

109 FERC ¶ 61,055
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Columbia Gulf Transmission Company

Docket No. RP04-413-000

v.

Tennessee Gas Pipeline Company

ORDER ON COMPLAINT ESTABLISHING HEARING PROCEEDINGS

(Issued October 12, 2004)

1. On July 26, 2004 Columbia Gulf Transmission Company (Columbia Gulf) filed a complaint pursuant to section 4, 5, 7 and 16 of the Natural Gas Act (NGA), alleging that Tennessee Gas Pipeline Company (Tennessee) is breaching contractual arrangements approved by the Commission by charging additional transportation charges on shippers that use Columbia Gulf's South Pass 77 (SP77) capacity. On August 13, 2004, Tennessee filed its answer in opposition to Columbia Gulf's Complaint denying the allegations.

2. As discussed below, the Commission will initiate hearing proceedings in order to fully develop the record concerning this complaint.

Background

3. Tennessee and Columbia Gulf jointly own the SP77 system which is operated by Tennessee. In 1996, Tennessee and Columbia Gulf executed a reciprocal lease agreement and a construction, ownership, operation and maintenance agreement (COOM Agreement) which the Commission approved in 1997.¹

¹ *Tennessee Gas Pipeline Co.*, 78 FERC 61,182 (1997) (1997 Order).

4. In setting forth the proposal of the parties in its 1997 Order, the Commission noted that Columbia Gulf represented that it did not have infrastructure to connect the SP77 facilities it jointly owned with Tennessee to its mainline system and that its shippers were required to enter into separate transportation agreements with Tennessee to “close the gap” between the jointly owned facilities and the Columbia Gulf mainline. For its part, Tennessee stated that its capacity on the jointly owned facilities was fully subscribed and fully utilized on most days so it could not accommodate incremental requests for capacity on the SP77 system. Tennessee stated that its customers were therefore required to obtain capacity from Columbia Gulf (or Chevron) on the SP77 system for transportation of the gas to the Tennessee mainline and then to contract with Tennessee for transportation on the Tennessee mainline. Tennessee stated that this requirement resulted in “rate stacking” which substantially reduced the level of new production being attached to the gathering systems that feed the SP77 system.²

5. To ameliorate these problems, Tennessee and Columbia Gulf filed a joint certificate application to lease capacity to each other pursuant to a reciprocal lease agreement. Generally, under the proposal, Columbia Gulf would abandon by lease a portion of its capacity (72,500 Mcf/day) on SP77 to Tennessee and Tennessee would abandon to Columbia Gulf a portion of its capacity (115,000 Mcf/day) on Tennessee’s “Muskrat Line” between the terminus of the SP77 system and the point at Egan, Louisiana where Tennessee’s Muskrat Line connects to the Columbia Gulf mainline.³

6. The Commission granted the applicants request to abandon by lease the subject capacity to each other finding that such action was in the public convenience and necessity subject to the condition that Tennessee and Columbia Gulf each treat the leased capacity as an extension of its own system. The Commission found that such abandonment would not adversely affect shippers on either system because Columbia Gulf was abandoning excess capacity to Tennessee on the SP77 system and Tennessee’s shippers would not be adversely impacted because the deliveries to Egan will not require the use of Tennessee’s mainline capacity on a forward haul basis; rather the deliveries would be provided by displacement and consequently will not create any capacity

² Id. at 61,752.

³ Tennessee represented that the natural gas deliveries to Egan will generally be transported from the SP77 system in an east-to-west direction on its Muskrat Line. Because the gas typically flows on the Muskrat Line in a west-to-east direction, Tennessee stated that the Columbia Gulf lease could be accommodated by displacement without impacting Tennessee’s forward haul capabilities. 78 FERC at 61,752.

constraint on Tennessee's system.⁴ The Commission stated that Tennessee's acquisition of the Columbia Gulf SP77 capacity would allow it to meet current capacity demands that it had been unable to fulfill. On the other hand, the Commission pointed out that Columbia Gulf would gain capacity on Tennessee's Muskrat Line which would allow Columbia Gulf's customers increased access to receipt points on the South Pass system. The Commission also noted that the agreement would resolve a dispute between the applicants as to how the shippers are to contract for capacity of Tennessee and Columbia Gulf.⁵

Columbia Gulf's Complaint

7. Columbia Gulf maintains that under its agreements with Tennessee for the exchange service provided on its leased capacity on the Muskrat Line there is no charge by Tennessee because Tennessee has already been compensated by the increased SP77 capacity entitlements it leased from Columbia Gulf at no charge.⁶ However, Columbia Gulf asserts that in April 2004, Tennessee began informing Columbia Gulf's SP77 customers 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 SP77 system to the

⁴ In granting abandonment authorization, the Commission required that the operating conditions and standards provided by the lease operating agreement shall not result in any impairment of Tennessee's or Columbia Gulf's shipper's rights under their respective tariffs. 78 FERC at 61,755.

⁵ The Commission noted that the applicants stated that their agreement would eliminate certain administrative burdens in that Columbia Gulf's shippers would no longer have to enter into separate transportation contracts with Tennessee to close the gap between Columbia Gulf's capacity on SP77 and its mainline facilities. Tennessee's shippers would no longer have to split throughput on the South Pass system between Columbia Gulf, Tennessee and Chevron. The applicants noted that, therefore the shippers would be relieved of duplicative nominations, balancing, and billings. 78 FERC at 61,752.

⁶ Columbia Gulf asserts that the Reciprocal Lease clearly provides that gas moving on Columbia Gulf's SP77 capacity will be delivered to Egan by displacement and that there will be no charge by Tennessee for the displacement service. Columbia Gulf Complaint at 5.

Yscloskey processing plant on Tennessee's 500 Line.⁷ Columbia Gulf asserts that Tennessee claims that the unprocessed gas must be processed to meet Tennessee's gas quality specifications and that the gas cannot be processed unless the shipper pays for transportation on Tennessee's mainline. Columbia Gulf also asserts that its customers were informed that if they shipped gas on Tennessee's SP77 capacity no additional charges would be incurred.⁸ Columbia Gulf maintains that Tennessee is engaging in anti-competitive behavior in order to eliminate it as a competitor on the SP77 system.

8. Columbia Gulf maintains that a main purpose of the Reciprocal Lease was to eliminate rate stacking that Columbia Gulf's SP77 customers were subject to in order to get their gas to market and that Tennessee's current attempt to re-impose a charge for transportation on its mainline subjects Columbia Gulf's customers to the same competitive disadvantage it faced before the Reciprocal Lease was implemented. Columbia Gulf asserts that the Reciprocal Lease enabled its SP77 customers to move their gas to the Columbia Gulf mainline at Egan without the need to pay additional transportation charges to Tennessee because Tennessee had been compensated for such transportation by lease of Columbia Gulf capacity on the SP77 system. Columbia Gulf argues that the attempt to impose an additional charge for such services by either Tennessee or Dynegy on its behalf, violates the NGA, the Reciprocal Lease agreement, and Commission orders. Therefore, Columbia Gulf requests that the Commission find that the Reciprocal Lease precludes Tennessee from charging an incremental transportation fee to shippers using Columbia Gulf's SP77 capacity.

Tennessee's Answer

9. Tennessee asserts that the Reciprocal Lease and the COOM Agreement require that the gas delivered to SP77 must meet the quality specifications of Tennessee's tariff which requires processing for gas with a hydrocarbon dew point of greater than 20 degrees Fahrenheit. Tennessee asserts that in order for shippers delivering gas to SP77 to have their gas processed, the gas must be transported on Tennessee's system on a forward haul basis to the Yscloskey plant. Tennessee asserts that Columbia Gulf's capacity rights under the Reciprocal Lease do not include a transportation path to the Yscloskey

⁷Columbia Gulf points out that Dynegy Midstream Services (Dynegy) operates the Yscloskey processing plant as it did when Columbia Gulf and Tennessee entered into the Reciprocal lease. Columbia Gulf Complaint at 11.

⁸ Columbia Gulf asserts that for over seven years Tennessee delivered Columbia Gulf's SP77 volumes to Egan by displacement without any additional charge for that service. Columbia Gulf Complaint at 11.

processing plant.⁹ Therefore, Tennessee maintains that it is entitled to charge for the additional transportation of non-conforming gas to the processing plant, because that service is not contemplated under the Reciprocal Lease. Moreover, Tennessee argues that the Reciprocal Lease does not authorize or otherwise require Tennessee to provide transportation service free of charge outside of the path defined in the lease.

10. Tennessee argues that Columbia Gulf maintains that the Reciprocal Lease specifically defines the capacity path and the applicable charges for the capacity path and asserts that there can be no additional fee for transportation on that path but then argues in a contradictory fashion that its shippers must be allowed transportation on a different path wholly outside the Reciprocal Lease for no charge. Tennessee argues that the fact that the Reciprocal Lease defines the capacity path requires that Tennessee charge for transportation outside that path for shippers that must process their gas.

11. Tennessee maintains that it is not imposing a new charge on the Columbia Gulf shippers but that it has offered shippers that do not have a current Tennessee transportation agreement with a path to the Yscloskey plant, a discounted interruptible transportation agreement on the Tennessee mainline if that party holds processing rights that it wishes to exercise at the plant. Tennessee maintains that the imposition of such a charge on Columbia Gulf's shippers that have no transportation agreement with Tennessee is not discriminatory because Tennessee shippers moving gas on the SP77 system on a forward haul basis to the Yscloskey plant pay for that service through their transportation agreements with Tennessee.

⁹ Tennessee asserts that the Reciprocal Lease is clear on its face as to Columbia Gulf's capacity rights:

“TGP Leased Capacity” [i.e. “CGT capacity”] shall mean the capacity on TGP's pipeline system from the TGP Receipt Point [defined as “the point of terminus or the interconnection of the South Pass 77 System with TGP's wholly owned mainline facilities”] to the TGP delivery point (defined as “the point of interconnection of TGP's pipeline facilities and CGT's facilities at Egan, Louisiana”) that is necessary to receive and deliver the Btu equivalent of 115,000 Mcf per day.

Tennessee Answer at 9 *citing* Reciprocal lease at 11.

12. Tennessee requests that the Commission dismiss Columbia Gulf's complaint because Columbia Gulf's claim that Tennessee is imposing a new improper charge on Columbia Gulf's SP77 system is unsupported and false and that Columbia Gulf's claims of anti-competitive behavior only serve to illustrate that it is Columbia Gulf that is seeking preferential treatment for its shippers.

Public Notice, Interventions and Protests

13. Public notice of Columbia Gulf's complaint was issued with interventions and protests due as provided in section 154.211 of the Commission's regulations (18 C.F.R. § 154.211 (2004)). August 13, 2004 was set as the comment date for interventions and answers in this proceeding. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted.

14. In addition to the aforementioned answer filed by Tennessee in this proceeding, Dynegy Midstream Services, Limited Partnership (Dynegy) also filed a motion to intervene and comment on August 13, 2004. Dynegy asserts that it has not collected transportation charges on Tennessee's behalf and is not acting as Tennessee's agent. Further Dynegy states that it is not a party to the Reciprocal Lease nor has it violated the NGA or the Commission's orders approving the Reciprocal Lease. Dynegy states that as operator of the Yscloskey plant it is party to a "Straddle Agreement" which was originally entered into in 1961, and was amended in February of 2003 to be effective March 1, 2003. Dynegy states that under this agreement, there is a fee of 2 cents/MMbtu plus Tennessee's Zone L retainage charge for any gas transported by a capacity owner other than Tennessee on the SP77 system. Dynegy asserts that this interruptible fee is imposed under a transportation agreement entered into by the party holding the processing rights and that it is only assessed against gas that has an option to flow on Tennessee's system. Dynegy asserts that the processing of the gas is governed by contracts with the owners of the gas or with Tennessee. Dynegy asserts that its actions and processing fees are consistent with the contractual arrangements to which it is a party.

Discussion

15. The South Pass system has been successfully operated by these parties for many years. However, as reflected by the positions taken in the instant proceeding, substantial disagreement exists between Tennessee and Columbia Gulf as to the intent of several agreements they entered into a decade ago in order to resolve problems on their jointly - owned system. The parties to this proceeding are engaged in a long-term complex partnership arrangement for use of the South Pass system as shown by their references to Commission certificate proceedings, their Reciprocal Lease agreements, and the COOM

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Agreement. Therefore, the Commission will initiate hearing proceedings so that the facts regarding this long term relationship may be fully ventilated and the intent of the contractual underpinnings of this relationship may be fully explored.

The Commission orders:

(A) Pursuant to the authority of the NGA, particularly sections 5, 7, 8, 15 and 16, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP04-413-000 concerning Columbia Gulf's complaint.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, must convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.