because Tennessee was able to make deliveries to Columbia Gulf at Egan through an exchange, there was no adverse impact on Tennessee's forward-haul capabilities. Tennessee still had its Muskrat Line capacity available for other uses. Joint Application, pp. 7-8.

21. Indeed, with regard to the rate stacking issue and the impact on shippers, the parties specifically represented to the Commission that the Reciprocal Lease would:

eliminate the administrative burdens that are associated with the current structure. Columbia Gulf's shippers will no longer need to enter into separate transportation contracts with Tennessee to "close the gap" between Columbia Gulf's capacity on the South Pass 77 system and Columbia Gulf's mainline system . . . Accordingly, shippers will realize a significant benefit from being relieved of the burden of duplicative nominations, balancing and billings.

Joint Application, pp. 6-7 (emphasis added). Tennessee and Columbia Gulf thus expressly contemplated that shippers moving gas on Columbia Gulf's South Pass 77 capacity would not be subjected to additional charges by Tennessee for transporting their South Pass gas to Columbia Gulf's mainline system at Egan, Louisiana.

22. The parties further represented in the Joint Application that there would be no rate impact on either pipeline due to the leases. Joint Application, p. 8, Hart Aff., ¶ 10. The Joint Application and the Reciprocal Lease contain no provisions permitting the imposition of additional charges by either party.

23. As noted, the Reciprocal Lease provides for Columbia Gulf to lease onshore mainline capacity from Tennessee. The lease defines the receipt point of the leased capacity, the “TGP Receipt Point,” as “the point of the terminus or the interconnection of the South Pass 77 System with TGP’s wholly-owned mainline facilities.” Exhibit A, Article I. A, p. 11. The delivery point of the leased capacity, the “TGP Delivery Point,” is defined as “the point of interconnection of TGP’s pipeline facilities and CGT’s pipeline facilities at Egan, Louisiana . . . .” *Id.* In § 4.5.4 of the Reciprocal Lease, the parties expressly acknowledged that the capacity leased by Columbia Gulf from Tennessee was “the link between [Columbia Gulf’s] Capacity Entitlement on the South Pass 77 system and its mainline system downstream of the [Tennessee] Delivery Point [Egan].” This lease thus enabled Columbia Gulf South Pass 77 shippers to move their gas to Columbia Gulf’s mainline at Egan without the need to pay additional transportation charges to Tennessee.

24. The intended elimination of “rate stacking” became even more clear as the Joint Application came under consideration by the Commission. A group of shippers on the South Pass 77 system (the “Indicated Shippers”) filed comments in support of the Joint Application. The Indicated Shippers confirmed that the prior system, including the rate stacking and dual nomination process, had been cumbersome to shippers, and that the arrangement proposed in the Reciprocal Lease “should break that logjam.”

Comments of Indicated Shippers in Support, p. 7, *See* Attachment G. The Indicated Shippers expressly requested, however, that the Commission clarify that both pipelines intended to operate their respective leased capacities as extensions of their own systems. Otherwise, the Indicated Shippers were concerned, “South Pass 77 shippers may continue to be subject to needless administrative burdens shipping gas on two different systems, defeating a significant purported benefit of the [Joint] Application, *as well as creating the possibility of continued rate stacking.*” *Id.* (emphasis added) (footnote omitted).

25. In its order approving the Reciprocal Lease, the Commission specifically discussed many of the potential benefits that had been raised by the parties in the Joint Application. In particular, the Commission acknowledged the parties’ explanation that the Reciprocal Lease was designed to put an end to “rate stacking,” whereby shippers had been forced to enter into two separate transportation agreements – one to transport on the South Pass 77 system, and another to move from that system to their desired markets. 78 FERC at pp. 61,752, and 61,754 (noting, *inter alia*, the parties’ representation that “Columbia Gulf’s shippers will no longer need to enter into separate transportation contracts with Tennessee to close the transportation gap between Columbia Gulf’s capacity on South Pass and Columbia Gulf’s mainline” and that it would “allow Columbia Gulf’s shippers increased access to receipt points on South Pass”). The Commission also found that “Tennessee’s acquisition of additional capacity on South Pass will allow it to meet current demand that it has been unable to fulfill.” *Id.*

26. The Commission specifically addressed the Indicated Shippers’ concern that Columbia Gulf and Tennessee specify how they proposed to treat their respective leased capacities, and directed that each pipeline treat its leased capacity as an extension

of its own system. 78 FERC at p. 61,753-54 and Ordering ¶ E(7). Charging an additional rate would be wholly inconsistent with the notion that the leased capacity is to be treated as if it were Columbia Gulf's own capacity.

27. The terms of the Reciprocal Lease, the parties' representations in the Joint Application, and the language contained in the Commission's orders approving the lease, prove beyond a shadow of a doubt that Tennessee's current attempts to impose additional transportation charges on Columbia Gulf's South Pass 77 shippers are illegal. To date, Tennessee has provided no basis for its sudden "about face" conclusion that it can impose separate transportation charges on shippers using Columbia Gulf's South Pass 77 capacity. Of course, Tennessee would be unable to do so if it tried.

28. As described in detail above, Tennessee and Columbia Gulf expressly contemplated in executing the Reciprocal Lease that shippers moving gas on Columbia Gulf's South Pass 77 capacity would not be subjected to additional charges for transporting that gas to Columbia Gulf's mainline system at Egan, Louisiana. Having made representations regarding the elimination of the rate stacking in the Joint Application, and having received the significant benefit of an increase in its capacity entitlements on the South Pass 77 system, the Commission must not permit Tennessee to flout its obligations under the Reciprocal Lease by re-imposing a charge for transportation service on its mainline.

**B. Tennessee's Illegal Actions Are Anti-Competitive and Are Causing Economic Harm to Columbia Gulf.**

29. Prior to executing the Reciprocal Lease Agreement, Tennessee and Columbia Gulf recognized that the imposition of "stacked" rates was placing Columbia Gulf at a competitive disadvantage with respect to shippers using the South Pass 77

system. That is, shippers faced a strong disincentive to transport their gas over Columbia Gulf's South Pass 77 capacity, because when doing so they were forced to pay a second transportation rate to use Tennessee's onshore pipeline facilities in order to get their gas to market. As described above, the Reciprocal Lease resolved the rate stacking issue and created meaningful competition on the South Pass 77 system. Joint Application, pp. 6-7.

30. Unfortunately, Tennessee's recent actions have forced Columbia Gulf to confront the very same competitive issues it thought had been resolved by the Reciprocal Lease. Tennessee is apparently requiring Columbia Gulf's South Pass shippers to pay an additional rate to transport their gas to the Yscloskey Plant for processing, while Tennessee's South Pass shippers pay no such additional rate. The result is predictable – as of July, 2004, 75% of the volumes flowing on Columbia Gulf's South Pass capacity are now being transported on Tennessee's South Pass capacity.

31. Of course, no pipeline can lose 75% of its throughput without suffering serious economic consequences. The Commission should see Tennessee's attempt to re-impose rate stacking for what it is: an effort to eliminate the competition Tennessee faces from Columbia Gulf on the South Pass 77 system.

32. If Tennessee is permitted to re-impose rate-stacking, shippers and producers in the South Pass area will be irretrievably damaged. They will no longer have an option other than Tennessee to get their gas to market. The Commission should not allow Tennessee to create a situation in which it is the only pipeline option for these shippers and producers.

## V. RELIEF REQUESTED BY COLUMBIA GULF

33. As demonstrated above, the imposition of any additional charges by Tennessee on Columbia Gulf's South Pass 77 shippers violates the Reciprocal Lease.<sup>8</sup> In addition, since the Reciprocal Lease was approved by the Commission under Section 7 of the NGA, Tennessee also is in violation of the Commission's February 26, 1997 order and the NGA. Columbia Gulf therefore respectfully requests that the Commission expeditiously act on this Complaint and issue an order finding that the Reciprocal Lease precludes Tennessee from charging an incremental transportation fee to shippers using Columbia Gulf's South Pass 77 capacity.

## VI. ENFORCEMENT HOT LINE/USE OF ADR

Prior to filing this Complaint, Columbia Gulf contacted the Commission's Hot Line about this matter on May 11, 2004. While Hot Line personnel were still investigating this matter, Columbia Gulf attempted to resolve this matter with Tennessee through the settlement procedures that had been ordered by the Commission in Docket No. RP04-215: another matter concerning Tennessee and Columbia Gulf. As part of that settlement effort, the Hot Line matter was terminated. The settlement procedures in Docket No. RP04-215 did not result in a settlement, and that case is now scheduled to go to hearing.

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<sup>8</sup> Because Tennessee may argue that it is not imposing an additional transportation charge on the South Pass 77 shippers, the Commission's order should make clear that Tennessee may not do indirectly what it is prohibited from doing directly. For example, Tennessee may argue that the Yscloskey Processing Plant Operator (Dynergy) is imposing the transportation charge. *See* Attachment E hereto. Since any charge that might be imposed to transport gas from the terminus of the South Pass 77 System to the Yscloskey Processing Plant would be for transportation on Tennessee's jurisdictional pipeline facilities, the Commission's jurisdiction and the application of the Reciprocal Lease cannot be avoided by having the processing plant assess the charge.

Although Columbia Gulf informed the Hot Line staff that this Complaint is being filed, Columbia Gulf does not believe that further use of the Hot Line will facilitate the expeditious resolution of this Complaint that Columbia Gulf requires.<sup>9</sup>

#### **VII. REQUEST FOR FAST TRACK PROCESSING**

Pursuant to Rule 206(h), Columbia Gulf requests that the Commission order fast track processing for this Complaint. As explained above, Tennessee's anticompetitive behavior and blatant violation of the Reciprocal Lease, the Commission's order approving the Reciprocal Lease, and Section 7 of the NGA have resulted in direct, substantial, and ongoing economic harm to Columbia Gulf and to competitive gas markets. Unfortunately, there is no reason to expect that this situation will change until the Commission takes action to stop Tennessee from imposing this illegal charge.

Columbia Gulf submits that this matter can be resolved on the basis of this Complaint, the Reciprocal Lease, the other documents attached to this Complaint, and the answer that will be filed by Tennessee. There should be no need for an evidentiary hearing.<sup>10</sup> Consequently, the Commission should be able to resolve this matter pursuant to its fast track procedures.

#### **VIII. CONCLUSION**

For the reasons set forth above, Columbia Gulf respectfully requests that the Commission promptly issue an order finding that Tennessee is in violation of the

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<sup>9</sup> Pursuant to Rule 206(b)(6), Columbia Gulf states that the issues presented by this Complaint are not pending in another proceeding before the Commission or another forum.

<sup>10</sup> Pursuant to Rule 206(b)(8), Columbia Gulf states that it has included all documents in its possession, or otherwise attainable, that support the facts in the Complaint.

Reciprocal Lease, the Commission's order approving the Reciprocal Lease, and the NGA. The Commission also should order Tennessee to immediately stop assessing any extra charges on Columbia Gulf's South Pass 77 shippers that are delivering gas to Egan, Louisiana pursuant to the terms of the Reciprocal Lease. Columbia Gulf also requests that the Commission grant such further relief that it deems to be necessary and proper.

Respectfully submitted,

COLUMBIA GULF  
TRANSMISSION COMPANY

Stephen R. Melton,  
Deputy General Counsel  
Sarah Sharlot Dietrich, Senior Attorney  
NiSource Corporate Services  
Company  
2603 Augusta Drive, Ste 300  
Houston, TX 70057

Kurt L. Krieger  
Assistant General Counsel  
NiSource Corporate Services  
Company  
P.O. Box 1273  
Charleston, WV 25225-1273

By: /s/ Barbara K. Heffernan  
Barbara K. Heffernan  
Debra Ann Palmer  
Schiff Hardin LLP  
1101 Connecticut Ave., NW, Suite 600  
Washington, DC 20036-4390

Kara L. Cunningham  
Steptoe & Johnson PLLC  
P.O. Box 1588  
Charleston, WV 25326-1588

July 26, 2004

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

**Columbia Gulf Transmission Company**

**Complainant**

**v.**

**Docket No. RP04-\_\_\_\_-000**

**Tennessee Gas Pipeline Company**

**Respondents**

**NOTICE OF COMPLAINT  
AND REQUEST FOR FAST TRACK PROCESSING**

( )

Take notice that on July 26, 2004 Columbia Gulf Transmission Company (Columbia Gulf) filed a formal complaint against Tennessee Gas Pipeline Company (Tennessee) pursuant to Sections 4(a), 5(a), 7(c), and 16 of the Natural Gas Act (NGA), and Rule 206 of the Commission's Rules of Practice and Procedure, alleging that Tennessee is illegally imposing a transportation charge on Columbia Gulf's South Pass 77 shippers in violation of the NGA, Commission orders that approved a Reciprocal Lease Agreement between Tennessee and Columbia Gulf, and in violation of the Reciprocal Lease Agreement itself. Columbia Gulf requests fast track processing of its Complaint.

Columbia Gulf certifies that copies of the complaint were served on the contacts for Tennessee as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive

~~00407265030 Received FERC OSEC 07/26/2004 04:21:00 PM Docket# RP04 413 000~~

email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time August \_\_, 2004.

Magalie R. Salas  
Secretary

DC\7005903.1

# **ATTACHMENT A**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Columbia Gas Transmission Company</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. RP04-</b>
	)	
<b>Tennessee Gas Pipeline Company,</b>	)	
	)	
<b>Respondent</b>	)	

**AFFIDAVIT OF JAMES W. HART  
IN SUPPORT OF  
COLUMBIA GULF TRANSMISSION COMPANY**

State of Texas

County of Harris

BEFORE ME, a Notary Public duly authorized to administer oaths, appeared James W. Hart, who, having been first duly cautioned and sworn upon oath, deposes and states as follows:

1. My name is James W. Hart, Jr. My business address is 2603 Augusta, Suite 300, Houston, Texas 77057. I am of legal age and I have personal knowledge of the matters set forth in this affidavit.

2. I am currently employed by Columbia Gulf Transmission Company ("Columbia Gulf") as Vice President, Marketing and Business Development. I have worked at Columbia Gulf for approximately 8 years. I received a Bachelor of Science degree in Chemistry from Southern Illinois University in 1971. I received an MBA from DePaul University in 1978. My current responsibilities include directing the commercial activities of Columbia Gulf including those involving the South Pass 77 System. I was directly involved in the negotiations that led to the Reciprocal Operating Lease Agreement ("Reciprocal Lease") that sets forth the parties' rights

and obligations with respect to the South Pass 77 system. *See* Attachment C. I signed the Reciprocal Lease on Columbia Gulf's behalf and am listed as one of the Columbia Gulf contacts on the related certificate application that was filed with the Commission seeking approval of the Reciprocal Lease.

3. The purpose of my affidavit is to support Columbia Gulf's claim that Tennessee is violating the terms of the Reciprocal Lease and the Commission order approving the lease.

4. I will start with a description of the South Pass 77 System. Columbia Gulf and Tennessee jointly own the South Pass 77 System, which is located in offshore southern Louisiana. It consists of 10.8 miles of 26-inch pipeline extending from a platform in South Pass Block 77 to a jointly owned platform located in South Pass Block 55, 17.5 miles of 36 inch pipeline extending from the South Pass 55 platform to an interconnection with Tennessee's mainline facilities in Plaquemines Parish, Louisiana, and various laterals. The South Pass System does not directly interconnect with Columbia Gulf's mainline facilities. The design capacity of the South Pass 77 System is 500,000 Mcf/day. The capacity was originally allocated as follows: Columbia Gulf – 187,500 Mcf/day; Tennessee – 187,500 Mcf/day, and Chevron – 125,000 Mcf/day. Two maps of this area are attached to the Complaint as Attachment B.

5. The South Pass 77 facilities were first certificated by the Commission in Docket No. CP79-444 in 1980, when both Columbia Gulf and Tennessee were still gas merchants. When the pipelines restructured their services and became transporters of natural gas pursuant to the directives of the Commission's Order No. 636, certain difficulties arose concerning the rate structure that was in place for transporting South Pass 77 system gas to the market.

6. Columbia Gulf was at a competitive disadvantage under the then existing arrangements because a shipper utilizing Columbia Gulf's South Pass capacity also had to enter

into a separate transportation contract with Tennessee to “close the gap” between Columbia Gulf’s South Pass facilities and the market area. This meant that the shipper had to pay an additional charge to Tennessee for transportation on the Tennessee system (“rate stacking”) and had the burden of duplicative nominations, balancing, and billings. Shippers understandably preferred to avoid both the extra charge and the extra burdens that were associated with the use of Columbia Gulf’s South Pass capacity. Thus, if given the opportunity to choose which capacity they would use, shippers would opt for that which came at the lowest cost and was easiest to implement.

7. The Reciprocal Lease was intended to address and resolve these issues. To implement the Reciprocal Lease, Columbia Gulf and Tennessee filed a Joint Abbreviated Application for Authorization to Abandon, and to Acquire, Firm Capacity by Lease with the Commission in Docket No. CP96-806 (“Joint Application”). As Columbia Gulf and Tennessee explained in the Joint Application, the Reciprocal Lease is designed to (a) provide Tennessee with additional capacity on the South Pass 77 System; (b) provide Columbia Gulf with direct access from the South Pass System to its mainline through the lease of a portion of Tennessee’s mainline facilities; and (c) resolve the rate stacking problem explained above. Joint Application at pp. 5-8.

8. These objectives were accomplished by Columbia Gulf leasing 72,500 Mcf/day of its South Pass 77 capacity to Tennessee, which left Columbia Gulf with only 115,000 Mcf/day of capacity on the South Pass 77 System, and by having Columbia Gulf lease from Tennessee 115,000 Mcf/day of capacity on Tennessee’s mainline (the Muskrat Line) between the terminus of the South Pass 77 System and Egan, Louisiana. Joint Application at 4-6. However, since gas typically flows west to east on the Muskrat Line, the deliveries at Egan are actually

accommodated by exchange or displacement. Reciprocal Lease, § 4.3.1. In other words, Tennessee would take delivery of the South Pass 77 gas being transported on Columbia Gulf's capacity at the terminus of the South Pass 77 system and re-deliver equivalent volumes to Columbia Gulf at Egan by displacement. There would be no charge for this displacement service because Tennessee already is being compensated by the additional capacity entitlement on the South Pass 77 system that it is leasing from Columbia Gulf at no charge.

9. Columbia Gulf and Tennessee pointed out the many mutual benefits of this arrangement in the application filed with the Commission, including: (a) elimination of the rate stacking problem, (b) increasing Tennessee's capacity entitlement on the South Pass 77 system, (c) increasing the level of new production being attached to the South Pass 77 System, (d) direct access to Columbia Gulf's markets, which provided producers with an additional outlet for their supplies, (e) increased competition between Tennessee and Columbia Gulf on an equal basis (*i.e.*, no extra charges would be incurred if a shipper used Columbia Gulf's South Pass capacity), and (f) elimination of the administrative burdens of multiple nominations, balancing, and billings. Joint Application at 6-8, 10. In addition, because Tennessee was able to make deliveries to Columbia Gulf at Egan by displacement, there is no adverse impact on Tennessee's forward-haul capabilities. The Commission specifically discussed many of these benefits in its order approving the Reciprocal Lease. 78 FERC ¶ 61,182 (1997).

10. The Joint Application (p. 8) also states that there will be no rate impact on either pipeline due to the leases. Each pipeline is to pay the other consideration of \$1.00 per year for the Reciprocal Lease. *Id.* There is no other provision in the Joint Application or the Reciprocal Lease that would permit the imposition of additional charges by either party.

11. The parties have been operating under the Reciprocal Lease since March, 1997. Until recently, Tennessee has delivered the South Pass 77 volumes to Egan by displacement and has never imposed any additional charge for this service. All of the natural gas that is produced in offshore Louisiana is unprocessed when it is delivered into Tennessee's onshore system at the terminus of the South Pass 77 System. Since the Reciprocal Lease was entered into, Tennessee has always accepted deliveries of all of the unprocessed gas that was delivered by all shippers at the terminus of the South Pass 77 System, regardless of whether the shipper was using Columbia Gulf's capacity or Tennessee's capacity. That situation changed in April of this year. See *Wendel Aff.*, ¶¶5-14.

12. As explained in the Affidavit of Stephen H. Wendel, in April of 2004, Columbia Gulf began to receive reports from its South Pass 77 shippers that Tennessee was threatening to impose additional transportation charges for South Pass 77 gas that was delivered using Columbia Gulf's capacity. The shippers were further informed that these additional charges would not be incurred if they used Tennessee's South Pass 77 capacity.

13. It is my understanding that Tennessee is imposing an extra transportation charge of 2 cents plus 1% fuel on any unprocessed gas that is delivered to the terminus of the South Pass 77 System using Columbia Gulf's capacity. I understand that Tennessee has taken the position that the unprocessed gas must be "transported" to the Yscloskey Plant (which is located on Tennessee's 500 Line, east of New Orleans) for processing before it can be delivered to Egan by displacement. See Attachment H to Complaint.

14. In my view, Tennessee's actions are both anticompetitive and in clear violation of the Reciprocal Lease. As I explained above, one of the primary purposes of the Reciprocal Lease was to provide direct access from the South Pass 77 system to Columbia Gulf's markets

and to eliminate the rate stacking or extra transportation charge that South Pass 77 shippers faced when they used Columbia Gulf's South Pass 77 capacity. Joint Application at 6-7.

15. It is important to note that Tennessee is being properly compensated for services rendered. As part of the Reciprocal Lease, Tennessee obtained a significant increase in its capacity rights on the South Pass 77 System: from 187,500 Mcf/day to 260,000 Mcf/day. Tennessee continues to use those capacity rights to generate revenues. The *quid pro quo* for the increased capacity rights received by Tennessee is the delivery of Columbia Gulf's South Pass 77 system volumes to Egan by displacement without the incurrence of any additional charges.

16. Tennessee's apparent attempt to justify the additional charges by claiming that the gas does not meet its quality specifications is specious. This is not a new situation. As I have explained, none of the gas from the South Pass 77 system meets the gas quality specifications. This was the case when the Reciprocal Lease was signed.

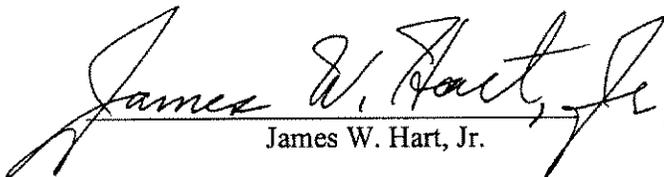
17. Columbia Gulf is suffering serious economic harm as a result of Tennessee's actions. As of July 1, 2004, Columbia Gulf has lost 60% of its South Pass 77 shippers. This constitutes about 75% of the volumes that have been flowing on Columbia Gulf's South Pass 77 capacity. Tennessee's actions are clearly anti-competitive both as to Columbia Gulf and as to the South Pass 77 shippers who are losing a competitive option for transporting their gas to the market.

**FURTHER AFFIANT SAYETH NOT.**

State of Texas

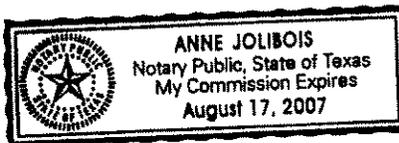
County of HARRIS

I, James W. Hart, Jr., being duly sworn, do hereby depose and say that I have read the attached document and certify it is true and correct to the best of my knowledge, information and belief.

  
James W. Hart, Jr.

Subscribed and sworn to before me this 26<sup>th</sup> day of July 2004.

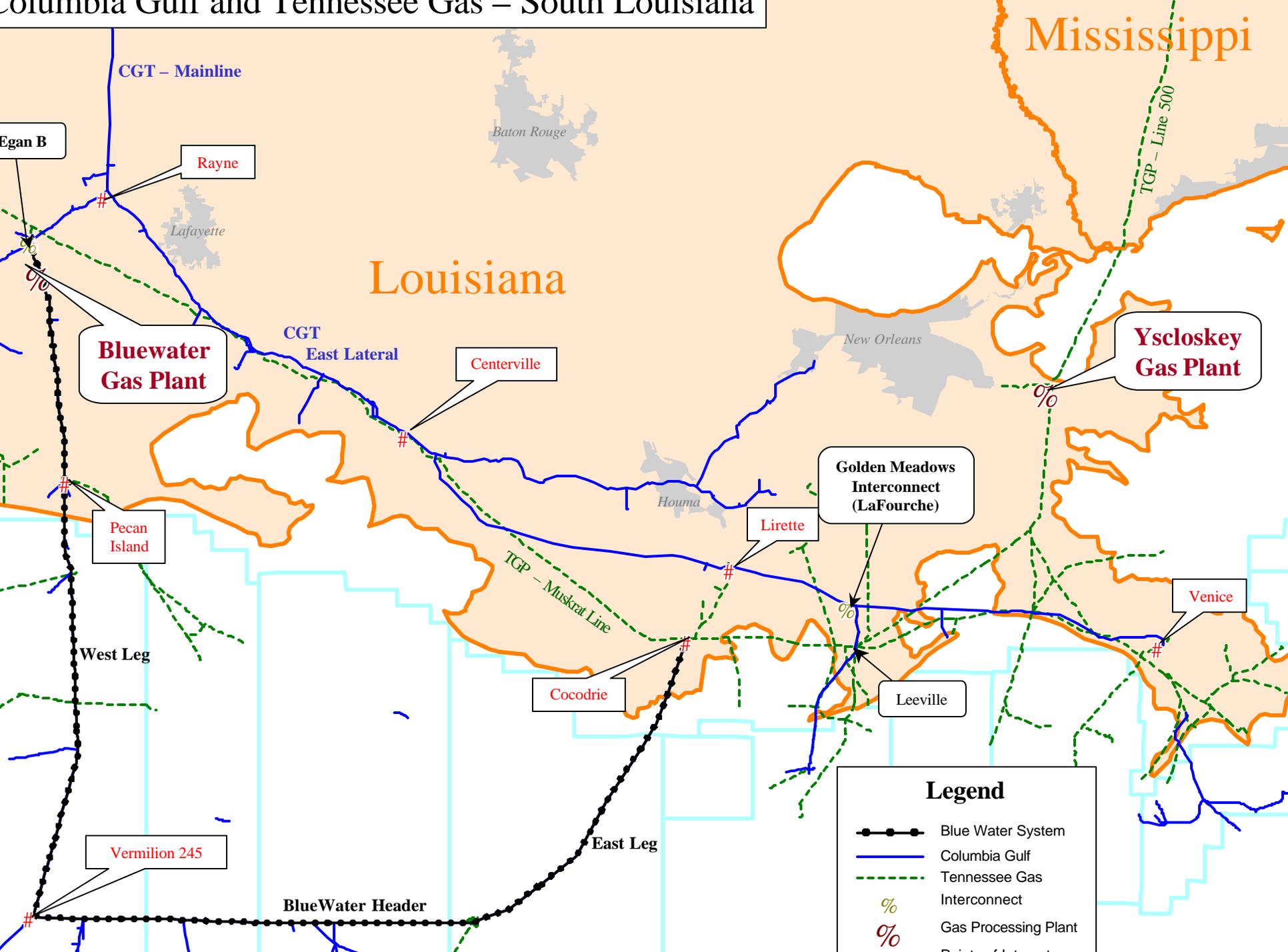
  
Notary Public

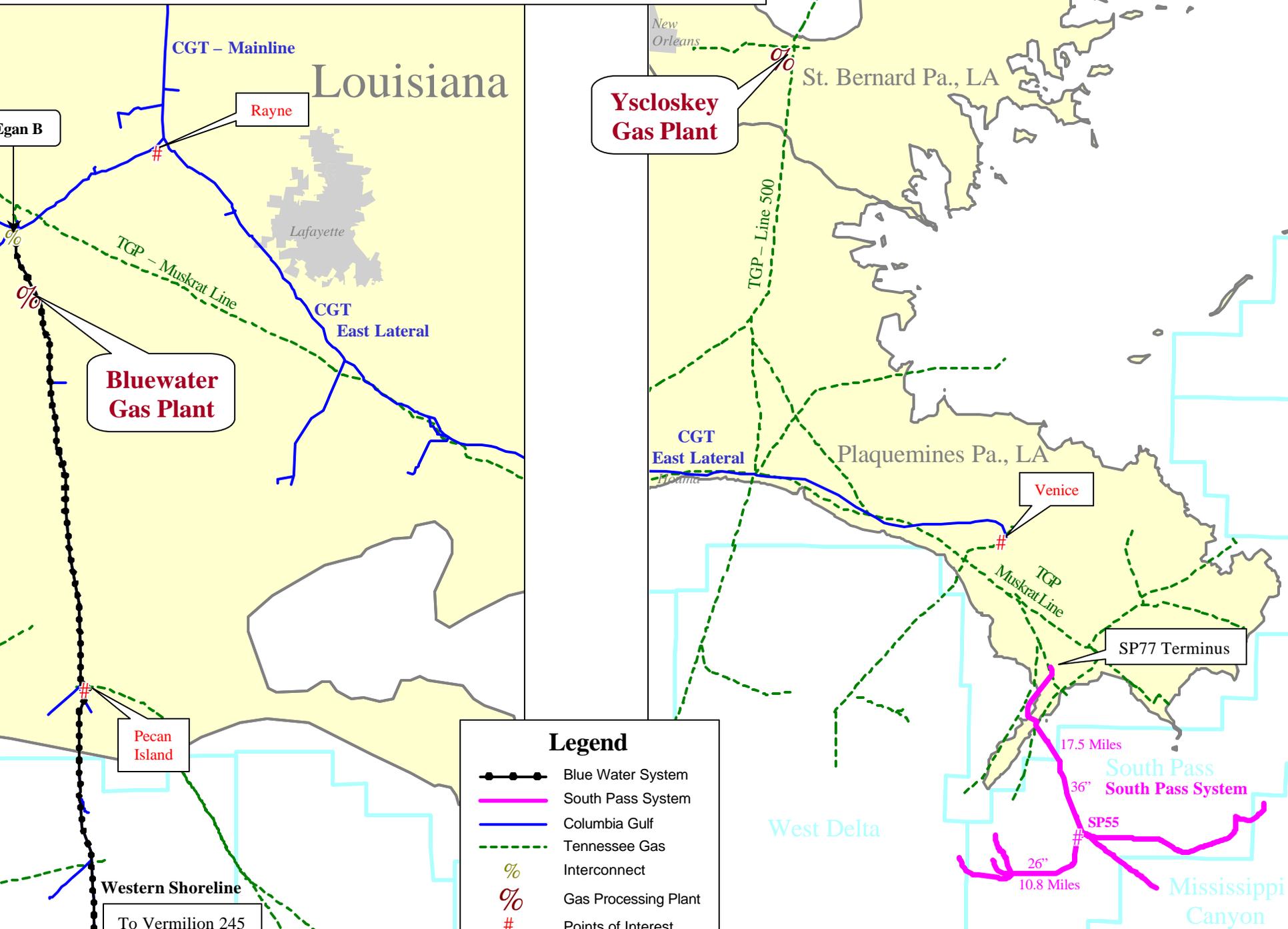


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# **ATTACHMENT B**

# Columbia Gulf and Tennessee Gas – South Louisiana





# Louisiana

**Yscloskey Gas Plant**

**Bluewater Gas Plant**

## Legend

- Blue Water System
- South Pass System
- Columbia Gulf
- Tennessee Gas
- Interconnect
- Gas Processing Plant
- Points of Interest

17.5 Miles  
36" South Pass System

26"  
10.8 Miles

Western Shoreline  
To Vermilion 245

# **ATTACHMENT C**

Tennessee Gas Pipeline  
1010 Milam Street  
PO Box 2511  
Houston, Texas 77252 2511  
Tel 713 757 2131

ORIGINAL



September 20, 1996

Ms. Lois D. Cashell  
Office of the Secretary, Room 1A  
Federal Energy Regulatory Commission  
888 First Street, N. E.  
Washington, D. C. 20426

96 SEP 20 PM 3:53  
FEDERAL ENERGY  
REGULATORY COMMISSION

Re: Docket No. CP96- -000  
Tennessee Gas Pipeline Company  
Joint Abbreviated Application

CP96-806-000

Dear Ms. Cashell:

Tennessee Gas Pipeline Company and Columbia Gulf Transmission Company ("Applicants"), pursuant to Section 7(b) and 7(c) of the Natural Gas Act and the Commission's Rules and Regulations thereunder, hereby submits an original and seven (7) copies of a joint application requesting authorization to lease firm capacity to each other on the South Pass 77 system.

In accordance with the Commission's requirements for submission of joint electronic filings, included on this diskette is Tennessee's file numbers CP960034.A1U, A2U and A3U. Additionally, included on this diskette are Columbia's file numbers CP960008.A1U, A2U and A3U.

Respectfully submitted,

TENNESSEE GAS PIPELINE COMPANY

By Peggy A. Heeg  
Peggy A. Heeg  
Associate General Counsel

Enclosure

c:\wpdoc\ltr\ferc.wp/p67

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10/2/96 [unclear] /OPR

FERC-DOCKET

SEP 20 1996

GENERAL INFORMATION AND FACILITY SUMMARY

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Company Name : Tennessee Gas Pipeline Company

Docket Number : CP96- -000

Date Filed : September 20, 1996

Type of Filing : initial filing

Type of Case (A) : 06 Abandonment

(B) : 19 Acquisition

Project Name : Tennessee & Columbia Gulf/Reciprocal

Total Miles : \_\_\_\_\_

Total Horsepower : \_\_\_\_\_

Total Cost : New \_\_\_\_\_

of Facilities : Abandoned \_\_\_\_\_

Maximum Daily  
Volume/Capacity : \_\_\_\_\_

Sensitivity of Data : filing does not contain privileged data

Company Name : Tennessee Gas Pipeline Company  
Docket Number : CP96-000

GENERAL INFORMATION AND FACILITY SUMMARY  
FOOTNOTE

0001 Project Name:

By this joint application Tennessee Gas Pipeline Company (Tennessee) and Columbia Gulf Transmission Company (Columbia Gulf) seek authorization to lease firm capacity to each other on the South Pass 77 system.

In accordance with the Commission's requirements for submission of joint electronic filings, included on this diskette is Tennessee's file numbers CP960034.A1U, A2U and A3U. Additionally, included on this diskette are Columbia's file numbers CP960008.A1U, A2U and A3U.

GENERAL INFORMATION AND FACILITY SUMMARY

-----

Company Name : Columbia Gulf Transmission Company

Docket Number : CP96- -000

Date Filed : September 20, 1996

Type of Filing : initial filing

Type of Case (A) : 06 Abandonment

(B) : 19 Acquisition

Project Name : Columbia Gulf & Tennessee/Reciprocal

Total Miles : \_\_\_\_\_

Total Horsepower : \_\_\_\_\_

Total Cost : New \_\_\_\_\_  
of Facilities : Abandoned \_\_\_\_\_

Maximum Daily  
Volume/Capacity : \_\_\_\_\_

Sensitivity of Data : filing does not contain privileged data

Company Name : Columbia Gulf Transmission Company  
Docket Number : CP96-000

GENERAL INFORMATION AND FACILITY SUMMARY  
FOOTNOTE

0001 Project Name:

By this joint application Columbia Gulf Transmission Company (Columbia Gulf) and Tennessee Gas Pipeline Company (Tennessee) seek authorization to lease firm capacity to each other on the South Pass 77 system.

In accordance with the Commission's requirements for submission of joint electronic filings, included on this diskette is Columbia's file numbers CP960008.A1U, A2U and A3U. Additionally, included on this diskette are Tennessee's file numbers CP960034.A1U, A2U and A3U.

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FEDERAL ENERGY  
REGULATORY COMMISSION

CP96-806-000"

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

TENNESSEE GAS PIPELINE COMPANY )  
AND ) Docket No. CP96- -000  
COLUMBIA GULF TRANSMISSION COMPANY )

JOINT ABBREVIATED APPLICATION FOR AUTHORIZATION  
TO ABANDON, AND TO ACQUIRE, FIRM CAPACITY BY LEASE

Tennessee Gas Pipeline Company ("Tennessee") and Columbia Gulf Transmission Company ("Columbia Gulf") request authorization pursuant to Sections 7(b) and 7(c) of the Natural Gas Act ("NGA") and Sections 157.7, 157.15 and 157.18 of the regulations of the Federal Energy Regulatory Commission ("Commission") for Tennessee and Columbia Gulf (referred to collectively as "Applicants") to lease firm capacity to each other in accordance with a Reciprocal Operating Lease Agreement ("Agreement"). Pursuant to the Agreement (1) Tennessee will lease firm capacity from Columbia Gulf on the South Pass 77 system <sup>1/</sup> and (2) Columbia Gulf will lease firm capacity on Tennessee's wholly-owned pipeline facilities that are located downstream of the South Pass 77 system.

In support of this application, Applicants respectfully show the following:

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1/ As discussed more fully below, the South Pass 77 system is jointly owned by Tennessee and Columbia Gulf.

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RECEIVED  
FEDERAL ENERGY REGULATORY COMMISSION

I.  
General

The exact legal name of Tennessee is Tennessee Gas Pipeline Company. Tennessee is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is located at 1010 Milam Street, Houston, Texas. The exact legal name of Columbia Gulf is Columbia Gulf Transmission Company. Columbia Gulf is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is located at 2603 Augusta Street, Houston, Texas.

All communications and pleadings associated with this application should be addressed to:

For Tennessee:

Peggy A. Heeg  
Tennessee Gas Pipeline Company  
Associate General Counsel  
P.O. Box 2511  
Houston, Texas 77252  
Telephone: (713) 757-2348  
Facsimile: (713) 757-8081

Jim Gotcher  
Tennessee Gas Pipeline Company  
Director of Supply Development  
P.O. Box 2511  
Houston, Texas 77252  
Telephone: (713) 757-2437  
Facsimile: (713) 757-1519

For Columbia Gulf:

Lee M. Beckett  
Assistant Secretary & Counsel  
Columbia Gulf Transmission  
Company  
P.O. Box 683  
Houston, Texas 77001-0683  
Telephone: (713) 267-4741  
Facsimile: (713) 267-4755

J.W. Hart, Jr.  
Vice President  
Columbia Gulf Transmission  
Company  
P.O. Box 683  
Houston, Texas 77001-0683  
Telephone: (713) 267-4159  
Facsimile: (713) 267-4190

Larry L. Willeke  
700 Thirteenth Street, N.W.  
Suite 900  
Washington, D.C. 20005

II.  
Existing Operations

Tennessee and Columbia Gulf both own and operate extensive interstate natural gas pipeline facilities. Tennessee and Columbia Gulf jointly own the South Pass 77 system located offshore southern Louisiana. The South Pass 77 system consists of (1) 10.8 miles of 26-inch pipeline extending from a platform in the South Pass 77 Block to a platform jointly owned by Tennessee and Columbia Gulf located in the South Pass 55 Block and (2) 17.5 miles of 36-inch pipeline extending from the South Pass 55 platform to an interconnection with Tennessee's wholly-owned mainline at valve 527A-601 located in Plaquemines Parish, Louisiana. See Tennessee Gas Pipeline Company et al., 12 FERC ¶ 61,307 (1980). Chevron U.S.A. Production Company acquired the right to utilize 25% of the system capacity on the South Pass 77 system. A map depicting the South Pass 77 system and Tennessee's mainline system is attached as Exhibit F.

The South Pass 77 system has a design capacity of 500,000 Mcf per day,<sup>2/</sup> with Tennessee, Columbia Gulf and Chevron having the following firm capacity entitlements:

	<u>Mcf/d</u>
Tennessee	187,500
Columbia Gulf	187,500
Chevron	125,000

---

<sup>2/</sup> The South Pass 77 system was originally authorized with a design capacity of 553,600 Mcf per day. Tennessee notified the Commission on September 17, 1982 that certain compression facilities would not be installed, resulting in a design capacity of 500,000 Mcf per day.

III.  
**Proposal**

The proposed Agreement is designed to: 1) provide Tennessee needed additional capacity on the South Pass 77 system; 2) grant Columbia Gulf direct access from its mainline system to the South Pass 77 system through a lease of a portion of Tennessee's mainline facilities; and 3) amicably resolve a contract dispute between Tennessee and Columbia Gulf with respect to the Applicants' capacity rights on the South Pass 77 system which has impeded the attachment of new supplies to the system.

A. **Lease of Capacity to Tennessee**

Pursuant to the Agreement included in Exhibit U,<sup>3/</sup> Columbia Gulf will retain 115,000 Mcf per day as its capacity entitlement on the South Pass 77 system and lease to Tennessee any capacity it would otherwise be entitled to over and above 115,000 Mcf per day. Based upon the current design capacity of the system, Tennessee will increase its capacity entitlement on the South Pass 77 system to 260,000 Mcf per day as a result of the Agreement. Tennessee will be entitled to any incremental capacity rights to which Columbia Gulf would otherwise be entitled if the South Pass 77 system is expanded.

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<sup>3/</sup> Upon receipt of acceptable authorizations from the Commission, the lease will continue until the earlier of (a) the effective date of any Commission abandonment authorization or (b) the cessation of physical and commercial operation of the South Pass 77 system. The Applicants request pregranted abandonment authorization at the end of the term of the leases.

Since Tennessee's capacity in the South Pass 77 system is fully subscribed, and is fully utilized on most days, Tennessee has not been able to accommodate incremental requests for capacity on the South Pass 77 system. As a result, Shippers are faced with utilizing Columbia's or Chevron's capacity in the South Pass 77 system to bring gas into Tennessee and then contracting with Tennessee to transport gas on the Tennessee mainline system to the desired market. This "rate stacking" has substantially reduced the level of new production being attached to the gathering systems which feed into the South Pass 77 system. Following Tennessee's acquisition of the leased capacity, Tennessee's customers and producers will be provided additional capacity to access supplies located on and upstream of the South Pass 77 system.

B. **Lease of Capacity to Columbia Gulf**

In contrast to Tennessee's need for additional capacity on the South Pass 77 system, Columbia Gulf has excess capacity on the South Pass 77 system. Columbia Gulf does not, however, have the facilities or the infrastructure to connect the South Pass 77 system with the rest of the Columbia Gulf system. As a result, Columbia Gulf has not had a means to provide its shippers direct access to new gas reserves absent the construction of downstream facilities at significant cost.<sup>4/</sup>

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<sup>4/</sup> Columbia Gulf has previously estimated that it would cost approximately \$13.5 million to construct new facilities to connect the South Pass 77 system to the closest viable interconnection with the Columbia Gulf East Lateral at Venice.

Pursuant to the Agreement, Columbia Gulf will lease 115,000 Mcf per day of capacity (an amount equal to Columbia Gulf's retained capacity entitlement on the South Pass 77 system) on Tennessee's system from the point of interconnection between Tennessee's mainline system and the South Pass 77 system to a point of interconnection between Tennessee and Columbia Gulf at Egan, Louisiana. The deliveries at Egan, Louisiana will generally be effectuated by transporting gas from the South Pass 77 system in a east -to-west direction on Tennessee's "Muskrat line." Since gas typically flows on the Muskrat line in a west-to-east direction, the lease can be accommodated without impacting Tennessee's forward haul capabilities.

Through the lease of capacity downstream of the South Pass 77 system, Columbia Gulf's customers will be able to directly access existing, as well as new Gulf of Mexico gas supplies. Similarly, producers will have an additional outlet for their supplies. Direct access to Columbia Gulf's markets will encourage competition between Tennessee and Columbia Gulf and enhance the marketability of supplies behind the South Pass 77 system. With the creation of such direct access, Tennessee and Columbia Gulf will compete head to head on an equal basis for transportation of such gas.

The Agreement will also eliminate the administrative burdens that are associated with the current structure. Columbia Gulf's shippers will no longer need to enter into separate transportation contracts with Tennessee to "close the gap"

between Columbia Gulf's capacity on the South Pass 77 system and Columbia Gulf's mainline system. Similarly, shippers desiring receipt points on the jointly-owned South Pass 77 system will no longer face the prospect of splitting their throughput on the South Pass 77 system between the two owners, as is currently the case for much of the throughput on the system. Accordingly, shippers will realize a significant benefit from being relieved of the burden of duplicative nominations, balancing and billings.

C. Impact of Reciprocal Leases

The lease of capacity will provide customers of both Tennessee and Columbia Gulf with greater flexibility and increased supply and market opportunities. Tennessee's customers will have increased access to receipt points on the South Pass 77 system and Columbia Gulf's customers will have direct access to South Pass area production for the first time. This new access has the potential to increase the value of released capacity on both systems.

The Agreement will have no detrimental impact on either Tennessee's or Columbia Gulf's existing customers. Since Columbia Gulf will retain 115,000 Mcf per day on the South Pass 77 system, which is well above its current usage of the system, Columbia Gulf's customers will retain sufficient access to the South Pass 77 system. Since the deliveries by Tennessee to Egan will not require the utilization of Tennessee mainline pipeline capacity on a forward haul basis, the lease to Columbia Gulf will not create any new capacity constraints on Tennessee's system,

but will instead efficiently maximize the use of Tennessee's capacity. Further, there will be no rate impact on either pipeline as a result of the leases.

Finally, the lease will resolve a long-standing contractual dispute between Tennessee and Columbia Gulf that has inhibited the utilization of the South Pass 77 system.<sup>5/</sup> The parties' creative settlement of this dispute conforms the capacity entitlements to each pipelines' respective requirements, creates seamless access for Columbia Gulf to South Pass 77 at its modified entitlement level, reduces administrative burdens, increases competition and encourages supply development.

#### IV.

#### Accounting Treatment

Each party will pay the other party \$1 per year for the reciprocal lease. Consistent with prior Commission guidance, the Applicants seek authorization to treat the Agreement as an

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<sup>5/</sup> The South Pass 77 system was originally constructed when Tennessee and Columbia Gulf's affiliate, Columbia Gas Transmission Corp., were gas merchants. As such, the underlying agreements relative to the South Pass 77 system do not clearly address the relationship of the parties as transporters of gas.

Over the past several years, a dispute has arisen between Tennessee and Columbia Gulf as to how transportation on the system is utilized. Columbia Gulf has taken the position that shippers desiring to transport gas on the South Pass 77 system must transport 50% of their throughput through Tennessee's capacity entitlement and 50% of their throughput through Columbia Gulf's capacity entitlement. Tennessee, on the other hand, has taken the position that potential customers may contract for 100% of their requirements on the South Pass 77 system from either Tennessee or Columbia Gulf, subject only to the capacity entitlement limitations outlined above.

operating lease pursuant to the Uniform System of Accounts, and to record the lease payment to Account No. 858 as operational Account No. 858 costs. The receipt of the lease payments will be recorded to Account No. 489. See Midwestern Gas Transmission Co. et al., FERC ¶ 61,320 at 61,888 n. 8 (1995) and Trunkline Gas Co. et al., 64 FERC ¶ 61,142 at pp. 62,147-148 (1993).

V.

**Public Convenience and Necessity**

The Agreement and the underlying reciprocal lease arrangements are consistent with the Commission's recent precedent on such arrangements. The Commission has recognized the unique benefits of pipeline leases. See Midwestern Gas Transmission Co. et al., 73 FERC ¶ 61,320 (1995).<sup>6/</sup>

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<sup>6/</sup> In Texas Eastern Transmission Corporation, 74 FERC ¶ 61,074 (1996), the Commission stated it would permit pipelines to hold upstream or downstream transportation contracts on pipelines to the extent that the pipeline can show how the capacity arrangement meets certain concerns raised in the order. None of the concerns expressed in Texas Eastern are applicable to the reciprocal lease.

Specifically, the leases 1) will not permit the acquiring party to gain control over access to upstream capacity and supply sources that would restrict customer choice; 2) will have no rate impact on either system; 3) provide customers and producers on both Tennessee and Columbia Gulf better access to capacity on the systems; and 4) will be integrated into the open access services of both pipelines (the respective shippers on each system will retain title to any gas that is transported through the leased capacity).

As shown above, the proposed lease arrangement provides numerous benefits to Tennessee, Columbia Gulf and the respective shippers on both systems. In particular, the arrangement (1) provides Tennessee's customers with increased access to additional supplies, (2) provides Columbia Gulf and its customers direct access to supplies increasing competition for transportation in the area, (3) eliminates various administrative burdens of shippers accessing such supplies and markets, (4) avoids the need for Columbia Gulf and Tennessee to construct new, duplicative capacity, (5) has no detrimental or adverse affect on existing shippers, and (6) resolves a contractual dispute that has created significant uncertainty for shippers. For the foregoing reasons, the proposed lease arrangements are supported by the public convenience and necessity and should be expeditiously approved.

VI.  
**Related Requirements**  
**Regulation 157.6(b) (5)**

The Applicants are not aware of any other application to any other federal, state or other regulatory body which will be necessary to effectuate or supplement the lease arrangement proposed in this Application.

VII.  
**Required Exhibits**  
**Regulation 157.6(b) (6)**

This application is an abbreviated application filed pursuant to Section 157.7 of the Commission's regulations. The

following exhibits required by Sections 157.14, 157.15 and 157.18 of the Commission's regulations are either (i) submitted in this application, (ii) incorporated by reference to other dockets, or (iii) omitted, in which case the reasons for such omission are given.

Exhibit A                      Articles of Incorporation and By-Laws

Tennessee:                      Submitted as Exhibit A to Tennessee's application in Docket No. CP95-320-000 and incorporated in this application by reference.

Columbia Gulf:                      Submitted as Exhibit A to Columbia Gulf's application in Docket Nos. CP76-66 and CP96-552 and incorporated in this application by reference.

Exhibit B                      State Authorization

Tennessee:                      Submitted as Exhibit B to Tennessee's application in Docket No. CP95-320-000 and incorporated in this application by reference.

Columbia Gulf:                      Submitted as Exhibit B to Columbia Gulf's application in Docket No. CP79-174 and incorporated in this application by reference.

Exhibit C                      Company Officials

Tennessee:                      Submitted as Exhibit C to Tennessee's application in Docket No. CP96-721-000 and incorporated in this application by reference.

Columbia Gulf:                      Submitted herewith.

Exhibit D                      Subsidiaries and Affiliation

Tennessee:                      Submitted as Exhibit C to Tennessee's application in Docket No. CP96-164-000 and incorporated in this application by reference.

Columbia Gulf: Submitted as Exhibit C to Columbia Gulf's application in Docket No. CP94-640 and incorporated in this application by reference.

Exhibit E Other Pending Applications and Filings  
Omitted. No other applications or filings by Applicants directly or significantly affect this application.

Exhibit F Location of Facilities  
Submitted in this application.

Exhibit F-I Factors Considered in Use of Joint  
Rights-of-Way  
Omitted. Applicants do not propose in this application the construction of any new facilities.

Exhibit F-II Factors Considered in Locating Facilities in  
Scenic, Historic, Recreational, or Wildlife  
Areas  
Omitted. Applicants do not propose in this application the construction of any new facilities.

Exhibit F-III Statement of Adoption of Guidelines  
Concerning Right-of-Way and Construction  
Activities  
Omitted. Applicants do not propose in this application the construction of any new facilities.

Exhibit F-IV Statement of Environmental Impact of the  
Proposed Action  
Omitted. Applicants do not propose in this application the construction of any new facilities.

Exhibit G, Flow Diagrams and Flow Diagram Data  
G-I, G-II  
Omitted. Applicants do not propose in this application the construction of any new facilities.

Exhibit H                      Total Gas Supply Data

Omitted. Applicants do not propose in this application to make any sales of gas.

Exhibit I                      Market Data

Omitted. Applicants do not propose by this application to offer sales services or construct new facilities.

Exhibit J                      Conversion to Natural Gas

Omitted. No conversion to natural gas is contemplated by this application.

Exhibit K                      Cost of Facilities

Omitted. Applicants do not propose in this application the construction of any new facilities.

Exhibit L                      Financing

Omitted. Applicants do not propose in this application the construction of any new facilities.

Exhibit M                      Construction, Operation and Management

See Exhibit U. The agreements attached as part of Exhibit U reflect the arrangement for the operation and management for (1) the South Pass 77 system, including the leased capacity from Columbia Gulf to Tennessee, and (2) the leased capacity from Tennessee to Columbia Gulf.

Exhibit N                      Revenues, Expenses and Income

Omitted. For purposes of accounting and rate treatment, Applicants request that the Agreement be treated as an "operating lease" pursuant to the Uniform System of Accounts for Natural Gas Companies. The payments would be charged to Account No. 858 and the receipt of lease payments would be charged to Account No. 489.

Exhibit O

Depreciation and Depletion

Omitted. Applicants do not propose in this application the construction of any new facilities.

Exhibit P

Tariff

Omitted. This application does not request authorization for new sales or services and does not contemplate a revision to existing tariffs.

Exhibit Q

Effect of Acquisition on Existing Contracts and Tariffs

Omitted. The Agreement, attached in Exhibit U, contemplates acquisition of capacity and not facilities. The Agreement will have no effect on existing contracts and tariffs.

Exhibit R

Acquisition Contracts

Omitted. See above discussion for Exhibit Q.

Exhibit S

Accounting

Omitted. See above discussion for Exhibit Q.

Exhibit T

Related Applications

Omitted. None required.

Exhibit U

Contracts and Agreements

Submitted are copies of the Agreement and the Ownership, Operation & Maintenance Agreement for the operation of the South Pass 77 system in hard copy only.

Exhibit V

Flow Diagram Showing Daily Design Capacity and Reflecting Operation of Applicant's Systems after Abandonment

Omitted. Applicants do not propose nor contemplate by this application any change in the daily design capacity of their respective systems. Any expansions of the South Pass 77 system that would require specific Commission authorization would be the subject of a separate application that would be filed when and if required.

Exhibit W                      Impact on Customers Whose Service Will Be Terminated

Omitted. The abandonment requested in this application will not terminate any service provided by Applicants to their respective customers.

Exhibit X                      Effect of Abandonment on Existing Tariffs

Omitted. The abandonment requested in this application will not affect Applicants' existing tariffs.

Exhibit Y                      Accounting Treatment of Abandonment

Omitted. Applicants do not propose to permanently abandon any facilities by this application. As noted in reference to Exhibit N, Applicants request that the transactions be accounted for as operating leases.

Exhibit Z                      Location of Facilities

Omitted. Applicants do not propose to permanently abandon any facilities by this application.

VIII.

In accordance with 18 C.F.R. §385.2011, included with this filing is a computer diskette containing the filing in electronic form. The undersigned submits that the paper copies contain the same information as the electronic media, that the undersigned has read and knows the contents of the paper copies and electronic media, and that the contents as stated in the copies and on the electronic media are true to the best knowledge and belief of the undersigned.

WHEREFORE, anticipating that this proceeding will be noncontested as described in 18 C.F.R. Section 385.802 of the Rules of Practice and Procedure, and in that event, Applicants respectfully request that the Commission's intermediate decision be omitted and Applicants waive oral hearing and opportunity for filing exceptions to the decision of the Commission. Applicants further request the Commission issue an order permitting and approving the Agreement as described in this application and such other authority, if any, as may be appropriate.

Notice of this application may be given by publication of the Form of Notice that is attached.

Respectfully submitted,

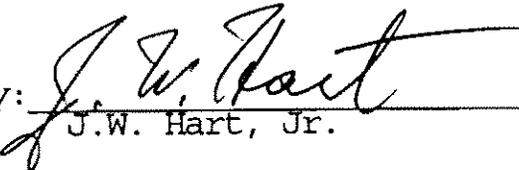
TENNESSEE GAS PIPELINE COMPANY

By:

  
Peggy A. Heeg

COLUMBIA GULF TRANSMISSION COMPANY

By:

  
J.W. Hart, Jr.

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of )  
 )  
Tennessee Gas Pipeline Company ) Docket No. CP96- -000  
and )  
Columbia Gulf Transmission Company )

NOTICE OF APPLICATION

(Issued \_\_\_\_\_, 1996)

Take notice that on \_\_\_\_\_, 1996, Tennessee Gas Pipeline Company (Tennessee) and Columbia Gulf Transmission Company (Columbia Gulf), (referred to collectively as "Applicants"), filed a joint application with the Commission in Docket No. CP96-\_\_\_\_\_-000 pursuant to Section 7(b) and 7(c) of the Natural Gas Act (NGA) for permission to lease firm capacity to each other in accordance with a Reciprocal Operating Lease Agreement (Agreement), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

The Applicants state that the proposed Agreement is designed to: 1) provide Tennessee needed additional capacity on the South Pass 77 system; 2) grant Columbia Gulf direct access from its mainline system to the South Pass 77 system through a lease of a portion of Tennessee's mainline facilities; and 3) amicably resolve a contract dispute between Tennessee and Columbia Gulf with respect to the Applicants' capacity rights on the South Pass 77 system which has impeded the attachment of new supplies to the system.

Columbia Gulf will retain 115,000 Mcf per day as its capacity entitlement on the South Pass 77 system and lease to Tennessee any capacity it would otherwise be entitled to over and above 115,000 Mcf per day.

Columbia Gulf will lease 115,000 Mcf per day of capacity (an amount equal to Columbia Gulf's retained capacity entitlement on the South Pass 77 system) on Tennessee's system from the point of interconnection between Tennessee's mainline system and the South Pass 77 system to a point of interconnection between Tennessee and Columbia Gulf at Egan, Louisiana.

The lease of capacity will provide Applicants' customers with greater flexibility, increased supply and market opportunities. Tennessee's customers will have increased access to receipt points on the South Pass 77 system and Columbia Gulf's customers will have direct access to South Pass area production for the first time. The Agreement will have no detrimental impact on Applicants existing customers. This new access has the potential to increase the value of released capacity on both systems.

Any person desiring to be heard or to make any protest with reference to said application should on or before \_\_\_\_\_, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

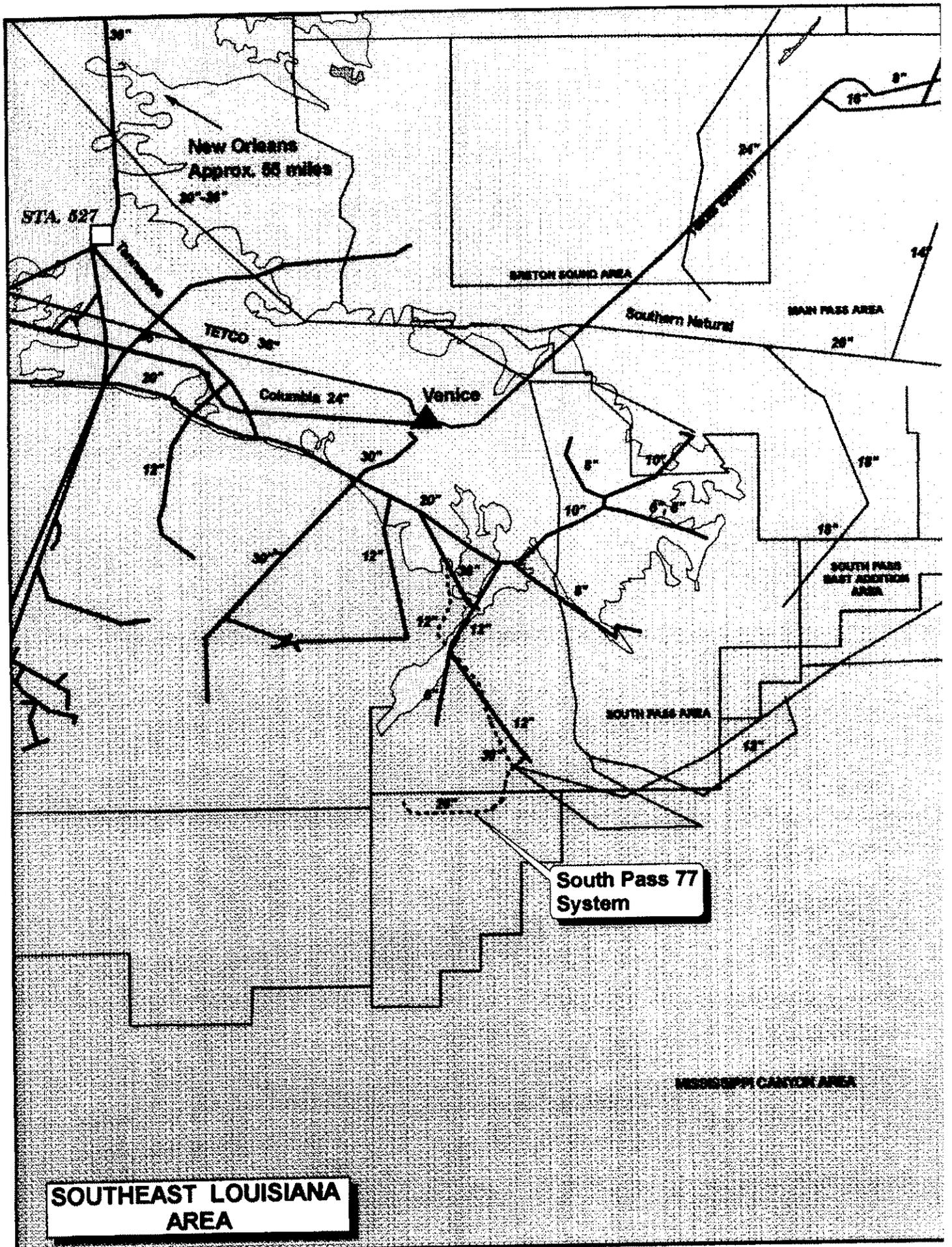
Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or be represented at the hearing.

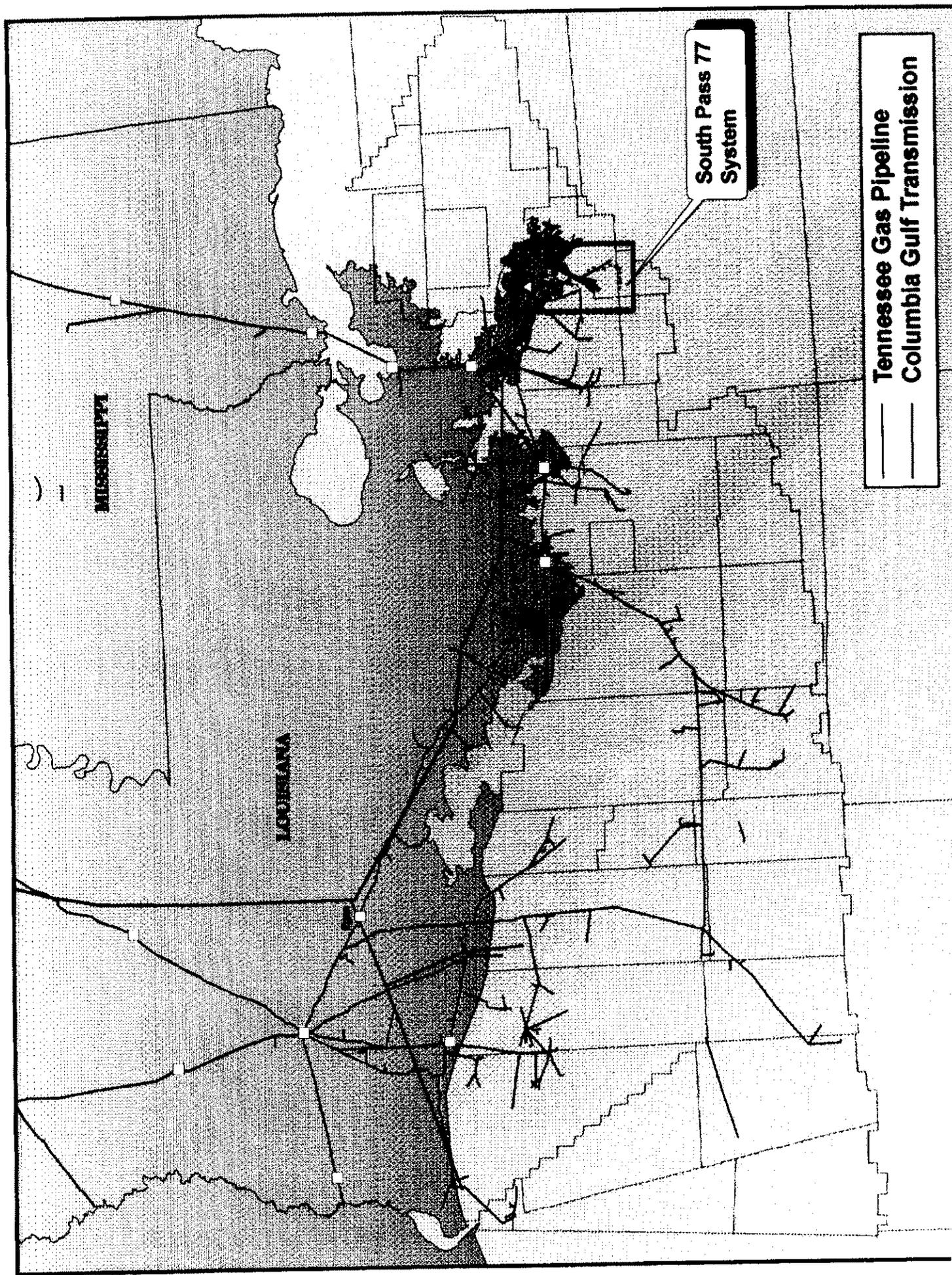
Lois D. Cashell  
Secretary

Exhibit C

Columbia Gulf Transmission Company Officials

Chief Executive Officer:	C. G. Abbott
President:	T. L. McGill
Senior Vice President, Chief Financial Officer & Controller:	M. P. O'Flynn
Secretary and General Counsel:	J. A. Jarrell
Treasurer:	N. C. Zola
Vice President:	S. S. Eblin S. E. Greene J. W. Hart, Jr. W. H. Marple K. O'Leary S. M. Warnick S. M. Wilner
Vice President and Chief Information Officer:	R. D. Stuart
Assistant Secretary and Assistant General Counsel:	K. E. Tawney
Assistant Secretary and Counsel:	L. M. Beckett III
Assistant Controller:	G. A. Barnard D. A. Fenwick





## RECIPROCAL OPERATING LEASE AGREEMENT

THIS AGREEMENT is entered into this 13th day of September, 1996 between TENNESSEE GAS PIPELINE COMPANY, a Delaware corporation, ("TGP") and COLUMBIA GULF TRANSMISSION COMPANY, a Delaware corporation, ("CGT") (individually referred to as "Party" and collectively referred to as the "Parties").

### WITNESSETH:

WHEREAS, TGP and CGT jointly own an undivided interest in interstate natural gas pipeline facilities located in offshore Louisiana, which is commonly referred to as the "South Pass 77 System";

WHEREAS, TGP desires to lease a portion of CGT's capacity on the South Pass 77 System to increase its available capacity on that system;

WHEREAS, CGT desires to lease a portion of TGP's mainline interstate pipeline system downstream of the South Pass 77 System to permit CGT to deliver its gas from the South Pass 77 System back to its existing mainline interstate pipeline system primarily at Egan Louisiana; and

WHEREAS, subject to the conditions set forth in this Agreement, each Party desires to enter into reciprocal lease arrangements of a portion of their respective interstate natural gas pipeline facilities.

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, TGP and CGT agree as follows:

### ARTICLE I DEFINITIONS AND INTERPRETATIONS

1.1 Definitions - Except where the context expressly states another meaning, terms used in this Agreement shall be construed to have the meanings set forth on Exhibit A.

1.2 Interpretation - Unless the context otherwise requires, the rules of construction set forth on Exhibit A shall govern the interpretation of this Agreement.

### ARTICLE II CONDITIONS PRECEDENT

2.1 Conditions Precedent - The Parties expressly agree that each Party's rights and obligations under this Agreement are contingent upon the satisfaction of the following conditions precedent:

- (a) TGP and CGT jointly filing an application on or before November 1, 1996, for all FERC authorizations necessary to implement this Agreement; and
- (b) TGP's and CGT's receipt of all FERC authorizations necessary to implement this Agreement on or before November 1, 1997, in a form and substance satisfactory to each Party in its sole discretion and that are final and no longer subject to judicial review; provided however, that TGP and CGT may by mutual agreement waive the condition that any such regulatory approval be final and not subject to judicial review.

Both Parties will cooperate with each other and do all things reasonably necessary and desirable to cause the conditions precedent to be satisfied as expeditiously as practicable. Each Party will bear one-half of any filing or other similar fees associated with seeking such governmental approvals.

2.2 Termination Right - If the conditions precedent set forth in Section 2.1 are not satisfied by the dates specified or such other date mutually agreed upon by the Parties, then either Party shall have the right to terminate this Agreement upon providing written notice to the other Party.

### ARTICLE III LEASE OF CGT LEASED CAPACITY

3.1 Lease of CGT LEASED CAPACITY - Effective from the Closing Date until the termination of this Agreement, CGT shall lease the CGT Leased Capacity to TGP on the terms and conditions set forth in this Agreement.

3.2 Use and Ownership of CGT Leased Capacity - Subject to the below, TGP shall have the right to use such capacity as if it were TGP's own capacity, including without limitation, the right to deliver gas for its own use, as well as transport gas for its shippers. The CGT Leased Capacity which is the subject of this Agreement is and shall at all times, remain the property of CGT. TGP shall have no right, title, or interest in such portion of CGT's pipeline system, except as expressly set forth in this Agreement or the SP COO&M Agreement. Except as set forth in the SP COO&M Agreement, TGP shall have no rights under this Agreement to permit TGP to construct, or cause to be constructed any modification or addition to, or any expansion of the CGT Leased Capacity, nor shall anything in this Agreement be construed to create a joint venture or partnership between TGP and CGT. Upon termination of this Agreement or any reduction in the leased capacity pursuant to the terms of this Agreement, the CGT Leased Capacity shall revert to CGT.

#### 3.3 Receipt and Delivery Rights and Obligations

3.3.1 Receipt and Delivery Points - Effective from the Closing Date until the termination of this Agreement, TGP shall have the right each day, on a firm basis and without interruption except as is expressly set forth in this Agreement and the SP COO&M Agreement, to (a) deliver at SP Receipt Points natural gas quantities up to the CGT Leased Capacity and (b) receive at SP Delivery Points natural gas quantities equivalent to the quantities delivered at the SP Receipt Points up to the CGT Leased Capacity.

3.3.2 Receipt and Delivery Pressures - TGP shall be required to deliver gas at the SP Receipt Points at pressures sufficient to permit all of the gas to enter the CGT Leased Capacity that exist at the time in accordance with the SP COO&M Agreement, not to exceed the maximum allowable operating pressure of the system. CGT shall cause gas to be redelivered at the SP Delivery Points at the pressures that exist at the time in accordance with the SP COO&M Agreement, not to exceed the maximum allowable operating pressure of the system.

3.4 Consideration - The consideration for the lease of the CGT Leased Capacity from CGT to TGP shall be (a) the payment of one dollar per year by TGP to CGT and (b) the performance of the obligations of TGP under this Agreement associated with the lease of the TGP Leased Capacity by TGP to CGT.

3.5 Operational Terms and Conditions - The terms and conditions associated with the day to day operations of the South Pass System, including the operations associated with the use of the CGT Leased Capacity, are set forth in the SP COO&M Agreement.

#### ARTICLE IV LEASE OF TGP LEASED CAPACITY

4.1 Lease of TGP Leased Capacity - Effective from the Closing Date until the termination of this Agreement, TGP shall lease the TGP Leased Capacity to CGT on the terms and conditions set forth in this Agreement.

4.2 Use and Ownership of TGP Leased Capacity - Subject to the below, CGT shall have the right to use such capacity as if it were CGT's own capacity, including the right to deliver gas for its own use, as well as transport gas for its shippers; provided that CGT shall not have the right on any day to deliver and receive quantities under the TGP Leased Capacity that are greater than the quantities of gas transported by CGT on CGT's Capacity Entitlement in the South Pass 77 System upstream of the TGP Receipt Point on that day. The TGP Leased Capacity which is the subject of this Agreement is and shall at all times, remain the property of TGP. CGT shall have no right, title, or interest in such portion of TGP's pipeline system, except as expressly set forth in this Agreement. Nothing contained in this Agreement shall be construed to permit CGT to construct, or cause to be constructed any modification or addition to, or any expansion of TGP's pipeline system, nor shall anything in this Agreement be construed to create a joint venture or partnership between TGP and CGT. Upon termination of this Agreement or any reduction in the leased capacity pursuant to the terms of this Agreement, the TGP Leased Capacity shall revert to TGP.

#### 4.3 Receipt and Delivery Rights and Obligations

4.3.1 Receipt and Delivery Points - Effective from the Closing Date until the termination of this Agreement, CGT shall have the right each day, on a firm basis and without interruption except as is expressly set forth in this Agreement, to (a) deliver at TGP Receipt Point natural gas quantities up to the TGP Leased Capacity and (b) receive at TGP Delivery Point by backoff or offset natural gas quantities equivalent to the quantities delivered by CGT at the TGP Receipt Point up to the TGP Leased Capacity. If there are not sufficient quantities of gas on any day scheduled to be delivered by CGT to TGP at the TGP Delivery Point to permit the backoff or offset of the deliveries of gas at that point under this Agreement and under third party transportation agreements on TGP, then TGP will not be obligated to operate its system in order to effectuate physical deliveries of gas to CGT at the TGP Delivery Point. However, if it is reasonably expected that TGP will be unable to effectuate deliveries requested by CGT in accordance with this Agreement by displacement at the TGP Delivery Point, then TGP shall have the right and the obligation to modify the operations of the east leg of the Blue Water system to move the null point east of the platform located Vermilion Block No. 245 and make deliveries by displacing gas through Vermilion Block No. 245 to the west leg of the Bluewater system. If the null point is moved east of such point, then the Parties recognize that various check measurement facilities may have to be installed to accommodate such a change at the platform Vermilion Block No. 245. TGP shall be responsible for costs incurred to install such facilities and TGP and CGT shall share any costs of operating and maintaining such facilities in accordance with the applicable agreement governing the ownership and operation of the Blue Water system.

4.3.2 Receipt and Delivery Pressures - CGT or the operator of the South Pass 77 System shall be required to deliver gas at the TGP Receipt Point at pressures sufficient to permit all of the gas to enter the TGP Capacity at the pressure that exists at the time in TGP's system at that point, not to exceed

the maximum allowable operating pressure of the system. If deliveries are not effectuated by displacement, then TGP shall cause gas to be redelivered at the TGP Delivery Point at the pressures that exist at the time in CGT's system at that point, not to exceed the maximum allowable operating pressure of both TGP's and CGT's systems.

4.4 Consideration - The consideration for the lease of the TGP Leased Capacity from TGP to CGT shall be (a) the payment of one dollar per year by CGT to TGP and (b) the performance of the obligations of CGT under this Agreement associated with the lease of the CGT Leased Capacity by CGT to TGP.

#### 4.5 Operational Terms and Conditions

4.5.1 Operation of TGP Capacity - TGP shall operate and maintain, or shall cause a third party to operate and maintain the TGP Leased Capacity and shall have sole authority in all matters relating to the physical operation of the TGP Leased Capacity in accordance with the terms and conditions of this Agreement. Without limiting the above, TGP shall have the sole right and discretion to determine and perform the necessary operation and maintenance activities on the TGP Leased Capacity in accordance with the standards set forth in Section 4.5.2 below; provided that TGP agrees to use its best efforts to avoid interruptions of receipts and deliveries during peak periods and to schedule such interruptions so as to attempt to minimize the impact on CGT's use of the TGP Leased Capacity. TGP further agrees to provide CGT with reasonable advance notice of any such planned interruptions. If any such operation and maintenance activities will result in the TGP Leased Capacity being reduced in whole or in part, then TGP shall notify CGT at least thirty days prior to the commencement of such operation and maintenance activities; provided that if such activities are performed on an emergency basis, then TGP shall notify CGT as soon as reasonably practicable.

4.5.2 Standards of Operation - Subject to and in accordance with applicable state and federal regulations, TGP shall operate and maintain the TGP Leased Capacity in a good and workmanlike manner and shall exercise the same care and judgment as would a Prudent Operator under the same or similar circumstances. TGP shall indemnify CGT from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorney's fees, arising out of or relating to the operation or maintenance of the TGP Leased Capacity and the custody and control of the gas transported in such capacity; provided however, that TGP shall not be liable for any damages suffered by CGT or its successors, assigns, shippers, subrogees that (a) are caused by a complete or partial failure of the TGP Leased Capacity to operate unless such failure is caused by TGP's negligence or willful misconduct or (b) are expressly excused under this Agreement.

4.5.3 Curtailments - If as a result of maintenance and repair activities, events of force majeure or otherwise there is a reduction of the availability of the TGP Leased Capacity in whole or in part, then such reduction shall be shared between TGP and its shippers and CGT on a pro rata basis based upon the firm entitlements of TGP and its shippers in relation to the TGP Leased Capacity.

4.5.4 Scheduling of Gas - Since the TGP Leased Capacity is the link between CGT's Capacity Entitlement on the South Pass 77 System and its mainline system downstream of the TGP Delivery Point, TGP and CGT shall utilize the nominations and scheduling of gas provided for under the SP COO&M Agreement for purposes of scheduling and dispatching gas on the TGP Leased Capacity under this Agreement.

4.5.5 Gas Quality - All natural gas quantities tendered by CGT into the TGP Leased Capacity and, to the extent that CGT complies with its obligations hereunder, all natural gas quantities delivered by TGP to CGT at the TGP Delivery Point shall conform with the natural gas specifications set forth in TGP's FERC Gas Tariff, which are incorporated into this Agreement by reference. TGP and CGT agree that if either the gas stream tendered by CGT or by TGP does not conform to such quality specifications or otherwise contains constituents that might interfere with the merchantability of the gas or might cause operational or environmental problems for the Party receiving the gas, then TGP and CGT shall promptly identify the source of the constituents and shall mutually agree upon the reasonable actions necessary to remove such constituents. Pending correction of any such quality deficiencies, the Party receiving the gas may refuse to accept any gas which is not of acceptable gas quality without prejudice to any other right such Party may have on account of the delivery of deficient gas.

4.5.6 Measurement of Gas - The gas received into and delivered from the TGP Leased Capacity shall be measured in accordance with the provisions of TGP's FERC Gas Tariff.

4.5.7 Balancing of Receipts and Deliveries - The Parties shall maintain in effect during the term of the lease arrangements mutually acceptable operational balancing agreements for the TGP Receipt Point, the TGP Delivery Point and the Alternate Delivery Point. If the Parties fail to maintain such balancing agreements in effect, the Parties agree that any operational imbalance occurring on any day will be corrected by allocating such gas quantities, as necessary, delivered into or out of the TGP Leased Capacity on the next subsequent day to correct such operation imbalance; provided that any imbalance that exists at the end of the month will be corrected in kind within thirty days of the end of the month. Upon termination of this Agreement, any remaining operational imbalances attributable to this Agreement shall be resolved pursuant to such operational balancing agreements; provided that if no such agreements are in effect at that time, then this Agreement shall survive termination for the sole purpose of correcting such operational imbalances, which the Parties intend to correct within thirty days of the termination of the Agreement.

## ARTICLE V GENERAL PROVISIONS APPLICABLE TO LEASES

5.1 Operating Leases - The Parties agree that it is the understanding and intention of the Parties that this Agreement is to be classified as an operating lease agreement. To the extent that by law or regulation, this Agreement cannot be classified as an operating lease agreement, the Parties agree to negotiate in good faith to effect any such changes to this Agreement necessary to classify this Agreement as an operating lease agreement.

5.2 Warranty of Title / Compliance with Law - Lessee warrants that it will have good and merchantable title, or good right to deliver, all natural gas delivered for its account or the account of its shippers at the receipt points under the applicable lease of capacity under this Agreement. Lessee shall utilize the leased capacity under this Agreement in a manner which shall comply with all applicable laws, rules, regulations and orders relating to Lessee's use of the capacity. Lessee shall indemnify Lessor and hold it harmless from all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including reasonable attorney's fees, arising out of the ownership of gas, condensate or inerts, or for any taxes, licenses, fees or charges which are applicable prior to the time of delivery of such gas to Lessor.

5.3 Unavailability of Capacity - If due to an Excusable Event either (a) TGP is unable to make all or a portion of the TGP Leased Capacity available to CGT or (b) CGT is unable to make all or a portion of

the CGT Leased Capacity available to TGP, then the capacity available under the TGP Leased Capacity and the CGT Leased Capacity shall be reduced to equal the lesser of the capacity available under TGP Leased Capacity or the CGT Leased Capacity only for the duration of such an Excusable Event.

## ARTICLE VI TERM

6.1 Term of Agreement - Unless terminated earlier by another provision of this Agreement or pursuant to the mutual agreement of the Parties, this Agreement shall become effective upon the date of its execution and shall continue in full force and effect until the Termination Date.

6.2 Pregranted Abandonment - Upon termination of this Agreement, the Parties agree that the Lessor shall have pre-granted abandonment authority under Section 7(b) of the Natural Gas Act for any and all certificate authorizations related to this Agreement.

## ARTICLE VII EXCUSABLE EVENT

7.1 Obligations of the Parties - If by reason of an Excusable Event a Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then to the extent affected a Party shall be relieved of its performance obligations under this Agreement and shall not be liable in damages during the continuance of any Excusable Event; provided that the Party claiming suspension of its obligations due to the Excusable Event shall be obligated to (a) provide written notice to the other Party of the Excusable Event, giving reasonably full particulars of the Excusable Event within a reasonable period of time after the occurrence of the cause relied on and (b) attempt to remedy the Excusable Event with all reasonable dispatch. An Excusable Event shall not relieve a Party of liability, however, in the event of its concurring negligence or willful misconduct in creating such an otherwise Excusable Event or in the event of failure to use due diligence to remedy the situation and to remove the cause or contingencies affecting such performance in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve such Party from its obligations to make payments under this Agreement.

7.2 Definition of Excusable Event - For purposes of this Agreement, an "Excusable Event" shall mean acts of God, strikes, lockouts or other industrial disturbances; acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, crevasses, floods or washouts; arrests and restraints imposed by the federal, state, or local government, whether civil or military; the binding order of any court, legislative body, or governmental authority which has been resisted in good faith by all reasonable legal means; vandalism, sabotage or civil disturbances; relocation of facilities; breakage or accident to machinery or lines of pipe; the necessity for testing (as required by governmental authority or as deemed necessary by the testing party for the safe operation thereof) or for making repairs or alterations to machinery or lines of pipe, including without limitation those repairs made pursuant to Section 4.5.1; failure of surface equipment or pipelines; accidents, breakdowns or the inability of a Party to obtain necessary material, supplies, permits, rights-of-way or labor to perform or comply with any obligation or condition of this Agreement; and any other causes, whether of the kind enumerated or otherwise, which are not reasonably within the control of the Party claiming suspension. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty and that the above requirement that any Excusable Event shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or disagreements with land owners

by acceding to the demands of any opposing party when such course is inadvisable in the discretion of the Party having the difficulty.

7.3 Inoperable Repairs - If an Excusable Event renders the facilities necessary to provide the TGP Leased Capacity and/or the CGT Leased Capacity contemplated by this Agreement inoperable and such facilities would continue to remain inoperable unless repaired and/or rebuilt and such repair and/or rebuild of facilities similar to the original facilities that were in place to implement this Agreement is determined by the Lessor to be economically unfeasible, then, absent written agreement of the Parties, the Lessee's sole recourse and remedy shall be the termination of this Agreement. If such an Excusable Event occurs, then the Lessor shall notify the Lessee of the Lessor's decision not to repair or rebuild such facilities as soon as reasonably practicable, but not later than 60 days after the occurrence of such an Excusable Event.

### ARTICLE VIII MISCELLANEOUS

8.1 Notices - All notices required in this Agreement shall be given to the Parties at the addresses stated below, or such other addresses as any Party shall hereafter from time to time designate to the other Party in writing:

CGT - Columbia Gulf Transmission Company  
2603 Augusta  
Houston, Texas 77057-5637  
Attention: Vice President, Marketing  
Facsimile: (713) 267-4190

TGP - Tennessee Gas Pipeline Company  
1010 Milam  
Houston, Texas 77002  
Attention: Director of Supply Development  
Facsimile: (713) 757-1519

Unless otherwise specified herein, such notices shall be in writing and shall be sent by first class mail, postage prepaid or by facsimile to the extent such facsimile is confirmed as received by the other Party.

8.2 Waivers - No waiver by a Party of any default by the other Party in the performance of any provision, condition or requirement in this Agreement shall be deemed to be a waiver of, or in any manner release the other Party from, performance of any other provision, condition or requirement in this Agreement, nor shall such waiver be deemed to be a waiver of, or in any manner a release of, the defaulting Party from future performance of the same provision, condition or requirement. Any delay or omission of any Party to exercise any right under this Agreement shall not impair the exercise of any such right or any like right accruing to it thereafter.

8.3 Corporate Authorization - Each Party represents to the other that this Agreement, the transactions contemplated in this Agreement, and the execution and delivery of this Agreement have been duly authorized by all necessary corporate actions, including, without limitation, required action on the part of the officers and agents of the representing party, and this Agreement, when executed and delivered, shall be valid and binding on it.

8.4 Entire Agreement - This Agreement represents the sole agreement between the Parties with respect to the terms and conditions upon which the Parties will perform under the reciprocal capacity leases between the Parties. No amendment or modification to this Agreement shall be effective except by a written amendment executed by both Parties.

8.5 Assignability - This Agreement shall enure to the benefit of any party which succeeds by purchase, merger or consolidation to all or substantially all of CGT or TGP (or their parent companies) or their respective assets, as the case may be. Except for the foregoing, this Agreement and any of the rights, duties or obligations of the Parties pursuant to this Agreement may not be assigned by either Party without the consent of the other Party, except for an assignment to a wholly-owned affiliate. Nothing in this Agreement shall prevent a Party from pledging, mortgaging or assigning its rights under this Agreement as security for its indebtedness and a Party may assign to the pledgee or mortgagee (or to a trustee for the holder of such indebtedness) any money due or to become due under this Agreement. If either Party should assign or transfer the leased capacity, then the Party shall make any such transfer or assignment subject to this Agreement unless the other Party elects otherwise.

8.6 Limitation of Liability - Any damages resulting from a breach of this Agreement by either Party shall be limited to actual damages incurred by the Party claiming the damages, provided that the Parties expressly agree to waive any and all rights, claims or causes of action arising under this Agreement for incidental, exemplary, indirect, consequential or punitive damages or any claims of loss profits.

8.7 Severability - Should any provision of this Agreement for any reason be declared or rendered invalid or unenforceable by any law or final and non-appealable order of any court or regulatory body having jurisdiction, such law or decision shall not affect the validity of the remaining provisions, and the remaining provisions shall remain in force and effect as if this Agreement had been executed without the invalid or unenforceable provision.; provided that should any provision(s) of this Agreement be declared invalid or unenforceable and such declaration materially alters the economic bargain of the Parties, this Agreement shall remain in full force and effect and the Parties shall promptly negotiate in good faith a new provision(s) to eliminate the invalid or unenforceable provision(s) and to restore this Agreement as nearly as possible to its original effect, consistent with the original intent of the Parties. If the Parties are unable to renegotiate a new provision with 120 days of the commencement of such negotiations, then the Party or Parties for whose benefit the invalid or unenforceable provision was for shall have the right to terminate this Agreement.

8.8 Third Party Beneficiaries - Neither Party intends for the provisions of this Agreement to benefit any third party. No third party shall have the right to enforce the terms of this Agreement against either TGP or CGT.

8.9 Payment and Offset Rights - The annual lease payments owed by the Parties pursuant to Sections 3.4 and 4.4 shall each be due and payable on the Closing Date and each anniversary thereafter during the term of this Agreement; provided that the Parties shall have the right to offset their respective payment obligations under this Agreement and no transfer of funds will be required.

8.10 Laws and Regulations - This Agreement and the obligations of the Parties are subject to all applicable laws, rules, orders and regulations of governmental authorities having jurisdiction.

8.11 Governing Law - This Agreement shall be governed by and interpreted in accordance the laws the State of Texas, without recourse to the law regarding conflicts of laws.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

**COLUMBIA GULF TRANSMISSION COMPANY**

By: James W. Hart  
Title: V.P. Marketing

**TENNESSEE GAS PIPELINE COMPANY**

By: J. E. Litcher  
Title: Agent and Attorney-in-fact  
RWB  
7/24

**EXHIBIT A**  
**DEFINITIONS AND INTERPRETATION**

**ARTICLE I-A**  
**DEFINITIONS**

Except where the context expressly states another meaning, terms used in this Agreement shall be construed to have the following meaning:

"**Closing Date**" shall mean the first day of the month following the satisfaction of the conditions precedent set forth in Article II.

"**CGT Leased Capacity**" shall mean the capacity on the South Pass System from any receipt points or any delivery points on the South Pass 77 System equal to all capacity on the South Pass 77 System to which CGT might otherwise have an entitlement that is greater than the Btu equivalent of 115,000 Mcf per day.

"**CGT's Capacity Entitlement**" shall mean the Btu equivalent of 115,000 Mcf per day, representing CGT's remaining capacity entitlement on the South Pass 77 System following the lease of the CGT Leased Capacity under this Agreement to TGP.

"**Day**" or "**Gas Day**" shall have the same meaning as that set forth in TGP's FERC Gas Tariff with regard to the scheduling of gas on TGP's pipeline system. In the absence of such a definition in TGP's FERC Gas Tariff, the term shall mean the period commencing at 8:00 a.m. CST and ending at 8:00 a.m. CST on the following day. The definition of day shall be amended to coincide with the definition used by the Gas Industry Standards Board, when such definition is commonly used throughout the pipeline industry.

"**Lessee**" shall mean TGP with regard to the lease of CGT Leased Capacity and CGT with regard to the lease of TGP Leased Capacity.

"**Lessor**" shall mean TGP with regard to the lease of TGP Leased Capacity and CGT with regard to the lease of CGT Leased Capacity.

"**South Pass 77 System**" shall mean the natural gas pipeline facilities that are jointly owned equally by TGP and CGT consisting of the existing and future pipeline facilities beginning at South Pass Block 77, offshore Louisiana, and terminating into TGP's No. 527A-100 system in Plaquemines Parish, Louisiana and all laterals, valves, interconnections, measurement and other auxiliary facilities necessary to operate the such pipeline facilities, including without limitation all fittings, appurtenances, appliances, valves, drips, yard and station piping, cathodic protection equipment, pigging, dehydration equipment, electrical and communication equipment and buildings used in operation of such facilities. Without limiting the above, and for purposes of clarification only, the initial facilities forming a part of the South Pass 77 System were authorized by the FERC in Docket No. CP79-444-000.

"**SP COO&M Agreement**" shall mean the agreement entered into on this same date between TGP and CGT regarding the construction, ownership, operation and maintenance of the South Pass 77 System.

"**SP Receipt Points**" shall mean all existing or future points of receipt on the South Pass 77 System.

"**SP Delivery Points**" shall mean all existing or future points of delivery on the South Pass 77 System.

"**Termination Date**" shall mean the earlier of (a) the effective date of any FERC abandonment authorization under Section 7(b) of the Natural Gas Act of all or substantially all of the South Pass 77 System or (b) the date CGT and TGP mutually agree to terminate physical and commercial operations of the South Pass 77 System pursuant to the SP COO&M Agreement.

"**TGP Leased Capacity**" shall mean the capacity on TGP's pipeline system from the TGP Receipt Point to the TGP Delivery Point that is necessary to receive and deliver the Btu equivalent of 115,000 Mcf per day.

"**TGP Receipt Point**" shall mean the point of the terminus or the interconnection of the South Pass 77 System with TGP's wholly-owned mainline facilities (Line No. 527A-100) in Plaquemines Parish, Louisiana.

"**TGP Delivery Point**" shall mean the point of interconnection of TGP's pipeline facilities and CGT's pipeline facilities at Egan, Louisiana (TGP Meter No. 011034) and (CGT Meter No. 434, Egan "B").

#### ARTICLE II-A INTERPRETATION

In interpreting this Agreement, unless the context otherwise states or requires:

- 2.1 the singular includes the plural and vice versa;
- 2.2 the reference to an individual or to a person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa;
- 2.3 where any expression is defined in this Agreement, another part of speech or grammatical form of that expression has a corresponding meaning;
- 2.4 references to "dollars" or "\$" are references to United States dollars;
- 2.5 references to time are references to Central Standard Time;
- 2.6 references to any legislation or to any section or provision of any legislation, includes any statutory modification or re-enactment of that legislation or any statutory provision substituted for it; and includes any subordinate legislation or regulations issued pursuant to that legislation or as it may be modified, re-enacted or substituted;
- 2.7 a reference to a governmental authority includes any successor authority;

2.8 a reference to any gender includes a reference to each other gender;

2.9 unless otherwise indicated, references to section or exhibits are references to sections or exhibits to this Agreement;

2.10 references to any agreement or instrument includes that agreement or instruments as amended, novated, supplemented, varied or replaced from time to time; and

2.11 no rule of construction of documents shall apply to the advantage of a Party on the basis that the Party put forward all or any part of this document.

CONSTRUCTION, OWNERSHIP,  
OPERATION AND MAINTENANCE AGREEMENT

PROJECT SOUTH PASS 77

THIS AGREEMENT made and entered into as of September 13, 1996, by and between TENNESSEE GAS PIPELINE COMPANY, a Delaware corporation ("Tennessee" or "Operator") and COLUMBIA GULF TRANSMISSION COMPANY, ("Columbia Gulf" or "Non-Operator"), all hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

W I T N E S S E T H

WHEREAS, the Parties jointly own and operate a natural gas pipeline system Offshore Louisiana, which is commonly known as the "South Pass System" and

WHEREAS, the Parties desire to set forth their respective rights and responsibilities with respect to ownership, operation and maintenance of such pipeline and other appurtenant facilities.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE I

DESCRIPTION OF FACILITIES

1.01 Description.

The South Pass System consists of:

- (a) approximately 10.8 miles of 26-inch pipeline extending from a platform in South Pass Block 77 (SP 77) to a platform in South Pass Block 55 (SP 55 CGP);
- (b) measurement facilities with Data Acquisition Control equipment ("DAC") located on the SP 77 platform;
- (c) approximately 17.4 miles of 36-inch pipeline extending from SP 55 CGP to a point on Tennessee's existing pipeline No. 527A-100;
- (d) measurement facilities with DAC equipment located on the SP 55 CGP platform for emergency fuel supply to Continental Oil Company;

- (e) a 70-foot by 135-foot self-contained drilling platform in SP 55 to be used as a central gathering platform and
- (f) other auxiliary and appurtenant facilities.

The above-described pipeline, measurement, platform and other appurtenant facilities (including offshore platform space) shall be hereinafter collectively referred to as "the Project."

## ARTICLE II

### Conditions Precedent

The Parties expressly agree that the provisions of this Agreement and each Party's rights and obligations under this Agreement shall not become effective until the satisfaction or waiver by the Parties of all of the conditions precedent contained in Article II of the Reciprocal Operating Lease Agreement between the Parties executed on this same date. If such conditions precedent are not satisfied or waived by the dates indicated therein and the Reciprocal Operating Lease Agreement is terminated for such reason, then either Party shall have the right to terminate this Agreement.

## ARTICLE III

### Ownership Interest

3.01 Ownership. The Parties agree that their respective undivided Ownership Interest in the Project shall be:

Tennessee:	50%
Columbia Gulf:	50%

3.02 Expansion. Unless the Parties mutually agree otherwise, Tennessee or its successor shall have the sole right to increase or expand, or cause to be increased or expanded, the capacity of the Project, including without limitation, the design, construction and ownership of additional facilities. Columbia Gulf's Ownership Capacity and Ownership Interest in the Project shall remain unaffected by the construction of such expansion facilities. Upon completion of any expansion by Tennessee requiring a capital expenditure, Tennessee shall own such expansion facilities and be solely responsible for their operation and maintenance, abandonment, retirement and salvage costs, and shall be solely entitled to use the increase in capacity associated with such expansion facilities.

### 3.03 Transfer of Interest.

- (a) Subject to the right of first refusal in (b) below, a Party may not sell its Ownership Interest in the Project or its resulting Capacity Entitlement (as defined in Article IV below) without the consent of the other Party, which consent shall not be unreasonably withheld. Such consent shall not be deemed to have been unreasonably withheld if (i) the assignee does not provide reasonable evidence of its assumption of all of the obligations of the Party transferring its interest or (ii) the transfer would materially adversely affect the financial or operational integrity of the Project.
- (b) Subject to (c) below, if a Party desires to transfer its Ownership Interest and its Capacity Entitlement to a third party, then that Party shall give notice in writing to the other Party along with a copy of the binding offer of a third party to purchase the Party's interest. The non-transferring Party shall have a right of first refusal, exercisable within thirty (30) days of receipt of such notice, to purchase the interest offered for sale to the third party. If the non-transferring Party does not elect to match such an offer or if it fails to respond within the thirty (30) day period and the consent of the other Party is provided in accordance with (a) above, then the transferring Party may proceed to complete the transfer. If the binding definitive agreement to transfer such interest (subject only to a condition precedent associated with governmental approvals to effectuate such transfer) is not executed within ninety (90) days after the expiration of the thirty (30) day period, then the transferring Party must comply again with the notice and right of first refusal procedures set forth in this section prior to effectuating the transfer.
- (c) Notwithstanding anything to the contrary, nothing in this Section shall prevent or restrict:
- (i) transfers of Ownership Interest and Capacity Entitlements to an Affiliate; provided that the transferee assumes all of the obligations of the transferor to the extent of the interest transferred and
  - (ii) an assignment, pledge or other transfer creating a security interest in all or any portion of a Party's Ownership Interest and Capacity Entitlement.

For purposes of this Section, a merger of a Party into another entity shall not be deemed to be a transfer of its Ownership Interest or Capacity Entitlement.

## ARTICLE IV

CAPACITY ENTITLEMENT

4.01 Existing Contractual Obligations. The Parties recognize that the Project is subject to existing contractual obligations. In particular, (a) the Parties have entered into the Letter Agreement dated September 5, 1980 ("Letter Agreement") with Chevron U.S.A., Inc. ("Chevron") and (b) Tennessee and Columbia Gulf have entered into the Reciprocal Operating Lease Agreement dated September 13, 1996 ("Lease Agreement").

4.02 Initial Capacity Entitlement.

(a) Based upon the Letter Agreement, the Lease Agreement and a design capacity of 500 MMcf per day, the Parties agree that their initial respective Capacity Entitlements in the Project, as of the effective date of the Reciprocal Operating Lease Agreement executed by Tennessee and Columbia Gulf, among themselves and Chevron shall be:

	<u>Ownership Capacity (MMcfd)</u>	<u>Chevron Capacity (MMcfd)</u>	<u>Lease Capacity (MMcfd)</u>	<u>Total Initial Capacity Entitlement (MMcfd)</u>
Tennessee	250	(62.5)	72.5	260
Columbia Gulf	250	(62.5)	(72.5)	115
Chevron	0	125	0	<u>125</u>
				500

4.03 Revised Capacity Entitlements. If the Effective Capacity of the Project exceeds 500 MMcf per day on any day, then the Parties' respective Capacity Entitlements shall be revised to equal the following:

	<u>Total Capacity Entitlement</u>
Tennessee	Effective Capacity of the Project - 240 MMcf/d
Columbia Gulf	115 MMcf/d
Chevron	125 MMcf/d

If the Effective Capacity of the Project is less than 500 MMcf on any day, then the Parties' respective Capacity Entitlement set forth in Section 4.02 above shall be reduced on a pro rata basis in proportion to their Capacity Entitlements set forth in Section 4.02 above. Notwithstanding the above, if the Effective Capacity of the Project is reduced as a result of the gross negligence or wilful misconduct of a Party, then the Party causing such reduction shall bear all such reduction.

#### 4.04 Use of Capacity Entitlement.

- (a) A Party may receive a volume of gas, in aggregate, up to its Capacity Entitlement from any point of receipt on the Project.
- (b) A Party shall be entitled to receive from any point of delivery on the Project a volume of gas which is the thermal equivalent of the volumes of gas delivered into the Project from only its own sources less the quantities of gas provided in accordance with Section 5.13 below.
- (c) Each Party shall have the right to utilize its Capacity Entitlement for its own use or for the purpose of transporting gas on behalf of others. Neither Party shall have any obligation to jointly transport, or to offer to jointly transport, third Party gas with the other Party.
- (d) Tennessee shall have the right to utilize any of Chevron's and Columbia Gulf's Capacity Entitlement that they are not utilizing on any day at no cost or charge to Tennessee. Columbia Gulf shall have the right to utilize any of Chevron's Capacity Entitlement that is not being utilized by either Chevron or Tennessee on any day and any of Tennessee's Capacity Entitlement that it is not utilizing on any day at no cost or charge to Columbia Gulf.

4.05 Construction of Additional Facilities. Either Party may cause to be attached to the Project laterals to attach gas supplies to be delivered into the Project. The design and cost of each lateral and the cost of the quantity of gas used for testing, purging, blowdown and line packing shall be borne solely by the Party constructing and owning such lateral. All construction of such laterals shall be in accordance with sound and prudent natural gas industry practice and shall be in compliance with the specifications of the Operator. Any Party constructing such laterals shall indemnify the other Party for any claim, losses, costs, liabilities or damages arising from such construction. No Party constructing a lateral shall permit hydrostatic test water to enter the Project. The Operator shall have the right, but not the obligation, to operate all laterals pursuant to the terms of a mutually agreeable operations and maintenance agreement to be entered into prior to placing the facilities in service. When an existing tap is used for connecting any such lateral, such lateral must be designed so as to provide a new tap connection for future use, unless otherwise agreed to by the other Party. All taps or hot-taps shall be accomplished in accordance with the Operator's specifications. Operator shall design, construct, install and approve of such tap installations at the expense of the Party requesting such tap installations. All such taps or hot-taps shall become a part of the Project and shall be owned by the Parties. The delivery pressure at the interconnection of the Project and the laterals shall be sufficient to allow the gas to enter the Project against the pressure

that exists from time to time, but not in excess of 1,246 psig unless the Parties mutually agree otherwise.

## ARTICLE V

### OPERATION AND MAINTENANCE

#### 5.01 Performance of Operator's Obligations.

- (a) Operator, for itself and as representative for Non-Operators, shall provide such supervisory, administrative, technical and other services and shall operate and maintain the Project and any facility addition, expansion or attachment in accordance with (i) this Agreement, (ii) the requirements of any Federal, state or other agency having jurisdiction and (iii) sound and prudent natural gas pipeline industry practice, but Operator will in no event operate or maintain the Project according to standards lower than the standard adopted by Operator in the operation of its own facilities of similar nature.
- (b) On or before November 1 of each year, Operator shall submit to the Parties for their review an estimate of the costs of the Routine Operation and Maintenance Services, the Special Services and the Measurement Services (as set forth in Sections 5.02, 5.03 and 5.04) for the following calendar year ("Operating Budget"), as allocated according to Section 5.06. The parties will approve or disapprove the Operating Budget within thirty (30) days of submission of the budget. If the Parties are unable to agree upon the Operating Budget by December 1 of that year, then either Party may submit the matter to binding arbitration to be held in Houston, Texas in accordance with the rules of the American Arbitration Association. The arbitration panel shall consist of three arbitrators that are qualified by education, experience and training in the construction, operation and maintenance of natural gas pipelines. The arbitrators will determine the minimum Operating Budget required to operate and maintain the Project in accordance with past operating and maintenance practices of the Project, but in no event less than that required to operate and maintain the pipeline in accordance with all governmental requirements, including without limitation operational, environmental, health and safety requirements imposed by the Department of Transportation. The arbitrators shall render a final decision within ninety days of notification of submission of the matter of arbitration. Pending any arbitration, Operator shall be entitled to costs for Routine Operation and Maintenance Services, Special Services and Measurement Services in an amount equal to the prorated Operating Budget for the prior calendar year.

- (c) Following approval or determination of the Operating Budget, if it appears that (i) the cost of any budgeted item will exceed the budgeted amount by \$50,000 or (ii) the cost of any unbudgeted item (other than those associated with Emergency Services as provided in Section 5.05 below) will cost in excess of \$50,000, then each such excess budgeted cost or unbudgeted cost shall not be incurred without the prior approval of the Parties. This approval may be oral in order to expedite action, but shall be followed immediately by written approval. The cost of any budgeted items or any unbudgeted item that costs less than \$50,000 will be reported on the monthly report following the incurrence of the additional cost.

5.02 Routine Services. Operator shall provide all Routine Operation and Maintenance Services which shall mean the furnishing of all materials, equipment, services, supplies and labor necessary for the routine operation, inspection, surveillance, monitoring, maintenance and repair of the Project including but not limited to the communications (including DAC), measurement, navigational warning, flow control, corrosion control and emergency shut down systems. Routine Operating and Maintenance Services shall include but not be limited to:

- (a) periodic testing, calibration, repairs, adjustments, external inspection, sandblasting, painting and minor maintenance of valves, piping and instruments located on the platforms associated with the Project;
- (b) submittal of reports to governmental bodies applicable to the Project, with copies to Non-Operator(s) of all such reports;
- (c) taking and mailing of samples for gas analysis;
- (d) reporting to Non-Operator the necessity for any Special Service to be performed and the estimated costs for budgeting purposes;
- (e) items that are required of the Operator by the U.S. Department of Transportation, Section 49 C.F.R., Parts 190, 191 and 192;
- (f) annual cathodic survey;
- (g) items that are required of the Operator by any other Federal, state or local governmental body having jurisdiction;
- (h) dispatching and allocating the daily scheduled nominations for the gas qualities to be transported by the Parties;

- (i) the purchase and maintenance of gas necessary for the testing, purging, blowdown and line pack in connection with the repair, replacement, operation and maintenance of the Project and
- (j) daily volume reports to be provided to Columbia Gulf.

5.03 Special Services. In addition to the performance of those services provided in Section 5.02 above, Operator shall, subject to the prior written consent of Non-Operators for non-budgeted expenditures in excess of \$50,000, perform all major equipment overhaul and replacement including but not limited to:

- (a) special operation, maintenance, and repair service, including but not limited to the following:
  - (i) internal inspection of pipeline by use of "intelligent pigs" and their injection, operation and removal;
  - (ii) underwater inspection of platforms, pipeline or riser;
  - (iii) replacement, reconditioning or overhaul of existing and construction of new and additional capital items;
  - (iv) in-situ coating;
  - (v) inspection of foreign facility crossings (i.e. - phone lines, cable, roads canals, waterways, pipelines, etc.);
  - (vi) repair or maintenance expenses above and beyond routine operating expenses;
  - (vii) abandonment, retirement and/or removal of facilities;
  - (viii) pigging, liquids removal and handling, chemical inhibitor purchase, transportation and storage and
  - (ix) rehab, safety testing.
- (b) Replacement or addition of capital items which shall be as defined in the FERC's Uniform System of Accounts, Part 216. The cost of such replacement will be borne by the Parties in accordance with their average sustained Capacity Entitlement for the six (6) months prior to the commitment to proceed with the replacement or addition of capital items.

5.04 Measurement Services. Operator shall provide Measurement Services for all measurement equipment for which Operator is effectively providing such

services on the date of this Agreement and as mutually agreed by the Parties thereafter as provided in this Agreement. Operator shall provide Measurement Services, which shall include:

- (a) the operation of all measurement equipment in accordance with the requirements of any Federal, state or other agency having jurisdiction and in accordance with sound and prudent natural gas pipeline industry practice. Operator shall operate such measurement equipment, shall be responsible for securing the changing of all charts (if applicable), gathering and analysis of gas samples, performance of gas volume calculations and shall calibrate, maintain, adjust and repair such measurement equipment;
- (b) the performance of periodic (at least monthly) tests of the measurement equipment for accuracy. Operator shall give Non-Operators reasonable notice so that Non-Operators may (at their own expense) have a representative present to witness such test;
- (c) the gas shall be measured in accordance with the provisions of Operator's Federal Energy Regulatory Commission (FERC) Gas Tariff, which is hereby incorporated by reference into and made a part of this Agreement and
- (d) all connections to the Project with projected flowrates of 2 MMCF per day or greater shall be instrumented with electronic measurement including SCADA communication for transmission of data to Operator.

5.05 Emergency Services. In the event of, or reasonable anticipation of, an explosion, fire, storms, collision or other emergency which might threaten life or property or render the Project incapable of continuous operation, Operator shall take such steps and incur such expenses and costs as in its opinion are required to deal with such emergency. Operator shall report such an emergency to Non-Operators as promptly as possible and shall be responsible for making any required reports to governmental agencies in connection with such emergency.

5.06 Compensation. For the performance of services described in Sections 5.02, 5.03, 5.04 and 5.05 above, Operator shall be entitled to reimbursement from Columbia Gulf and Chevron of an amount equivalent to 37.5% and 25%, respectively, of the actual costs incurred in providing such services. This Agreement shall not affect any other existing or future agreements with respect to the operation and maintenance of measurement facilities which are being addressed in such other agreements. Tennessee shall bear any costs and expenses attributable solely to the installation of any compression facilities on the Project following the date of this Agreement that increased the Effective Capacity. Actual costs associated with the performance of the

services described in this Article V shall include, but not necessarily be limited to the following:

- (a) Salaries and Wages. The share of the salaries and bonuses of Operator's permanently and/or temporarily assigned field employees and home office and division office engineers, measurement technicians, pipeline and compressor operations personnel, right-of-way personnel and other operations personnel, all on a time-devoted basis.
- (b) Employee Benefits and Taxes. Group life insurance, hospitalization, disability, pension, retirement, thrift and other benefits applicable to employees chargeable under (a) above and the cost of paid holiday, vacation, sickness and other customary allowances, payroll taxes and expenditures or contributions made pursuant to assessments imposed by governmental authority which are applicable to salaries, wages and costs chargeable under Section 5.06(a) above applicable to such employees shall be reimbursable. The cost of such assessments, benefits and taxes shall be determined by a monthly loading factor as per Operator's standard policy.
- (c) General Office Operating Costs. The Parties shall be charged 22% of base payroll cost plus paid absence loading of Operator's Houston office employees incurred in work on the Project facilities. The percentage shall be subject to adjustment in order to reflect Operator's actual experience. Effective as of the date of this Agreement, the charge shall be calculated for each department by multiplying (i) the ratio of the amount of time worked in connection with the operation and maintenance of the Project facilities by the employees in the department to the total amount of time worked by the employees and (ii) the total amount of general office operating costs of the department. Such departmental expenses charged shall be deemed to include, without limitation, all printing, reproduction, transportation, office supplies, rent, telephone, telecopy, telegraph, computer services, similar electronic services and other supplies and expenses.
- (d) Expenses of Employees. Expenses of employees chargeable under (a) above, computed in accordance with Operator's standard policy and detailed as to meals, transportation, lodging, etc.
- (e) Materials and Supplies. The actual cost of materials and supplies, net of discounts taken, plus applicable taxes and freight and including warehouse handling.

- (f) Contract Services. Amounts paid to third party contractors, subcontractors and consultants and other contract costs such as, but not limited to, x-ray examination, helicopter and boat transportation, pipe coating, pipe inspection, miscellaneous engineering services and outside legal and auditing expenses.
  - (g) Equipment Use. The cost of owned and rental equipment and tools, including transportation equipment, at Operator's standard use rates or invoiced cost, as applicable. The rate charged should not exceed first class commercial rates.
  - (h) Monthly Expenses of Division Office. Applicable monthly expenses of Operator's division office used as needed for services performed under Sections 5.02, 5.03 and 5.04 above.
  - (i) Other Costs. Other costs of a direct nature which are determined to be proper and chargeable.
- 5.07 Administrative and General Expenses. The Parties agree such actual costs recovered under this agreement shall include administrative and general expenses as calculated in accordance with the terms and conditions set forth in the Settlement Agreement between the Parties dated July 20, 1990.
- 5.08 Direct Costs Incurred by Parties Other Than Tennessee. Parties other than Tennessee shall not charge to the joint account any direct costs incurred by them.
- 5.09 Payment of Services.
- (a) All costs and expenses as enumerated in Sections 5.02 through 5.07 above associated with the Project will be billed to the Non-Operators in accordance with Section 5.06 above.
  - (b) After execution of this Agreement, Non-Operators shall pay Operator on a monthly basis within thirty (30) days after receipt of Operator's invoice for all costs and expenses as set forth under this Article V. With respect to costs for the service described in Section 5.03 above, Operator may elect to bill for advances. If so, on or before the last day of each month, Operator shall submit an invoice to the Non-Operators for their share of estimated costs to be incurred in the following month, plus their share of actual costs incurred through the previous month, less the sum of amounts previously billed. The Non-Operators shall pay such invoice within fifteen (15) days after receipt thereof.

- (c) Quantities of gas to operate compression facilities will be borne by the Party or Parties for whose behalf the compression facilities were installed in accordance with Section 3.02 above. In the event compression is installed by Operator or its designee to increase the capacity of the Project, such compression will be operated and maintained by Operator, and all costs to operate and maintain such compression will be paid by Operator and any other Party that may have mutually agreed to participate in the construction and operation of such facilities.
  - (d) In the event Tennessee or Columbia Gulf with the approval of the Operator permits the transportation of liquids and/or liquefiabiles for its respective producers, such Party shall be responsible for the charging and collecting of any charges to its producers deemed necessary by such Party.
- 5.10 Audit. For the purpose of checking the actual cost incurred by Operator for the reimbursable work performed under this Agreement, each Non-Operator shall, after thirty (30) days advance written notice, be permitted at mutually agreeable times to inspect Operator's books at Operator's Houston office during normal business hours with respect to the reimbursable cost of such work. Any Party may perform early compliance audits under the Agreement. Any such audits must be initiated within two (2) years after the close of the calendar year in which the costs were incurred and such audits shall not be conducted more often than once each calendar year. If a Party fails to initiate these audits within the allowed time, the books and records of account of Operator as prepared shall be presumed to be correct. Operator will maintain all necessary records at its accounting office, including back-up data, all of which shall be complete to reflect all charges for reimbursable work. Audit time and expenses shall be borne by the requesting Party, none of which shall be charged to the joint account.
- 5.11 Gas Quality. All gas delivered into, or redelivered out of, the Project shall conform to the specifications in Operator's FERC Gas Tariff.
- 5.12 Nomination, Scheduling and Balancing.
- (a) Columbia Gulf shall receive nominations from shippers on its capacity of the Project and provide Operator an aggregation of such nominations at each point of receipt on the Project no later than one-half hour following the close of Operator's nomination deadline for shippers on its system. Columbia Gulf shall provide such aggregated nominations via Operator's TENN-SPEED II system or any successor electronic system.

- (b) Each Party will use, or will cause any party receiving or delivering its gas to use, all reasonable efforts to ensure that receipts and deliveries of gas are equal to the quantities provided to Operator. Each Party will be responsible to control and, if necessary, adjust nominations, receipts and deliveries of gas to maintain a balance between nominated quantities and actual quantities and between receipts and deliveries on the Project. Each Party will cooperate to minimize any imbalances that do occur and to eliminate any imbalances as soon as possible. Based upon the best information available, each Party shall take action to correct any imbalances occurring during the month by making adjustments in nominations, receipts and/or deliveries. If a Party does not take such corrective action, then the Operator may adjust that Party's scheduled receipts and deliveries over the remainder of the month, or to the extent necessary over any subsequent months to maintain a balance of receipts and deliveries.
- (c) If any imbalance between receipts and deliveries of a Party exists at the end of a month, then Operator shall correct any such imbalances by altering receipts or deliveries scheduled at the interconnection of the pipeline facilities of Tennessee and Columbia Gulf at Egan or at any other mutually agreeable points.
- (d) Notwithstanding the above, Operator shall have the right to take actions that are required to protect the operational integrity of the Project.

5.13 Line Pack and Lost and Unaccounted For Gas. Each Party will provide its proportionate share of the gas required for line pack, pigging, purging, testing and blowdowns on the basis of their Capacity Entitlement. Each Party will provide its proportionate share of the gas for lost and unaccounted for quantities based upon each Party's utilization of capacity of the Project during each day; provided that during the effective term and pursuant to the Lease Agreement, Columbia Gulf's share of such gas shall be equal to its capacity utilization of the project on each day multiplied by the Company Use and Unaccounted For percentage in Columbia Gulf's FERC Gas Tariff that is applicable to offshore laterals, deducted in kind, by Operator at the point of delivery.

5.14 Relationship of the Parties. In the performance of its obligations under this Agreement, Operator shall be an independent contractor and not an employee or agent of Non-Operators.

5.15 Inspection. Non-Operators shall, at their sole risk and expense, have the right at all reasonable times during normal business hours to inspect the Project.

- 5.16 Assignment of Duties. The Operator may from time to time delegate or assign all or part of its responsibilities to others, including to any Affiliate, as the Operator deems necessary, useful or appropriate; provided that any such arrangement shall be on an arm's length basis and shall not relieve the Operator of any responsibility for such duties.
- 5.17 Non-Exclusive Arrangement. The Operator shall not incur any liability to the Owners as a result of engaging in any other business or venture regardless of whether such other business or venture competes with the Owner's business or whether the Operator is active in the management or business of such other business or venture.

## ARTICLE VI

### INDEMNITY, INSURANCE AND WAIVER OF RECOVERY

- 6.01 Risk of Loss. Each Owner shall be the beneficial owner of an undivided interest in the Project in proportion to its respective Ownership Interest. Except for occurrences resulting from the gross negligence or willful misconduct of the Operator or another Owner, each Owner shall be responsible for (a) the risk of loss of its Ownership Interest in the Project and shall be responsible for insuring its interest therein and (b) the risk of the loss of gas in the Project on a pro rata basis, based on such Owner's Capacity Entitlement.
- 6.02 No Indirect Damages. It is acknowledged and agreed that the Operator is not guaranteeing or responsible for the Project failing to meet any particular operating result, and the Operator shall not be liable for any special, incidental, indirect, punitive or consequential damages of any nature, arising from the construction of any additional facilities or the operation or maintenance of the Project, including without limitation, any loss of revenues resulting from any unavailability of the Project for any reason, lost profits, increased expense of operation, supplies or labor or claims of the Owner's shippers, affiliates or any third party, and the Owners hereby release the Operator from any liability for all such losses and damages.
- 6.03 Liens. Each Party agrees to notify the other Party immediately of the filing of any claims and/or liens against the Project. Either Party may at its option require a bond in an amount and with such sureties as may reasonably be requested by such Party, conditioned to indemnify and save harmless such Party from all such liens upon or against its property. If such Party fails to furnish such bond when so required, then the other Party shall have the right to pay any sums necessary to obtain the release of such liens and bill the costs to the Party failing to keep the other Party's property free from such claims or liens.

## ARTICLE VII

FORCE MAJEURE

- 7.01 Force Majeure. If by reason of force majeure any Party is unable, wholly, or in part, to carry out its obligations under this Agreement, and if such Party gives notice and reasonably full particulars of such force majeure in writing or by telegraph or telex to the other Parties within a reasonable time after the occurrence of the cause relied on, such Party, so far as and to the extent that it is affected by such force majeure, shall not be liable in damages during the continuance of any inability so caused; provided, such cause shall be remedied with all reasonable dispatch; and provided further, such cause shall not relieve any Party from its obligation to make payments hereunder which were due prior to such force majeure.
- 7.02 Force Majeure Defined. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, military actions, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms or storm warnings (including, but not limited to, hurricanes or hurricane warnings), crevasses, floods and washouts; arrests and restraints of governments and people, civil disturbances, explosions; shutdowns for purposes of necessary repairs, relocations or construction of facilities; breakage or accident to equipment, facilities or lines of pipe, the necessity for testing (as required by governmental authority or as deemed necessary by the testing party for safe operation); the necessity of making repairs or alterations to equipment, facilities or lines of pipe, accidents, breakdowns and the inability of any Party to obtain necessary rights-of-way, materials, supplies or permits due to existing or future rules, regulations, orders, laws or proclamations of the FERC or other governmental authorities (Federal, state and local), including both civil and military; inability of any Party to obtain necessary labor in order to perform or comply with any obligation or condition of this Agreement; and any other causes, whether of the kind herein enumerated or otherwise, and whether caused or occasioned by or happening on account of the act or omission of any Party or some persons or concern not a party hereto, not within control of any Party, and which by the exercise of diligence any Party is unable to prevent or overcome. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the affected Party and that the above requirement that any force majeure shall be remedied with all reasonable dispatch, shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the affected Party.

## ARTICLE VIII

TERM AND TERMINATION

- 8.01 Term. This Agreement shall be effective for all purposes (including but not limited to all monetary obligations) as of the date of the satisfaction or waiver of all conditions precedent as set forth in Article II and shall extend for a primary term of fifteen (15) years from the date of this Agreement and shall remain in force from year to year thereafter, until terminated upon one (1) year's prior written notice by any Party to the non-terminating Party, which termination may be made effective at the end of the primary term of this Agreement or at the end of any year thereafter.
- 8.02 Termination. Notwithstanding any of the foregoing, this Agreement may be terminated at any time as follows:
- (a) Upon default by any Party in the performance of any material provision, condition or requirement herein, the other Parties may give notice in writing to the Party in default, specifying the default. Unless such default is cured within thirty (30) days, or if such cure cannot be completed within the thirty (30) day period, then if the cure thereof is not undertaken promptly upon receipt of such notice and diligently prosecuted thereafter, this Agreement may be terminated forthwith by written notice at the option of the Party serving such notice of default.
  - (b) In the event the FERC shall issue an order authorizing abandonment of the Project, this Agreement shall terminate as of the later of the effective date of such order or the date the facilities are removed and the abandonment completed.
- 8.03 Effect. Termination of this Agreement shall not relieve any Party from any obligation accruing or accrued to the date of such termination or deprive a Party not in default of any remedy otherwise available to it. In addition, the terminating Party will still be responsible for its share of any salvage or abandonment costs in accordance with the percentages set forth in Section 5.06 above.
- 8.04 Discontinuance of Use.
- (a) In the event of a catastrophic failure either Party may elect to terminate this Agreement and its use of the Project. The other Party may elect to repair the Project and shall enjoy the rights to all of the then current capacity. The Party exercising the right of discontinuance shall remain liable for its proportionate share of abandonment costs, if any. For the purposes of this Article VIII, a catastrophe shall be defined as an event, naturally or otherwise

occurring, that results in damages with a repair cost of \$5,000,000 or greater to the Project.

- (b) In the event a Party discontinues use of the Project for any reason other than catastrophic failure as defined in this Section 8.04, the remaining Party utilizing the facilities shall, after ninety (90) days notice from the discontinuing Party, assume the duty of operating and maintaining such facilities.
  - (i) If such event occurs during the primary term of the Agreement, then until the Party discontinuing use sells its interest in such facilities, thereby assigning its rights and obligations hereunder, such Party discontinuing use of the facilities shall continue to pay its share of the operating and maintenance costs.
  - (ii) If after the primary term of this Agreement, a Party discontinuing use of the facilities is unable to sell its interest in such facilities, the Party continuing to utilize the facilities shall assume all operating and maintenance costs, provided however, that the Party discontinuing use after the primary term shall remain liable for its proportionate share of abandonment costs, if any.

The Party continuing to utilize the Project shall have the right to utilize the discontinuing Party's Capacity Entitlement without the payment of a transportation charge or any other charge or fee to the discontinuing Party.

- (c) Such assumption of costs and use of capacity shall not become effective until all necessary regulatory approvals therefore, including any certificate and abandonment authority required by the FERC or a successor body having jurisdiction, are obtained.
- (d) If at any time the Parties mutually desire to terminate use of the Project, the facilities shall be disposed of in a mutually agreeable manner with costs incurred or revenues received from disposition to be shared based on the percentages set forth in Section 5.06 above.

## ARTICLE IX

### RIGHT TO REMOVE OPERATOR

- 9.01 The Owners may remove the Operator by notice to Operator if any of the following shall occur:

- (a) Operator dissolves, liquidates or terminates its separate corporate existence;
- (b) proceedings shall be commenced by or against Operator for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension, and, if such proceedings have commenced against Operator, such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) within ninety (90) days after such proceeding shall have commenced;
- (c) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of Operator or of a substantial part of its affairs, shall have been entered, and such decree or order shall have remained in force undischarged and unstayed for a period of ninety (90) days, or any substantial part of the property of Operator shall be sequestered or attached and shall not be returned to the possession of Operator or released from such attachment within ninety (90) days thereafter or
- (d) Operator shall make a general assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due.

9.02 The Operator may resign as Operator at any time during the term of this Agreement upon six months written notice.

## ARTICLE X

### GENERAL PROVISIONS

10.01 Written Communications. Any notice, request, statement or other communication provided for in this Agreement shall be in writing and shall be considered as duly delivered when mailed by registered or certified mail to the post office address of the Parties hereto, which are as follows:

If to Tennessee:

Tennessee Gas Pipeline Company  
P. O. Box 2511  
Houston, Texas 77252-2511  
Attention: Director of Supply Development  
Phone: (713)757-2437  
Fax: (713)757-1519

If to Columbia Gulf:

Columbia Gulf Transmission Company  
P. O. Box 683  
Houston, Texas 77001  
Attention: Vice President, Marketing  
Phone: (713)267-4159  
Fax: (713)267-4190

Any Party may designate other addresses or change the above address upon written notification to the other Parties.

- 10.02 Laws and Regulatory Bodies. This Agreement, the operation of the Project and the rights and obligations of Operator and Non-Operators hereunder shall be subject to all valid and applicable laws, orders, directives, rules and regulations of any duly constituted governmental body or official having jurisdiction, and this Agreement is conditioned upon acceptance of all regulatory authorizations deemed necessary by each Party, and satisfactory to each Party, which will permit the Parties to participate in and jointly utilize the Project in the manner contemplated hereby.
- 10.03 Waiver. No waiver by any Party of any default by another Party in the performance of any provision, condition or requirement herein shall be deemed to be a waiver of, or in any manner release such other Party from, performance of any provision, condition or requirement herein, nor deemed to be a waiver of, or in any manner release the defaulting Party from, future performance of the same provision, condition or requirement; nor shall any delay or omission of any Party to exercise any right hereunder in any manner impair the exercise of such right or of any other right to which it is entitled.
- 10.04 Modification. This Agreement may not be modified, varied or amended except by an instrument in writing signed by the Parties.
- 10.05 Captions. The titles to each of the various Articles and Sections in this Agreement are included for convenience or reference only and shall have no effect on, or be deemed as part of, the test of this Agreement.
- 10.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- 10.07 Reformation and Severability. If any provision of this Agreement is declared null and void by a court of competent jurisdiction, then that provision shall be considered severable at the option of the Parties, and if the severability is

exercised, the remaining provisions of this Agreement shall remain in full force and effect.

- 10.08 Several Liability and No Partnership. The duties, obligations and liabilities of the Parties are intended to be several and not joint, and nothing herein shall be construed to create a joint venture, association or partnership duty, obligation or liability with respect to the Parties. Each of the Parties elects to be excluded from the application of all of the provisions of Subchapter K, Chapter 1, Subtitle A, of the Internal Revenue Code of 1986, as permitted and authorized by Section 761 of such Code and the regulations promulgated thereunder, or any similar present or future state or Federal statutes. Should there be any requirement that all Parties or any Party further evidence this election, each Party agrees to execute such documents and furnish such other evidence as may be required by the Federal Internal Revenue Service. Each Party further agrees not to give any notices or take any other action inconsistent with the elections made hereby. The Parties hereby appoint Tennessee as agent solely for the purpose of filing the statement of election provided in Treasury Regulation Section 1.761-2(b)(2)(i) and agree to furnish to Tennessee such information as is necessary in order to complete said statement.
- 10.09 Applicable Law. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS
- 10.10 Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which, when taken together, shall constitute but one and the same Agreement.
- 10.11 Previous Agreements. This Agreement constitutes the entire Agreement between the Parties concerning the subject matter hereof and supercedes any prior understanding or written or oral Agreement relative to said matter. Without limiting the above, the provisions of the letter agreement dated November 23, 1982 between the Parties, the letters from Columbia Gulf to Tennessee dated December 18, 1986 and March 14, 1988, and the settlement agreement dated July 20, 1990 between the Parties are superceded to the extent they are addressed in this Agreement as of the effective date of this Agreement pursuant to Article II. The Parties will still be bound to such Agreements with regard to any rights and obligations between the Parties and Chevron. The Parties agree that the terms and conditions of the Agreement for the Exchange of Electronic Measurement Data shall remain in force and effect as to the Project and the other facilities covered by such Agreement.
- 10.12 Assignability. Any company which shall succeed by purchase, merger or consolidation to the properties of any of the Parties hereto, shall be entitled

to the rights and shall be subject to the obligations of its predecessor in title under this Agreement. Either Party may, without relieving itself of its obligations under this Agreement, assign any of its rights hereunder to a company with which it is affiliated, but otherwise no assignment of the Agreement or any of the rights or obligations hereunder shall be made unless there first shall have been obtained the written consent thereto of the other Party. It is agreed, however, that the restrictions on assignment contained in this Section 10.12 shall not in any way prevent either Party to the Agreement from pledging or mortgaging its rights hereunder as security for its indebtedness.

10.13 Further Assurances. The Parties agree to execute and deliver all such other and additional instruments and documents and to perform such other acts and duties as may be reasonable and necessary to effectuate more fully this Agreement.

10.14 Drug and Alcohol Testing. Where either Party is responsible for the construction, operation, maintenance and/or emergency response associated with any facilities under this Agreement, such Party shall be in compliance with the terms of the United States Department of Transportation Federal Pipeline Safety Drug and Alcohol Testing regulations.

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(This space intentionally left blank.)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

TENNESSEE GAS PIPELINE COMPANY

By J. E. Getcher  
Name: J. E. Getcher  
Title: Agent and Attorney-in-fact

COLUMBIA GULF TRANSMISSION COMPANY

By James W. Hart  
Name: James W. Hart LNS  
Title: Vice President

SIGNATURE PAGE to that certain Construction, Ownership, Operation and Maintenance Agreement for the Project South Pass 77 made and entered into as of September 13, 1996, by and between TENNESSEE GAS PIPELINE COMPANY and COLUMBIA GULF TRANSMISSION COMPANY.

# **ATTACHMENT D**

**UNITED STATES OF AMERICA  
Before the  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>COLUMBIA GULF TRANSMISSION COMPANY,</b>	)	
<b>Complainant,</b>	)	
	)	
v.	)	<b>Docket No. RP04-</b>
	)	
<b>TENNESSEE GAS PIPELINE COMPANY,</b>	)	
<b>Respondent.</b>	)	

**AFFIDAVIT OF STEPHEN H. WENDEL  
IN SUPPORT OF  
COLUMBIA GULF TRANSMISSION COMPANY**

State of Texas

County of Harris

BEFORE ME, a Notary Public duly authorized to administer oaths, appeared Stephen H. Wendel, who having first been duly cautioned and sworn upon oath, deposes and states as follows:

1. My name is Stephen H. Wendel. My business address is 2603 Augusta, Houston, Texas 77057. I am a Business Manager at Columbia Gulf Transmission Company (“Columbia Gulf”). I am of legal age and have personal knowledge of the matters discussed in this affidavit.

2. In my position as Business Manager, I am responsible for, among other things, attaching new natural gas supplies to Columbia Gulf’s system. I often communicate with Columbia Gulf shippers, including those shippers transporting gas on offshore facilities owned or operated by Columbia Gulf, such as the South Pass 77 system. The South Pass 77 facilities are located off shore of Louisiana in the Gulf of Mexico and are jointly owned by Columbia Gulf and Tennessee Gas Pipeline Company (“Tennessee”) and are operated by Tennessee.

3. As discussed in more detail in the Affidavit of James W. Hart (Attachment A), the South Pass 77 facilities are not physically connected with onshore facilities owned and operated by Columbia Gulf. The South Pass 77 facilities are physically connected onshore to pipeline facilities owned and operated by Tennessee. Columbia Gulf and Tennessee have addressed this issue through the use of a Reciprocal Operating Lease Agreement (“Reciprocal Lease”), which provides that Tennessee will deliver Columbia Gulf’s South Pass 77 natural gas quantities by displacement or exchange to Columbia Gulf at Egan, Louisiana or at Vermilion Block 245 (“Vermilion 245”) on the Western Shore Line of the Blue Water Project.

4. In recent months, approximately five shippers have routinely been using Columbia Gulf’s capacity in the South Pass 77 system to transport their gas. Pursuant to the Reciprocal Lease, these natural gas quantities are re-delivered to these shippers by displacement at Egan or Vermilion 245. To the best of my knowledge, since Columbia Gulf and Tennessee entered into the Reciprocal Lease, Tennessee has never charged Columbia Gulf’s South Pass 77 shippers a separate transportation rate for this service.

5. On April 7, 2004, I had a conversation with one of Columbia Gulf’s South Pass 77 shippers. Due to confidentiality concerns, I will refer to this entity as “Shipper A.” According to Shipper A, Tennessee stated that if Shipper A continued to transport gas on Columbia Gulf’s South Pass 77 capacity, Tennessee would begin assessing a rate for transportation on Tennessee’s onshore facilities downstream of the South Pass 77 system. Tennessee informed the shipper that this rate would be applied retroactively to April 1, 2004. Shipper A also was informed that if it used Tennessee’s capacity on the South Pass system, there would be no additional charge for transportation of the gas on Tennessee’s system downstream

of the terminus of the South Pass system. Shipper A asked Tennessee to provide this new information in writing, but Tennessee refused.

6. Beginning April 9, 2004, Shipper A stopped nominating gas on Columbia Gulf's portion of the South Pass 77 capacity. Shipper A told me that it made this decision to avoid the extra transportation charge that would be imposed by Tennessee if Shipper A continued to use Columbia Gulf as its transporter on the South Pass system.

7. On April 9, 2004, Shipper B received an e-mail from the operator of the Yscloskey Plant informing Shipper B that an additional charge of 2 cents plus 1% fuel would be charged for all gas that flowed on Columbia Gulf's portion of the South Pass 77 capacity. Shipper B continues to ship on Columbia Gulf because it has a firm transportation agreement on Columbia Gulf and cannot switch to Tennessee's capacity on the South Pass 77 system without incurring duplicative charges for transportation. To the best of my knowledge, however, Tennessee has not directly contacted Shipper B about this new charge.

8. On April 16, 2004, I had a conversation with another shipper, Murphy Gas Gathering ("Murphy") that transports gas using Columbia Gulf's South Pass 77 capacity. Murphy told me that earlier in that week, it was told that Tennessee would begin assessing a transportation rate for the use of its onshore facilities downstream of the South Pass 77 system on May 1, 2004. This additional charge would be imposed only if Murphy used Columbia Gulf's portion of the South Pass 77 capacity. Murphy asked Tennessee to provide this information in writing. Again, as with Shipper A, Tennessee refused to do so. Except for two days in May (which Murphy told me were tests to see what Tennessee would do if gas shipped was shipped on Columbia Gulf's capacity), Murphy stopped nominating gas on Columbia Gulf's portion of the South Pass 77 capacity as of May 1, 2004.

9. In June 2004, Murphy again attempted to nominate gas on Columbia Gulf's South Pass capacity. Murphy nominated gas on June 10 through June 15. On June 11, Tennessee requested that Columbia Gulf "require [Murphy] to enter into a processing agreement . . ." Tennessee stated further that if no agreement was in place by June 17, 2004, Tennessee would "avail itself of its rights" including "non-confirmation of the receipt of Murphy's gas into the South Pass system . . ." (Attachment H). However, notwithstanding Tennessee's assertion to the contrary, Murphy has had a processing agreement in place for the entire period this matter has been in controversy. Murphy therefore nominated gas on Columbia Gulf for June 22, 2004. On June 22<sup>nd</sup>, Tennessee interrupted the flow of Murphy's gas by refusing to confirm Murphy's gas nominations on Columbia Gulf's South Pass capacity.

10. On June 24, 2004, Columbia Gulf received a letter from Tennessee that is attached to this Complaint as Exhibit F. The letter informs Columbia Gulf that Murphy is not meeting Tennessee's gas quality requirements. Although the letter acknowledges that Murphy has a gas processing agreement in place with the Yscloskey plant, Tennessee maintains that Murphy has not met the proof of processing requirements because it does not have an agreement in place with Tennessee to transport the gas from the terminus of the South Pass 77 system to the Yscloskey plant. In response to this action by Tennessee, Murphy contacted the Commission's Hot Line Staff to lodge a complaint against Tennessee. In is my understanding that the Commission staff is still investigating Murphy's complaint, and that the Hot Line inquiry will be closed upon the filing of this Complaint by Columbia Gulf.

11. On April 21, 2004, I had a conversation with Superior Oil & Gas ("Superior"). Superior's production ties into the South Pass 77 system via a lateral that is 100% owned by Columbia Gulf. Superior therefore transports its gas using Columbia Gulf's South Pass 77

capacity. Superior told me that Tennessee had not contacted them about the assessment of transportation charges for the use of onshore facilities downstream of the South Pass 77 system. Superior was subsequently told informally by one of the owners of the Yscloskey processing plant that an additional charge would be imposed if Superior moved its gas on Columbia Gulf's South Pass 77 capacity. Because Superior must ship on Columbia Gulf's lateral, it gains no benefit by switching to Tennessee's South Pass capacity in order to avoid the additional charge. In fact, in either case, Superior would have to pay duplicative transportation charges.

12. On June 18, 2004, a representative of Eni Marketing Inc. ("Eni") sent Columbia Gulf a copy of a "Customer Order" that it had received from Dynegy Midstream Services, Inc. ("Dynegy"), the operator of the Yscloskey Processing Plant. This Customer Order pertains to gas that Eni ships on Columbia Gulf's South Pass 77 capacity. This document is attached to this Complaint as Attachment E. It is my understanding that Eni Marketing had been told that in order for its gas to flow on Columbia Gulf's South Pass 77 capacity, Eni must enter into a new processing agreement (*i.e.*, the Customer Order) by July 1, 2004. Section 10 of Exhibit A to the Customer Order states that the Producer (Eni Marketing) will be required to pay Tennessee's interruptible transportation fee (currently \$0.02) per dth, plus fuel. To the best of my knowledge, Eni executed the Customer Order and understands that it will be invoiced by the Yscloskey Plant operator for the new Tennessee transportation charge. Eni's South Pass gas therefore continues to flow on Columbia Gulf's South Pass capacity.

13. It is my understanding that Tennessee also contacted Shipper C, another shipper on Columbia Gulf's portion of the South Pass 77 facilities, regarding the assessment of transportation charges for use of Tennessee's onshore facilities downstream of the South Pass 77 system. It is my further understanding that Shipper C was in the process of selling its interest

and agreed to execute a short-term agreement that resulted in the payment of the additional charges to Tennessee for approximately one month.

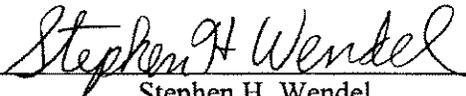
14. At least two (2) new shippers and one existing shipper that had considered entering into transportation agreements with Columbia Gulf have indicated that they will not ship on Columbia Gulf's South Pass capacity because of the concern that they will be required to pay additional transportation fees to Tennessee. One of these shippers is Walter Oil & Gas. Columbia Gulf is not able to provide the name of the other shippers due to confidentiality concerns on the part of the shippers.

15. FURTHER AFFIANT SAYETH NOT.

State of Texas

County of Harris

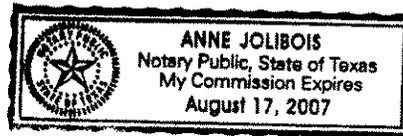
I, Stephen H. Wendel, being duly sworn, do hereby depose and say that I have read the attached affidavit and certify that it is true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Stephen H. Wendel

Subscribed to and sworn before me this 26<sup>th</sup> day of July, 2004.

  
\_\_\_\_\_  
Notary Public

DC\7004623.1



# **ATTACHMENT E**

**CUSTOMER ORDER**

**Natural Gas Processing Agreement effective January 1, 2001 between  
Dynegy Midstream Services, Limited Partnership and Eni US Operating Co. Inc.**

Customer Order No. 3, dated June 2, 2004 between Dynegy Midstream Services, Limited Partnership and Eni US Operating Co. Inc.

To: Julie McGowen

Telephone Number: (713) 393-6296  
Customer Fax No. (713) 393-6395

From: Dynegy Midstream Services, Limited Partnership  
1000 Louisiana Street  
Houston, TX 77002  
Attention: Bill Grantham  
Telephone Number: (713) 767-6092  
Fax No.: (713) 767-5960

This Customer Order constitutes a supplement to and forms a part of that certain Natural Gas Processing Agreement (the "Agreement") between the Parties Eni US Operating Co. Inc. and Dynegy Midstream Services, Limited Partnership, Contract No. 013033.

**Commercial Terms:**

Producer's Committed Gas:

FIELD	AREA	BLOCK	METER NAME &/OR DESCRIPTION	METER NO.
Medusa	Mississippi Canyon	538 & 582	Medusa	1-2619-03
Cognac	Mississippi Canyon	194	MC 194	1-2363-05

Term of Commitment: July 1, 2004 through July 31, 2004 and month-to-month thereafter. This Customer Order can be terminated by either party by giving the other party at least five (5) Business Days written notice prior to July 31, 2004 or the last day of any subsequent month, as applicable.

Compensation: as set forth in Exhibit "A" to this Customer Order

**Gas Control and Accounting Contacts:**

Pipeline allocated volume statements shall be faxed to Processor's Gas Control contact at facsimile (713) 507-3870.

The monthly summary of allocated volumes prepared by the pipeline transporting Producer's Committed Gas shall be faxed to Processor's Accounting Department at facsimile (713) 767-5960.

Accepted and agreed to effective as of the date set forth above.

Accepted and agreed to effective as of the date set forth above.

**DYNEGY MIDSTREAM SERVICES, LIMITED PARTNERSHIP**

**ENI US OPERATING, CO. INC.**

a Delaware limited partnership

By: **Dynegy Midstream G.P., Inc., its General Partner**

By: Bill Grantham  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: **Bill Grantham**  
Title: **Attorney-In-Fact**

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_

**EXHIBIT "A"  
COMPENSATION**

**CONTRACT NUMBER: 013033**

Customer Order No. 3, effective July 1, 2004 between Dynegy Midstream Services, Limited Partnership and Eni US Operating Co. Inc.

The compensation due Producer or Processor, as applicable, shall be determined as follows:

1. **Product Price.** "Product Price" for each of the following Product components shall mean the component sales price in cents per gallon as determined in accordance with Table "A" below, less fractionation fees, less a one cent (\$0.01) per gallon product distribution fee which includes, but is not limited to, the costs associated with treating, pumping, storage, marketing and loading of products. The Product Price for Scrubber Liquids shall be the price set forth in Table A below:

Table "A"

Ethane	Propane	Iso-Butane	Normal Butane	Natural Gasoline	Scrubber Liquids
Actual Sale Price	OPIS Napoleonville month average less 1.80 cpg	OPIS Napoleonville month average less 1.25 cpg	OPIS Napoleonville month average less 1.25 cpg	OPIS Napoleonville month average	Actual Sale Price.

2. **OPIS.** "OPIS" shall mean the monthly average of the daily high and low prices for each Product component as quoted by the Oil Price Information Service for the area specified for the month in which Products are extracted from the Producer's Committed Gas. In the event that Oil Price Information Service no longer publishes the OPIS index specified price information, Producer and Processor shall mutually determine an alternate method for determining price information.
3. **Product Value.** "Product Value" shall mean the sum of each Product component identified in Table "A" above allocated to Producer's Committed Gas (less any volume deductions for in-kind fractionation fees to the extent that such fees are not reflected in the Product Price) multiplied by its Product Price and reported in dollars.
4. **PTR Price.** "PTR Price" shall mean 101% of the published price quotes for the Tennessee Gas Pipeline Co., Louisiana, 500 Leg, as published in "INSIDE F.E.R.C.'s Gas Market Report", a McGraw-Hill Co. publication, "Prices of Spot Gas Delivered to the Pipelines, First of the Month, Index", for the month in which Producer's Committed Gas is Processed. PTR Price shall be measured in \$/MMBTU.
5. **PTR Value.** The "PTR Value" shall mean the product of the PTR Price times the PTR quantity applicable to Producer's Committed Gas and then adding to such product, the PTR Transport Cost plus the actual pipeline cashout (if any), PTR Fuel Cost and taxes applicable to said PTR, including fuel use tax if applicable. The PTR Transport Cost shall equal the product of the rate for PTR transportation actually charged by Tennessee Gas, which is as of date of this Customer Order, \$0.1049 per Dth, times the PTR quantity applicable to

Producer's Committed Gas. The PTR Fuel Cost shall equal the actual percentage rate for fuel charged by Tennessee pursuant to PTR Transportation which is, as of the date of this Customer Order, ninety-eight hundredths percent (0.98%), times the PTR Price times the PTR quantity applicable to Producer's Committed Gas.

6. PTR Supply. Processor has the right to supply the PTR for Producer's Committed Gas or request Producer to supply said PTR. If pursuant to Processor's request Producer is supplying the PTR for Producer's Committed Gas, Producer shall be responsible for the entire cost of the PTR, PTR transportation and PTR imbalances (if any) associated with said PTR. Producer its designee or agent shall nominate the PTR to the Plant when Producer is supplying the PTR.
7. Stream Economic Value. "Stream Economic Value" shall mean the Product Value less the PTR value less two cents (\$0.02) per MCF of Gas received at the Plant Inlet and processed hereunder.
8. Net Liquids Value. "Net Liquids Value" shall equal the Product Value of all Products multiplied by seventy-five percent (75%).
9. Conditioning Fee. "Conditioning Fee" shall equal the product obtained by multiplying the volume (in MCF) of Producer's Committed Gas received at the Plant Inlet for processing by the Conditioning Rate. The Conditioning Rate shall initially be eight cents (\$0.08) per MCF. Beginning January 1, 2004, the Conditioning Rate shall be redetermined and adjusted annually on April 1<sup>st</sup> each year according to the following formula (Conditioning Rate in cents per MCF), however the Conditioning Rate shall never be less than eight cents (\$0.08) per MCF:

$$\text{Conditioning Rate} = \$0.08 * (\text{GDP 2} / \text{GDP 1})$$

Where:

GDP2 = United States Bureau of Economic Analysis GDP Implicit Price Deflator for the previous calendar year.

GDP1 = The average of the GDP Implicit Price Deflator for the calendar year 2002.

The Conditioning Rate as of April 1, 2004 is \$0.0813 per MCF.

10. Interruptible Transportation Fee. Producer shall be responsible for the actual Interruptible Transportation Fee ("IT Fee") charged by Tennessee Gas to Producer's Committed Gas (if any). The IT Fee as of the date of this Customer Order is two cents (\$0.02) per Dth plus fuel. The fuel percentage shall be the same as the PTR Fuel Cost as shown in section 5 of this Customer Order.

11: Compensation.

(1) If the Stream Economic Value is greater than zero, then:

- (i) When Processor is supplying PTR, Processor shall pay Producer an amount equal to the Net Liquids Value less the sum of the PTR Value and the IT Fee. If the Net Liquids Value less the sum of the PTR Value and the IT Fee is a negative value, then no compensation shall be due Producer by Processor and Producer shall pay Processor an amount equal to said negative value.
- (ii) When Producer is supplying the PTR, Processor shall pay to Producer an amount equal to the Net Liquids Value less the IT Fee. If the Net Liquids Value less the IT Fee is a negative value, then no compensation shall be due Producer by Processor and Producer shall pay Processor an amount equal to said negative value.

(2) If the Stream Economic Value is equal to or less than zero, then:

- (i) When Processor is supplying PTR, Producer shall pay Processor an amount equal to the PTR Value plus the IT Fee plus the Conditioning Fee less the Product Value.
- (ii) When Producer is supplying the PTR, then Processor shall pay Producer an amount equal to the Product Value less the Conditioning Fee less the IT Fee. If the Product Value less the Conditioning Fee less the IT fee is a negative value, then no compensation shall be due Producer by Processor and Producer shall pay Processor an amount equal to said negative value.

# **ATTACHMENT F**

Kourtney Calhoun  
Director  
Transportation Services



June 24, 2004

Columbia Gulf Transmission  
2603 Augusta, Ste. 300  
Houston, Texas 77057-5637

Dear Elise,

As you know, Tennessee Gas Pipeline Company ("Tennessee") has previously notified Columbia Gulf Transmission Company ("CGT"), on May 27, 2004 and June 11, 2004, that CGT's South Pass 77 Project shipper, Murphy Gas Gathering ("Murphy"), is not meeting Tennessee's gas quality requirements. While Murphy now contends that it has a gas processing arrangement at the Yscloskey Processing Plant (the "Plant"), neither Murphy, nor the processor nor CGT have made the necessary transportation arrangement on Tennessee's system to cause the non-conforming Murphy gas to be delivered by Tennessee to the Plant. Indeed, on June 22, 2004, Enterprise Products Operating ("Enterprise") an owner at the Plant and processor, confirmed that it will not transport the subject gas on Murphy's behalf and that it will not process Murphy's non-conforming gas if the gas is not transported and delivered to the Plant. Under these conditions, Murphy has not provided Tennessee with "proof of processing" because it does not currently have an effective means of having its non-conforming gas processed.

Unless and until Murphy meets processor conditions to effectuate processing of its gas, including causing the gas to be transported and delivered to the Plant, Tennessee will continue to avail itself of its rights, including but not limited to, non confirmation of non-conforming Murphy gas receipts into the South Pass 77 Project. In this regard, Tennessee is non-confirming Murphy's gas for the June 22 and June 23 gas days, as stated below.

<u>Producer</u>	<u>TGP Meter</u>	<u>Block</u>	<u>HDP</u>	<u>06/22/04 Nom/Conf</u>	<u>06/23/04 Nom/Conf</u>
Murphy Gas Gathering	01-2358	South Pass 55	+74.2	5,028/2,514	4,945/0

Please call me at 832-676-2699, if you have any questions.

Sincerely,

Kourtney Calhoun  
Director, TGP Transportation Services

Cc: Tom Brasselle - Columbia Gulf Transmission  
Greg Downum - Murphy Gas Gathering

# **ATTACHMENT G**

ORIGINAL

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OFFICE OF THE SECRETARY

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FEDERAL ENERGY  
REGULATORY COMMISSION

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Company )  
and )  
Columbia Gulf Transmission )  
Company )

Docket No. CP96-806-000

COMMENTS OF INDICATED SHIPPERS IN SUPPORT

Indicated Shippers<sup>1</sup> submit the following comments in support of the Application filed on September 20, 1996, by Tennessee Gas Pipeline Company ("Tennessee") in this proceeding. Indicated Shippers request that the Commission approve the Application expeditiously, subject to several understandings and clarifications set forth below.

BACKGROUND

On September 20, 1996, Tennessee Gas Pipeline Company ("Tennessee") and Columbia Gulf Transmission Company ("Columbia Gulf") (referred to collectively as "TGP/CGT") filed a joint application under Sections 7(b) and 7(c) of the Natural Gas Act ("NGA"), 15 U.S.C. §§ 717f(b) and 717f(c), for permission to lease firm capacity to each other.

TGP/CGT state that the proposed reciprocal lease arrangement is designed to: (i) provide Tennessee with needed additional

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<sup>1</sup> Indicated Shippers joining in these Comments are Amoco Production Company, Burlington Resources Oil and Gas Company, Conoco Inc., Exxon Corporation, Mobil Exploration and Producing U.S. Inc., Texaco Natural Gas Inc. and Vastar Gas Marketing, Inc. Each member of Indicated Shippers either has filed a motion for leave to intervene in this proceeding, or is filing a motion for leave to intervene contemporaneously with these Comments.

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capacity on the South Pass 77 system; (ii) grant Columbia Gulf direct access from its mainline system to the South Pass 77 system through a lease of a portion of Tennessee's mainline facilities; and (iii) resolve a contract dispute between Tennessee and Columbia Gulf with respect to their respective capacity rights on the South Pass 77 system.

Under the lease arrangement, Columbia Gulf will retain 115,000 Mcf per day as its capacity entitlement on the South Pass 77 system and lease to Tennessee any capacity it would otherwise be entitled to over and above 115,000 Mcf per day. Columbia Gulf will lease 115,000 Mcf per day of complementary downstream capacity (an amount equal to Columbia Gulf's retained capacity entitlement on the South Pass 77 system) on Tennessee's system downstream from the point of interconnection between Tennessee's mainline system and the South Pass 77 system to a point of interconnection between Tennessee and Columbia Gulf at Egan, Louisiana.

TGP/CGT state that the lease of capacity will provide their customers with greater flexibility, increased supply and market opportunities. Tennessee's customers will have increased access to receipt points on the South Pass 77 system and Columbia Gulf's customers will have direct access to South Pass area production for the first time. TGP/CGT also contend that the lease arrangement will have no detrimental impacts on any existing customers. Further, they state that this new access could increase the value of released capacity on both systems.

Indicated Shippers are suppliers, marketers and shippers of

natural gas with reserves located in the vicinity of the South Pass 77 facilities. Indicated Shippers thus have interests which may be directly affected by the outcome of this proceeding.

#### COMMENTS

Indicated Shippers support the TGP/CGT Application as a creative resolution of problems arising out of Tennessee's and Columbi Gulf's joint ownership of the South Pass 77 facilities. The current arrangement has impeded the flow of gas over those facilities to downstream markets.

As a matter of general policy, Indicated Shippers have concerns with arrangements under which one pipeline leases capacity on another pipeline. In this circumstance, however, given the unique history of these facilities and their operation, Indicated Shippers are prepared to support the TGP/CGT Application. In particular, Indicated Shippers base their support on both Tennessee's and Columbia Gulf's assurances that the application will have no rate impact on shippers on either system. TGP/CGT Application, at p. 8.

Among other things, under this Application Tennessee's capacity on the South Pass 77 System will increase from 187 to 260 MMcfd, providing producers behind this system with additional direct access to markets on Tennessee. Moreover, and perhaps most importantly, under this proposal shippers would no longer be required to split nominations between the two pipelines. The split nomination process is needlessly cumbersome. Instead, Tennessee and Columbia Gulf will compete for any new gas flowing through this

system.

As stated above, Indicated Shippers continue to have general concerns when pipelines seek to obtain capacity rights on other pipelines. In Texas Eastern Pipeline Corporation, Docket No. CP95-218-000, 74 FERC ¶ 61,074 (1996), issued earlier this year, the Commission considered whether it should continue its policy of preventing pipelines from acquiring upstream or downstream capacity for new or expanded transportation services "now that the unbundling of the industry is complete." 74 FERC at p. 61,220.

In Order No. 636, the Commission required pipelines to assign to their shippers their existing rights to upstream capacity. The Commission based this requirement on its concern that a pipeline otherwise would use those rights to favor its merchant function and inhibit access by other merchants to the production area, and to prevent pipelines from charging customers for merchant services that those customers do not use.

As a consequence of the completion of the unbundling of the merchant function following implementation of Order No. 636, the Commission announced in Texas Eastern that it would no longer employ a presumption against allowing pipelines to acquire up- or downstream capacity.<sup>2</sup> In the future, the Commission will consider such proposals on a case-by-case basis. Texas Eastern does not

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<sup>2</sup> On December 15, 1995, the Commission issued an order in Midwestern Gas Transmission Company/Trunkline Gas Company, 73 FERC ¶ 61,320, granting Trunkline permission to lease capacity on Midwestern. In that order, the Commission stated that "changes in the industry and associated policy considerations, in our view, justify this leasing arrangement." 73 FERC at p. 61,888 (citation omitted).

represent a complete reversal of policy. The Commission did not announce in Texas Eastern that it would henceforth employ a presumption in favor of pipeline acquisition of capacity on other pipelines.

Thus, the same considerations that argued against permitting pipeline capacity acquisition continue to be relevant. Moreover, the Commission made clear that it would not allow a pipeline to hold title to the gas being shipped on the upstream pipeline. The Commission stated further that it was not "changing our prohibition on pipelines' making bundled sales at pipeline interconnections."<sup>3</sup>

The TGP/CGT Application states that none of the concerns expressed in Texas Eastern apply to the proposed reciprocal lease agreement. Application, at p. 9, fn. 6. Indicated Shippers respectfully submit, however, that in some circumstances reciprocal lease agreements between interstate pipelines could trigger the same concerns. As discussed more fully below, Indicated Shippers believe that the TGP/CGT Application adequately addresses those concerns in this fact-specific context, subject to understandings and clarifications requested and discussed below.

The Commission's new case-by-case policy calls for evaluation of several factors in connection with a proposed acquisition of pipeline capacity by another pipeline. The TGP/CGT Application satisfies these criteria. An important distinguishing characteristic in this instance is that Tennessee and Columbia Gulf presently own and operate jointly the South Pass 77 facilities,

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<sup>3</sup> Texas Eastern, 74 FERC at p. 61,220.

which are central to the authorizations sought, largely as a vestige of these pipelines' historical merchant service. Moreover, the reciprocal lease arrangement proposed in this application should facilitate transportation service, thereby encouraging competition.

Flexibility/Duplication. In assessing lease arrangements in which one pipeline seeks to lease capacity on another pipeline, the Commission examines whether the acquisition proposal will enable the leasing pipeline to avoid having to choose between expanding its own system to reach a new market or supply source, or limiting itself to serving its pre-restructuring markets. As part of this inquiry, the Commission also examines whether the lease proposal will enable the pipeline to forego constructing its own duplicative facilities, with the attendant environmental burdens and economic inefficiency.

By creating direct access to markets and removing some of the burdens of shipping gas on this system, Tennessee and Columbia Gulf may have avoided the need to construct additional capacity.<sup>4</sup>

Convenience. Under Texas Eastern, the Commission also examines whether the acquisition will allow the acquiring pipeline's shippers to deal with a single pipeline and thereby avoid the administrative burdens of contracting, billing,

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<sup>4</sup> The TGP/CGT Application states that the reciprocal lease arrangement "avoids the need for Columbia Gulf and Tennessee to construct new, duplicative capacity." TGP/CGT Application at 10. In view of the potentially high costs versus the benefits of such incremental construction, Tennessee and Columbia may have decided that such additional construction to boost capacity on the South Pass 77 system would not be a viable option.

scheduling, nominating, balancing and dealing with penalties on multiple pipelines. The Commission will give weight to shippers' affirmations of such benefits.

The Application appears to satisfy this criterion. As stated above, the dual nomination procedure required to move gas on this system has proved cumbersome, thereby impeding shippers. The TGP/CGT reciprocal lease agreement should break that logjam. However, the Application does not expressly state that Tennessee will operate its leased Columbia Gulf capacity as if it were part of Tennessee's own system, or whether Columbia Gulf would treat its leased capacity on Tennessee's system as an extension of the Columbia Gulf system.

The Application states that the authorizations would reduce administrative burdens. This argument implicitly suggests that both pipelines intend to operate their respective leased capacity as extensions of their own systems. Nonetheless, the Commission should clarify that this is the applicants' intent. Otherwise, South Pass 77 shippers may continue to be subject to needless administrative burdens shipping gas on two different systems, defeating a significant purported benefit of the Application, as well as the creating the possibility of continued rate stacking.<sup>5</sup>

Control over Access. Although the Commission announced a new policy toward pipeline capacity acquisition in Texas Eastern, the Commission expressed continuing concern that pipelines not skew customer choices by tying up supply area capacity. The TGP/CGT

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<sup>5</sup> See Midwestern, 73 FERC at p. 61,888.

Application, instead of skewing choices, should expand choices. Thus, the Application satisfies this criterion as well.

Preference. The Commission also has expressed concern about the possibility of preferential treatment for the pipeline purchasing capacity over the other customers of the pipeline selling capacity. This concern should be inapplicable in this circumstance. Tennessee does not propose to hold title to, or otherwise ship gas on the capacity it proposes to lease from Columbia Gulf, nor does Columbia Gulf intend to hold title to, or otherwise ship gas on the capacity it proposes to lease from Tennessee. Moreover, and unlike some recent applications,<sup>6</sup> neither Tennessee nor Columbia Gulf propose to act as shipper for third parties on their leased capacity. Instead, as discussed above, both Tennessee and Columbia Gulf apparently propose to utilize its leased capacity on the other pipeline's system as an extension of its own system. (These Comments request that this apparent intent be clarified in the previous section.)

Terms and Conditions of Service. The Commission requires the pipeline acquiring leased capacity to detail the access rights of shippers to receipt and delivery points on the acquired capacity. This information will address the manner in which the acquiring pipeline will manage the capacity, consistent with the open-access principles of Order No. 636. The reciprocal lease arrangement

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<sup>6</sup> See Colorado Interstate Gas Company, Docket No. CP96-335, 76 FERC ¶ 61,252 (September 30, 1996) (permitting CIG to hold capacity on Wyoming Interstate Company on behalf of three shippers).

underlying the Application appears to allow each pipeline to treat its leased capacity as if it were an extension of its own system, although, as discussed above, this intent should be clarified. If the current terms and conditions governing transportation of each of the respective systems will continue to apply, then this criterion would be satisfied.

Open Season. In Midwestern, discussed above, the Commission granted Midwestern authorization to abandon, and Trunkline Gas Company to acquire, by operating lease, firm capacity on Midwestern's system to permit Trunkline to serve a downstream market. Trunkline obtained the rights to leased capacity on Midwestern after Midwestern posted the capacity on its electronic bulletin board and no party other than Trunkline came forward as a potential bidder. In contrast, the TGP/CGT Application does not indicate whether either company made its capacity to be leased to the other subject to an open season.

As a matter of general policy, the Commission should require pipelines to post their available capacity in an open season prior to leasing that capacity to another entity. This policy is particularly important when the acquiring entity is another interstate pipeline. However, in view of the unique circumstances presented by the proposed reciprocal lease arrangement, in particular the facts that (i) the pipelines intend that the reciprocal lease govern in part shared facilities, and (ii) the reciprocal lease arrangement resolves a long-standing dispute between Tennessee and Columbia Gulf, the Commission should approve

this Application. To have required an open season to accomplish this reciprocal lease would have been problematic.<sup>7</sup>

Term. The TGP/CGT Application states that the reciprocal lease arrangement will continue until "the earlier of (a) the effective date of any Commission abandonment authorization or (b) the cessation of physical and commercial operation of the South Pass system." TGP/CGT Application at p. 4, fn. 3. TGP/CGT request pregranted abandonment authorization "at the end of the term of the leases."

This request appears on its face to be ambiguous, and should be clarified. The Commission authorized the construction and operation of these facilities under Section 7(c) of the NGA, granting Tennessee and Columbia a certificate of public convenience and necessity of unlimited duration.<sup>8</sup> Therefore, prior to the cessation of operation of these facilities, Tennessee and Columbia Gulf must receive abandonment authorization from the Commission, pursuant to Section 7(b) of the NGA.<sup>9</sup> Indicated Shippers

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<sup>7</sup> It is interesting to note in this context that in Docket No. RP96-275, in which Tennessee proposes to allocate new capacity based on a net present value evaluation, Tennessee is vigorously defending its right to require an open season whenever a firm shipper seeks to modify primary points. See "Response of Tennessee Gas Pipeline Company to Comments and Protests on NPV Filing," Docket No. RP96-275-001, filed September 19, 1996.

<sup>8</sup> Tennessee Gas Pipeline Company and Columbia Gulf Transmission Company, 12 FERC ¶ 61,307 (1980). The description of the South Pass 77 system in the current application differs in several minor respects from the description provided in the certificate order.

<sup>9</sup> 15 U.S.C. § 717f(b), which provides in pertinent part as follows: "No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or

therefore respectfully submit that the reciprocal lease arrangement should remain in effect until the effective date of any Commission abandonment authorization.

In summary, the TGP/CGT Application should be approved, with the clarifications and understandings set forth above. It is consistent with the Commission's current policy regarding pipeline leasing of capacity on other pipelines. Moreover, the Application will provide benefits for shippers utilizing these facilities, in the form of less cumbersome procedures for scheduling transportation. And, finally, both Tennessee and Columbia Gulf have represented that the reciprocal lease arrangement will have no rate impact on either system's shippers.

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any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained...."

Wherefore, for the foregoing reasons, Indicated Shippers respectfully urge the Commission to approve the TGP/CGT Application expeditiously.

Respectfully submitted,



Kevin M. Sweeney  
John, Hengerer & Esposito  
1200 17th Street, N.W.  
Suite 600  
Washington, D.C. 20036  
(202) 429-8802

**Attorney for Indicated  
Shippers**

**Amoco Production Company  
Burlington Resources Oil and Gas  
Company  
Conoco Inc.  
Exxon Corporation  
Mobil Exploration and Producing  
U.S., Inc.  
Texaco Natural Gas Inc.  
Vastar Gas Marketing, Inc.**

**AMOCO PRODUCTION COMPANY**  
Brian J. Heisler  
Amoco Corporation  
501 WestLake Park Blvd.  
P.O. Box 3092  
Houston, TX 77253  
(713) 366-3639

**BURLINGTON RESOURCES OIL AND  
GAS COMPANY**  
Joseph D. Naylor  
Burlington Resources Oil and  
Gas Company  
5051 Westheimer  
Houston, TX 77060-1991  
(713) 624-9269

**CONOCO INC.**

Bruce A. Connell  
Conoco Inc.  
P.O. Box 4783, ML 1034  
Houston, TX 77210  
(713) 293-1736

**EXXON CORPORATION**

Thomas M. Morneau  
Exxon Corporation  
P.O. Box 2180  
Houston, Texas 77252-2180  
(713) 656-6642

**MOBIL EXPLORATION AND  
PRODUCING U.S., INC.**

Michael A. Kelly  
Mobil Exploration and  
Producing U.S., Inc.  
12450 Greenspoint Drive  
Houston, Texas 77060-1991  
(713) 775-2285

**TEXACO NATURAL GAS INC.**

Mickey Jo Lawrence  
P.O. Box 4596  
Houston, Texas 77210-4596  
(713) 752-6008

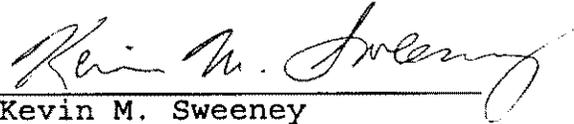
**VASTAR GAS MARKETING, INC.**

JoAnn P. Russell  
Vastar Gas Marketing, Inc.  
200 Westlake Park Blvd.  
Suite 200  
Houston, TX 77079  
(713) 584-3968

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 17th day of October, 1996.



Kevin M. Sweeney  
John, Hengerer & Esposito  
1200 17th Street, N.W.  
Suite 600  
Washington, D.C. 20036  
(202) 429-8802

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# **ATTACHMENT H**

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#3536 P.003/003

Kourtney Calhoun  
Director  
Transportation Services



June 11, 2004

Columbia Gulf Transmission  
2603 Augusta, Ste. 300  
Houston, Texas 77057-5637

Dear Elise,

Tennessee Gas Pipeline Company ("Tennessee") received notification from Enterprise Products Operating ("Enterprise"), an owner at the Yscloskey Processing Plant, that the producer listed below does not have an agreement in place that applies to processing of that producer's gas volumes produced at the specified point and flowing into the South Pass 77 Project, which is operated by Tennessee. Additionally, the plant operator has informed Tennessee that the plant will only process gas for which it has, or a plant owner has, a contract with the plant. Pursuant to the agreement between Tennessee and Columbia Gulf Transmission Company ("CGT") for operations of the South Pass 77 Project,<sup>1</sup> as well as the South Pass reciprocal lease agreement,<sup>2</sup> CGT has contractually agreed to require its shippers / producers to comply with Tennessee's gas quality requirements as contained in Tennessee's FERC Gas Tariff. Pursuant to Article II, Section 9 of the General Terms and Conditions of Tennessee's FERC Gas Tariff, Tennessee has a posted HDP requirement of 20 degrees for all points located upstream of Station 87 and upstream of a processing plant on Tennessee's system.

Tennessee accordingly requests that CGT immediately require the producer listed below to enter into a processing agreement at Yscloskey for its volumes at the specified receipt point into the South Pass 77 System or otherwise meet its processor's requirements for processing. Unless such processing agreement or other processor conditions are put in place or met by June 17, 2004, or absent notification from Enterprise indicating that they will continue to process such gas while negotiation of such agreement is underway, Tennessee will avail itself of its rights under the South Pass Operating Agreement, including but not limited to, non confirmation of offending gas receipts into the South Pass 77 Project.

<u>Producer</u>	<u>TGP Meter</u>	<u>Block</u>	<u>HDP</u>
Murphy Gas Gathering	01-2358	South Pass 55	+74.2

Please call me at 832-676-2699, if you have any questions.

Sincerely,

Kourtney Calhoun  
Director, TGP Transportation Services

Cc: Tom Brasselle

<sup>1</sup> September 13, 1999 Construction, Ownership, Operations and Maintenance Agreement between TGP and CGT ("South Pass Operating Agreement"). See Section 5.11.

<sup>2</sup> September 13, 1996 Reciprocal Operating Lease Agreement between TGP and CGT. See Section 4.5.5.

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