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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 5, 2001

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v. **CASE NO. PUE000388**

COLUMBIA GAS OF VIRGINIA, INC.

FINAL ORDER

The issue presented by this case is whether Columbia Gas of Virginia, Inc. ("Columbia Gas" or "the Company") failed to comply with its filed transportation tariff by overcharging its transportation customers purchasing gas directly from Columbia Gas in connection with the Company's banking and balancing services.

Banking and balancing services are provided to the Company's gas transportation customers through the Company's tariff on file at the Commission. Transportation customers who purchase this service are entitled to purchase gas from the Company when such customers use more gas than they have had delivered to the Company's system. These gas purchases are referred to in the Company's tariff as "excess volumes."[1] At issue is whether Company must bill for the *non-gas* components (i.e.,

[1] Transportation services offered by the Company permit gas transportation customers to purchase gas from someone other than the distribution company (e.g., Columbia Gas), have the gas delivered to the distribution company, and then have the distribution company deliver the gas to the customer's facilities. Distribution companies offering transportation service must plan for the likelihood that the volumes of gas delivered by customers will vary from the volumes of gas utilized at the customers' facilities. As described in the Company's tariff, banking and balancing services are designed to account for such differences in volumes. Consequently, the Company's tariff contains two provisions concerning the sales of gas to transportation customers. The first provision pertains to transportation customers purchasing banking and balancing services, and is the provision at the heart of this case. The second provision is for transportation customers not subscribing to banking and balancing services.

components other than the gas commodity itself) of these excess volumes under the declining blocks of the Company's TS-1/TS-2 transportation rate schedules as the Commission Staff ("Staff") contends, or under the interruptible, *non-gas,* rate blocks of Rate Schedule LGS as the Company asserts. Customers whose transportation volumes would otherwise be billed in a given billing cycle under the second and subsequent rate blocks of transportation rate schedules TS-1/TS-2, pay more for such excess volumes gas purchases under the Company's interpretation of its tariff, and less under the Staff's.

As summarized in the Hearing Examiner's Report in this matter,[2] on August 3, 2000, Staff filed a Motion Requesting Issuance of a Rule to Show Cause ("Motion") requiring the Company to show cause why it should not be found in violation of Virginia Code §§ 56-234, 56-236, and 56-237, for failure to comply with its filed tariffs. In its Motion, Staff sought to enjoin Columbia Gas from continuing to disregard its filed tariffs and sought appropriate penalties.

On August 10, 2000, the Commission issued its Rule to Show Cause why Columbia Gas should not be found in violation of Virginia Code §§ 56-234, 56-236, and 56-237 for failing to comply with its filed tariffs and why, because of the Company's failure to cease such violations, the Commission should not impose fines and penalties and enjoin Columbia Gas from further violations. In its order, the Commission directed Columbia Gas to file a responsive pleading on or before August 29, 2000. Further, the Commission directed Columbia Gas and Staff to file on or before August 29, 2000, a joint stipulation of material facts relating to this matter. Finally, the Commission directed Columbia Gas to furnish notice of this proceeding; set September 15, 2000, as the deadline for Staff and Columbia Gas to submit legal briefs; and assigned this matter to a Hearing Examiner.

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[2] Commonwealth of Virginia, ex rel., State Corporation Commission v. Columbia Gas of Virginia, Inc., Case No. PUE000388, Report of Alexander F. Skirpan, Jr., Hearing Examiner, dated March 25, 2001.

On August 29, 2000, Columbia Gas filed its Response to Rule to Show Cause and Motion to Dismiss ("Response and Motion"). Columbia Gas contended that it had not overcharged transportation customers and that it billed such customers according to the terms, conditions, and intent of its tariff. Therefore, Columbia Gas argued that the Rule to Show Cause should be dismissed.

Also, on August 29, 2000, Staff and Columbia Gas filed a joint stipulation of facts ("Joint Stipulation"). This document lists ten undisputed material facts and three disputed issues of fact.

On September 22, 2000, Staff and Columbia Gas filed briefs supporting their positions. On November 9, 2000, a Hearing Examiner's Ruling scheduled a public hearing and established a procedural schedule for the filing of testimony and exhibits.

On January 19, 2001, a hearing was convened. Representing Columbia Gas were Kodwo Ghartey-Tagoe, Esquire, and James Copenhaver, Esquire. Arlen K. Bolstad, Esquire, and William H. Chambliss, Esquire, represented the Staff. The Staff presented the testimony of John Stevens, utilities engineer with the Commission's Division of Energy Regulation, who adopted his prefiled direct and rebuttal testimonies at the hearing. The Company presented two witnesses: Mark P. Balmert, business services manager of regulatory compliance for Columbia Gas and Columbia Gas of Ohio, Inc., and Robert E. Horner, manager of regulatory policy for Columbia Gas. The Company's witnesses adopted their pre-filed testimony at the hearing. At the conclusion of the hearing, the parties were afforded an opportunity to file post-hearing briefs. The Company and Staff filed post-hearing briefs on February 16, 2001. Thereafter, the Hearing Examiner's report concerning this matter was filed on March 23, 2001. The Company, by its counsel, filed comments and exceptions to the Report on April 16, 2001.

This case began with Staff's investigation of a complaint filed by Old Virginia Brick Company, Inc. ("Old Virginia Brick") against Columbia Gas. Old Virginia Brick purchases two distinct services

from the Company. First, Old Virginia Brick purchases gas transportation service from Columbia Gas under Rate Schedule TS-1/TS-2.[3] As shown below, Rate Schedule TS-1/TS-2 comprises four "declining" rate blocks in which transportation charges (calculated on the basis of gas volumes delivered to the customer) decline as gas volumes transported to the customer increase. These volumetric rate blocks are the basis on which transportation customers are charged for gas transportation services (not for the gas commodity itself). These TS-1/TS-2 transportation rate blocks are as follows:

First 1,000 MCF	$0.8866 per MCF
Next 4,000 MCF	$0.5082 per MCF
Next 15,000 MCF	$0.2511 per MCF
Over 20,000 MCF	$0.1741 per MCF[4]

It bears emphasizing that these rate blocks are identical to the base, *non-gas* volumetric charges of the Large General Service ("LGS") rate schedules for firm, standby, interruptible, and curtailable options.[5] The LGS rate schedule is *not* a transportation schedule, however. Rate Schedule LGS is made expressly applicable only to those transactions in which the Company is selling the gas commodity to customers on a firm, standby, interruptible, or curtailable basis. Moreover, as will be discussed in greater detail below, the LGS rate schedule contains no express language making its provisions applicable to "excess volumes" under Rate Schedules TS-1/TS-2.

A second, ancillary service to which Old Virginia Brick as a transportation customer subscribes is the banking and balancing service offered by Columbia Gas pursuant to the tariff (TS-1/TS-2).[6] This

[3] Joint Stipulation at ¶ A. 2.

[4] Exhibit REH-5, at Appendix B.

[5] *Id.*

[6] Joint Stipulation at ¶ A. 3.

service permits Company transportation customers to purchase gas (i.e., the commodity itself as contrasted with transportation services for that gas) from Columbia Gas when these customers use more gas than they have had transported to the Company's system within a given billing cycle, and the customers have no "banked" volumes to credit against that deficiency.[7] These gas purchases are referred to in the tariff as "excess volumes."

When Columbia Gas sells excess volumes to transportation customers taking banking and balancing services, it first bills these customers for the actual gas commodity at the average daily city gate price for the month published in *Gas Daily*, all as explicitly provided in the Company's transportation rate schedule TS-1/TS-2.[8] With respect to billing for the *transportation* of such gas, Columbia's current practice is to apply the interruptible base *non-gas* rate blocks of Rate Schedule LGS to such purchases. Although (as pointed out above) the volumetric rate blocks of Rate Schedules TS-1/TS-2 and LGS are identical, by billing the excess volumes separately under Rate Schedule LGS, excess volumes are effectively billed under the first (and most expensive) rate block under either schedule. This billing practice increases the bills of transportation customers whose total transportation volumes would otherwise be billed under the second or subsequent declining rate blocks of Rate Schedule TS-1/TS-2.

Old Virginia Brick's bill for February 2000 illustrates this billing increase.[9] During that month, the sum of routine transportation volumes plus excess volumes of gas transported to Old Virginia Brick

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[7] *Id*.

[8] *Id*. at ¶ A. 4.

[9] JAS-1, Attachment I.

would have placed the excess volumes in the third rate block of Rate Schedule TS-1/TS-2.[10] However, Columbia Gas separated the two volumes when it calculated its bill to Old Virginia Brick, billing the excess volumes under the first rate block of Rate Schedule LGS.[11] This difference in methodology increased the bill for Old Virginia Brick for February 2000, by $874.35 over what Old Virginia Brick would have been charged had transportation of these excess volumes been billed under the third rate block of Rate Schedule TS-1/TS-2.[12] Moreover, Columbia Gas included an additional administrative charge of $121.72, also calculated on the basis of Rate Schedule LGS—a charge the Staff has challenged as well.

Following its investigation of the complaint filed by Old Virginia Brick, Staff concluded that the Company's billing practices described above violate its tariff and that Columbia Gas should refund excess amounts billed to customers.[13] Columbia Gas has refused to discontinue its billing practices in this regard and has not agreed to make any refunds.[14]

As noted by the Hearing Examiner, Columbia Gas and Staff stipulated that the Company's billing practice described above reflects the billing determinants, rate design, and revenue requirements in Case Nos. PUE970455 and PUE980287 ("1997 and 1998 Rate Cases")[15] The parties also agreed that if the billing determinants utilized in the 1997 and 1998 Rate Cases had been consistent with Staff's

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[10] Joint Stipulation at ¶ A. 5.

[11] *Id*.

[12] *Id*.

[13] *Id*. at ¶ A. 7.

[14] *Id*.

[15] *Id*. at ¶ A. 8.

tariff interpretation in this case, then the actual rates would have been higher than those approved by the Commission.[16] Consequently, Staff's tariff interpretation would result in lower revenues for Columbia Gas.[17]

On this point, Staff witness Stevens emphasizes that Columbia Gas explicitly eliminated references to Rate Schedule LGS in its banking and balancing service tariff in conjunction with the 1997 and 1998 rate cases, while making no corresponding changes in its billing determinants.[18] The Company has, however, continued to apply Rate Schedule LGS to excess gas volumes purchased by banking and balancing customers—as if this tariff change had not occurred.[19] Mr. Stevens posits that the Company did so to recover the revenues it would have otherwise lost due to its apparent failure to adjust rates to reflect the tariff language change.[20]

Mr. Stevens also pointed to the Company's own explanation of this tariff change, an explanation given in direct testimony filed by the Company in its 1997 Rate Case. In that case, the Company offered the testimony of Robert E. Horner (Columbia's Manager of Regulatory Relations who also appeared as a witness in the instant case). Explaining the tariff change in the banking and balancing provisions of Rate Schedule TS-1/TS-2, Mr. Horner testified that banking and balancing customers

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[16] *Id*. at ¶ A. 10.

[17] *Id*.

[18] Exhibit JAS-1 at 5-7.

[19] *Id*. at 6-7.

[20] *Id*.

taking excess volumes would be charged for the gas commodity itself plus the "*normally applicable TS-1 or TS-2 rate*."[21]

Finally, Mr. Stevens maintained that Staff's application of the Company's tariff permitted Columbia Gas the opportunity to recover its costs and did not interfere with the appropriate price signals of the cost of gas.[22] In his pre-filed rebuttal testimony, Mr. Stevens reiterated that it was the Company's responsibility to ensure that its billing determinants reflected the tariff change in the 1997 Rate Case.[23] Failure to have done so should not excuse the Company's failure to follow its tariff, he said.[24]

On December 11, 2000, Columbia Gas filed the testimony of two witnesses. Mark P. Balmert, business services manager of regulatory compliance for Columbia Gas and Columbia Gas of Ohio, Inc., explained the workpapers supporting the billing determinants supplied to Staff by the Company in the 1997 and 1998 Rate Cases.[25] Also, Mr. Balmert asserted that the tariff change adopted in the 1997 Rate Case was not intended to change its rate design.[26] Robert E. Horner, manager of regulatory policy for Columbia Gas, claimed that the Company has not violated the terms and conditions of its tariff.[27] In

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[21] *Id*. at 10. Mr. Horner's direct testimony in the Company's 1997 rate case concerning Sheet 162 (the tariff provision at the center of this case), was that "[C]ommonwealth proposes to charge transportation customers that under-tender gas volumes the normally applicable TS-1 or TS-2 [rate] plus the average city gate price for deliveries to mid-Atlantic city gates via Columbia Gas Transmission Corporation as published in Gas Daily for the month." (This excerpt from Mr. Horner 1997 testimony is part of Attachment VII appended to Exhibit JAS-1).

[22] *Id*. at 11.

[23] Exhibit JAS-6 at 2.

[24] *Id*. at 2-3.

[25] Exhibit MPB-4, at 2-7.

[26] *Id*. at 7-8.

[27] Exhibit REH-5, at 4-5.

this regard, Mr. Horner stated that because the excess volumes provision is a "sales" service, the Company is correct to apply the terms and conditions of Schedule LGS.[28] Furthermore, Mr. Horner declared that the Company's billing methodology avoids discrimination against interruptible and standby service customers and is consistent with the rationale underlying the tariff change approved in the 1997 Rate Case.[29]

Hearing Examiner Skirpan found in his report that the pertinent language of the Company's tariff concerning excess volumes is unambiguous. He concluded that the banking and balancing provision within Rate Schedule TS-1/TS-2 sets the commodity and transportation prices for these gas volumes; it does not incorporate the rates, terms, or conditions of Rate Schedule LGS. Moreover, he concluded that Rate Schedule LGS contains language that prohibits its use as a default interruptible backup service (which is precisely how Columbia Gas attempts to use it, in his view). Thus, Hearing Examiner Skirpan found that that Columbia Gas had failed to follow its tariff.

Mr. Skirpan also concluded that extrinsic evidence offered by the Company tends to support its claims that the Company's billing practices at issue in this case are not inconsistent with revenue requirements and rate design in the Company's 1997 and 1998 Rate Cases. Consequently, he recommended that Columbia Gas not be subject to any fines or penalties. However, he agreed with Staff that refunds are appropriate in this case.

In summary, Hearing Examiner Skirpan recommended that the Commission: (i) adopt the findings and recommendations contained in his Report; (ii) direct the Company to conform its billing

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[28] *Id*. at 6-7.

[29] *Id*. at 8-15.

practices to its authorized tariff and refund any amounts collected in error; and (iii) dismiss this case from the Commission's docket of active cases and pass the papers herein to the file for ended causes.

NOW THE COMMISSION, having considered the record, the Hearing Examiner's Report, the comments and exceptions to the Hearing Examiner's Report and the applicable law, is of the opinion and finds that we should adopt the findings and recommendations set forth in the Hearing Examiner's Report.

In the case before us, Staff argues that Company's tariff concerning these excess volumes is unambiguous and does not permit Columbia Gas to add additional administrative costs or treat these excess volumes transported to the Company's transportation customers as sales subject to the separate and independent application of Rate Schedule LGS.[30] Moreover, Staff maintains that if the Commission finds the tariff ambiguous, then the ambiguity must be resolved against Columbia Gas.[31] In support of this contention, Staff cites *Smokeless Fuel Company v. The Chesapeake and Ohio Railway Company*[32] in which the Virginia Supreme Court held:

> [I]t is well settled and may be freely conceded that tariffs are to be construed according to their language, and that the intention of the framers is entitled to little, if any, consideration. Furthermore, in cases of doubt, the language of the tariff is to be construed most strongly against those who frame it.[33]

Columbia Gas, on the other hand, maintains that its billing methodology for purchases of excess volumes by TS-1/TS-2 customers complies with its filed tariffs and therefore does not violate §§ 56-

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[30] Staff's Post-Hearing Brief at 3-4.

[31] *Id*. at 5-7.

[32] 142 Va. 355 (1925).

[33] *Id*. at 371.

234, 56-236, and 56-237.[34] Columbia Gas states that all parties agree that the excess volumes provision of its tariff is "somewhat ambiguous."[35] Thus, Columbia Gas urges the Commission to apply the rule of reason in its interpretation.[36] In support, the Company argues that because the banking and balancing provision permits the "purchase of excess volumes" and Rate Schedule TS-1/TS-2 applies only to transportation and delivery services, "the tariff . . . implies that customers must look to one of the Company's sales tariffs for the pricing of [such] purchases."[37] Further, Columbia Gas asks the Commission to apply the rule of reason in its interpretation because "a literal reading of the tariff would permit customers purchasing excess volumes from the Company under that provision to pay a below cost rate for their gas . . . ."[38] Finally, Columbia Gas submits that the excess volumes provision is "ambiguous because the evidence in this case shows that at the time the tariff was filed in 1997, neither the Commission nor [the Company] intended that the language would absolve Banking and Balancing Service customers purchasing Excess Volumes from paying the non-gas components of [the Company's] interruptible sales service."[39] The Company's comments and exceptions to the Hearing Examiner's Report[40] are consistent with the positions it took in its post-hearing brief summarized above.

In our view, the Company's analysis of the issues introduces far more complexity than warranted. Under the Company's billing method, purchases of excess volumes for the Company's

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[34] Company's Post-Hearing Brief at 4-6.

[35] *Id*. at 6.

[36] *Id*. at 6-10.

[37] *Id*. at 7.

[38] *Id*.

[39] *Id*. at 8.

transportation customers are currently being billed separately from gas transportation services.[41] For purchases of excess volumes, Columbia Gas applies the average monthly city gate price of gas, which specifically is provided for by its tariff. In addition, for purchases of excess volumes, the Company applies the interruptible non-gas components set forth in Rate Schedule LGS.[42] Columbia Gas claims that it must look to Rate Schedule LGS to determine customer charges for the non-gas components of excess volumes because Rate Schedule TS-1/TS-2 covers only the transportation and delivery of gas and does not establish terms and conditions for the sale of gas.[43]

As emphasized by Hearing Examiner Skirpan, Columbia Gas cannot claim that Rate Schedule TS-1/TS-2 is void of any terms and conditions for the sale of gas. At a minimum, the banking and balancing provisions of this rate schedule set the commodity price of gas. That is, Rate Schedule TS-1/TS-2 explicitly sets the commodity (or gas) price of excess volumes sold to transportation customers at "the average city gate price for deliveries to mid-Atlantic city gates via Columbia Gas Transmission Corporation as published in *Gas Daily* for the month."[44] Moreover, as highlighted by Columbia Gas during the hearing, Rate Schedule TS-1/TS-2 also includes a "catch-all" provision that permits the Company to bill customers for gross receipts taxes.[45] However, the issue remains, does the Company's tariff indicate whether Rate Schedule LGS is applicable, in any way, to the sale of excess volumes made

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[40] Comment and Exceptions of Columbia Gas of Virginia, Inc., filed in PUE000388, dated April 16, 2001.

[41] Exhibit REH-5, at 3, Appendix D.

[42] *Id*.

[43] *Id*. at 6.

[44] *Id*. at Appendix A, Original Sheet No. 162.

[45] *Id*. at Appendix A, Original Sheet No. 165; Stevens, Tr. at 44; Company's Post-Hearing

pursuant to the banking and balancing provision of Rate Schedule TS-1/TS-2? Put another way, may this Commission look outside the provisions of the banking and balancing service tariff language in Rate Schedule TS-1/TS-2 to determine what a customer taking such service must pay the company for excess volume gas purchases?

In his detailed analysis, the Hearing Examiner does note that Rate Schedule TS-1/TS-2 makes reference to Rate Schedule LGS in language addressing the obligations of transportation customers purchasing excess volumes who *do not* subscribe to banking and balancing services. As per the tariff, these Customers "will purchase such excess volumes from Company, if available, at the Company's LGS interruptible sales rate unadjusted for the ACA. . . ."[46] In contrast, the banking and balancing service tariff provision of TS-1/TS-2 states that customers *who do subscribe to banking and balancing* service "may purchase excess volumes, if available, from the Company at the average city gate price for deliveries to mid-Atlantic city gates via Columbia Gas Transmission Corporation as published in *Gas Daily* for the month."[47]

Two additional references are made to Rate Schedule LGS in Rate Schedule TS-1/TS-2 as noted by the Hearing Examiner. Neither provision, however, has any connection to billing banking and balancing service customers for excess volumes.[48]

Brief at 12.

[46] *Id*. at Appendix A, Original Sheet No. 162.

[47] *Id*.

[48] As noted by the Hearing Examiner, the second specific reference to Rate Schedule LGS contained in Rate Schedule TS-1/TS-2 is in the tariff's rate section. This provision only establishes that Rate Schedules TS-1/TS-2 are used in conjunction with service provided under Schedule LGS. The third specific reference to Rate Schedule LGS within the TS-1/TS-2 Rate Schedules concerns back-up service and provides the Company is under no obligation to deliver gas on any day in excess of the Customer-owned volumes physically delivered into the Company's distribution facilities unless a Customer has contracted with the Company for LGS Firm/Standby sales service.[48] As noted by the Hearing

We agree with the Hearing Examiner that a literal reading of the banking and balancing provision at issue in this case fails to reference Rate Schedule LGS. Moreover, implicit incorporation of the non-gas components of Rate Schedule LGS into the terms and conditions of such sales is unlikely given the tariff's specific reference to Rate Schedule LGS in the provision addressing the excess volumes obligations of transportation customers that *do not* take banking and balancing services.

As Mr. Skirpan emphasizes, rather than confronting the actual words of its tariff, Columbia Gas attempts to make the case that its tariff is ambiguous. In this regard, the Company's witness, Mr. Horner, offered two alternate theories of ambiguity. The first is that Rate Schedule TS-1/TS-2 does not establish terms and conditions for the sale of gas. Under that theory, the Company declares that we must look outside Rate Schedule TS-1/TS-2 for those terms and conditions, and thus, it directs us to Rate Schedule LGS for that information, despite the fact that this rate schedule contains no language making it applicable to Rate Schedule TS-1/TS-2.

The Company's second argument for ambiguity centers on the Company's past practices. Prior to the tariff change in the 1997 Rate Case, the provision for the purchase of excess volumes by banking and balancing customers contained an explicit reference to Rate Schedule LGS. That is, prior to the change in language, the banking and balancing provision at issue in this case also permitted customers to "purchase excess volumes, if available, from the Company at the Company's LGS Interruptible sales rate, unadjusted for the ACA."[49] Thus, the Company's current billing practices appear to comply with past practices under its prior tariff. But, such past practices do not create or prove "ambiguity" in the

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Examiner, this third provision indicates that Columbia Gas has no obligation to provide excess gas. It does not address how such sales are billed.

[49] Exhibit JAS-3.

current tariff from which the referent language has been excised. Put simply, past practices and other extrinsic evidence should be used to resolve, and not create, ambiguity.[50]

With regard to the Company's argument that Rate Schedule TS-1/TS-2 is not available for excess volumes sales service, i.e., that this tariff language does not establish terms and conditions for the sale of gas, we note that both Rate Schedule TS-1/TS-2 and Rate Schedule LGS contain sections devoted to the availability and character of service. Rate Schedule TS-1/TS-2 contains the following provision regarding the availability and character of service:

> a. Gas service under this Rate Schedule is available to any nonresidential Customer located on the Company's distribution system for the transportation and delivery of gas through the Company's distribution facilities; . . . .[51]

Columbia Gas argues that "for the transportation and delivery of gas through the Company's distribution facilities" limits the applicability of Rate Schedule TS-1/TS-2 to exclude terms and conditions for the sale of gas.[52] Consequently, Company witness Horner testified that the banking and balancing provision of Rate Schedule TS-1/TS-2 was ambiguous because it referred to the "purchase [of] excess volumes" without referring to a specific sales rate schedule.[53]

Based on the record, we find the language stating that Rate Schedule TS-1/TS-2 "is available . . . for the transportation and delivery of gas" does not exclude terms and conditions related to the sale of gas, especially for sales made as a by-product of transportation service. Therefore, the tariff

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[50] *See, e.g.*, *Burns v. Eby & Walker, Inc.*, 226 Va. 218 (1983).

[51] Exhibit REH-5 at Appendix A, Original Sheet No. 160.

[52] Company's Post-Hearing Brief at 13.

[53] Horner, Tr. at 103-05.

provisions at issue, which provisions state that transportation customers may purchase excess volumes from the Company at "the average city gate price for deliveries to mid-Atlantic city gates via Columbia Gas Transmission Corporation as published in *Gas Daily* for the month,"[54] also direct us to the total charge to be applied.

We also note that the service terms and conditions of Rate Schedule LGS state:

> d. Interruptible and Curtailable Service under this Rate Schedule shall not be available as a standby or back up gas supply for service under any other Rate Schedule of this Tariff;[55]

During the hearing, Mr. Horner was asked if this provision prohibited banking and balancing customers from utilizing Rate Schedule LGS. Mr. Horner's response was as follows:

> Well, I would interpret it to not - - in the case of a balancing service prohibit you from going back to this rate schedule for the rates themselves. I think what it's intended to do is to have a customer that didn't subscribe to banking and balancing . . . from utilizing LGS interruptible service, inclusive of ACAs and refunds, *et cetera*, as their means to supply their facilities when they couldn't get gas or otherwise.[56]

Thus, Mr. Horner acknowledged that the tariff language prohibiting Rate Schedule LGS's use for standby or back up gas supply is applicable to transportation customers served under Rate Schedule TS-1/TS-2. He sought, however, to limit that prohibition's applicability to transportation customers that do not subscribe to banking and balancing services. As discussed above, however, Rate Schedule TS-1/TS-2 explicitly states that customers *not* taking banking and balancing services will be charged "the Company's LGS interruptible sales rate unadjusted for the ACA" for purchases of excess volumes.

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[54] Exhibit REH-5, at Appendix A, Original Sheet No. 162.

[55] Exhibit REH-5, at Appendix B, Original Sheet No. 151.

[56] Horner, Tr. at 110-11.

Thus, the TS-1/TS-2 tariff language provides an explicit exception to the prohibition within Rate Schedule LGS; the exception does not apply to customers who subscribe to banking and balancing services.

We find no ambiguity in the tariffs with respect to the issues we have before us. The banking and balancing provision itself within Rate Schedule TS-1/TS-2 sets the total charge to be applied for the sale of such gas; it does not incorporate the rates, terms, or conditions of Rate Schedule LGS. We agree with Hearing Examiner Skirpan that the Company has failed to follow its tariff in its application of the interruptible *non-gas* rate blocks of Rate Schedule LGS to excess volumes sold under the provisions of the Company's banking and balancing service.

We do find that gross receipts taxes are applicable to the sales of excess volumes to transportation customers receiving banking and balancing services under the Company's tariff provisions in Original Sheet 165, No. 12.[57] To the extent that the Company has omitted to obtain payment from its transportation customers for any such taxes otherwise due under this tariff language, its tariff would, however, limit its ability to collect such taxes to the twelve month period immediately preceding any billing statement allegedly in error.[58]

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[57] Original Sheet 165 (No. 12) of the Company's tariff, provides that bills rendered under that rate schedule are subject to "any effective tax based upon revenue receipts levied by governing bodies". Consequently, there is basis in the Company's tariff for the imposition of gross receipts tax independent of Rate Schedule LGS, and thus such taxes are appropriately assessed on excess volumes sales to banking and balancing customers under the provisions in Original Sheet 165 of the Company's filed tariff. On that issue, the Hearing Examiner indicated on page 14 of his report, his agreement with Staff's interpretation of the Company's tariff "with the exception of Staff's failure to include gross receipts tax." However, the exception may have resulted from a possible misunderstanding of the Staff's position on that issue, clarified in Mr. Stevens' testimony (Tr. at 44-45) indicating that gross receipts taxes are encompassed within Original Sheet 165 (No. 12) of the Company's tariff.

[58] Original Sheet No. 367 (in Number 7.4 "Adjustment of Billing Errors") provides that in the case of customer undercharges and overcharges, any claim for billing adjustment must be made within twelve months of the date of the billing statement allegedly in error.

On the other hand, and consistent with our findings above, we find that the Company was not authorized under its tariff to assess administrative charges on the sales of excess volumes under the interruptible, *non-gas* provisions of Rate Schedule LGS. Such charges are not authorized under the Company's transportation rate schedules (TS-1/TS-2) and, as we conclude above, Rate Schedule LGS has no applicability to such sales.

With respect to refunds, we will direct the Company to make refunds on overcharges resulting from the application of the interruptible *non-gas* rate blocks of Rate Schedule LGS to the sales of excess volumes to banking and balancing services customers. The Company's obligation to make such refunds shall be calculated with reference to excess volumes purchased by the Company's banking and balancing service customers on and after October 13, 1998, the effective date of the Company's current transportation Rate Schedules TS-1/TS-2.[59]

Accordingly, IT IS ORDERED THAT:

(1) The recommendations set forth in the Hearing Examiner's March 23, 2001 report are hereby adopted;

(2) The Company shall conform its billing practices to its authorized tariff as specified herein.

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[59] The Company's counsel suggested at the hearing in his cross examination of Staff witness, John Stevens, that the Company's tariff contains language "that limits refunds in the event of a mistake and such, to one year…" (Tr. 64-65). Additionally, in the Company's comments and exceptions to the Hearing Examiner's Report, the Company asserts that "[P]ursuant to CGV's tariff, Original Sheet No. 367, refunds in the event of a mistake are limited to twelve months." (Comments and Exceptions of Columbia Gas of Virginia, Inc, dated April 16, 2001, pg. 18). Our review of the Company's tariff reveals no provision so limiting the Company's obligation to makes refunds in this matter. Specifically, Original Sheet No. 367 (in Number 7.4 "Adjustment of Billing Errors") provides only that in the case of customer undercharges and overcharges, any claim for billing adjustment must be made within twelve months of the date of the billing statement allegedly in error. Such language places no limitation on the Commission's authority to grant refunds where the Company has violated its tariff.

(3) The Company shall refund any and all amounts collected in violation of its tariff as set forth in this Order; specifically, the overcharges resulting from the application of the interruptible *non-gas* rate blocks of Rate Schedule LGS to the sales of excess volumes to banking and balancing services customers. The Company's obligation to make such refunds shall be calculated with reference to excess volumes purchased by the Company's banking and balancing service customers on and after October 13, 1998, the effective date of its current transportation Rate Schedules TS-1/TS-2.

(4) The papers herein are passed to the file for ended causes.