UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Louisiana Municipal Gas Authority in re: Docket No. RP05-666-000

Acadian Gas Pipeline System
Crosstex LIG, LLC
Cypress Gas Pipeline, LLC
Enbridge Pipelines (Midla) L.L.C.
Florida Gas Transmission Company
Gulf South Pipeline Company, LP
Southern Natural Gas Company
Tennessee Gas Pipeline Company
Texas Eastern Transmission L.P.
Texas Gas Transmission, LLC
Transcontinental Gas Pipe Line Corporation

ORDER ON REQUEST FOR WAIVER

(Issued October 12, 2005)

1. On September 6, 2005, the Louisiana Municipal Gas Authority (LMGA) requested that the Commission grant a waiver of any penalties, fees, and charges (other than for the actual transportation of natural gas delivered to a customer) that might otherwise be assessed by a pipeline in connection with natural gas transportation service during the Hurricane Katrina emergency for all LMGA member customers.[1] The Commission will grant the above-named pipelines waiver authorization, to the extent necessary, and will defer action on LMGA's request and establish waiver procedures, as discussed below. In

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[1] LMGA states that it is a state-authorized entity comprised of 57 small municipally-owned natural gas distribution systems in Louisiana that provide service to homes and businesses. It states that Pelican Gas Management, Inc. (Pelican), their agent, arranges gas purchases and transportation. The LMGA municipalities are identified in Attachment B to a September 1, 2005 letter LMGA sent to pipelines serving LMGA, which is attached to the September 6, 2005 filing.

instances where the above-named pipelines whose customers were directly affected by Hurricane Katrina agree that any penalties, fees, or other charges were incurred as a result of the hurricane, and where a pipeline would agree to waive such penalties, fees, or other charges except that they do not believe that the *force majeure* or other provisions of their tariffs permit them to do so, the Commission will grant, to the extent necessary, the above-named pipelines the authority to waive on a non-discriminatory basis penalties, fees, or other charges incurred as a result of Hurricane Katrina. If one of these pipelines denies a waiver as not justified by a particular customer's circumstances, the customer may file a waiver request with the Commission and the underlying penalties, fees, or other charges will be stayed pending Commission action on such requests, if any, that are made. Accordingly, the Commission will defer consideration of the waiver request until such time that an actual request for waiver of an assessed penalty, fee, or other charge is received. In addition, the Commission will entertain similar requests from other pipelines for a grant of tariff authorization to waive penalties, fees, and other charges.

Background

2. The LMGA's September 6, 2005 waiver request states that its members have been devastated by Hurricane Katrina. LMGA states that power and communications (which are needed to make nominations, monitor gas deliveries, and process invoices, among other things) are out in several areas of South Louisiana, and thus the impacted local distribution companies (LDC) simply do not have the ability to take the steps they normally could take in order to avoid penalties (or the use of forced services such as mandatory PALS service that are allowed under a pipeline's tariff). LMGA incorporates by reference the details of its request as stated in its letter dated September 1, 2005, to the pipelines serving LMGA,[2] and provided as an attachment to the September 6, 2005 filing.

3. LMGA's September 1, 2005 letter requested the pipelines to voluntarily agree to insure that for the period August 29, 2005 through the end of the current emergency, the pipelines will refrain, waive, or otherwise take such action as necessary consistent with their tariffs and regulatory obligations to insure that the identified LMGA cities are not assessed penalties, fees, or other such charges (such as mandatory PALS service or the like) that are allowed under a pipeline's tariff. LMGA states that Pelican will undertake to advise each pipeline when a LMGA member city's operations have returned to normal.

[2] Appendix A to the September 1, 2005 letter lists the following natural gas pipelines serving LMGA: Acadian Gas Pipeline System; Crosstex LIG, LLC; Cypress Gas Pipeline, LLC; Enbridge Pipelines (Midla) L.L.C.; Florida Gas Transmission Company; Gulf South Pipeline Company, LP; Southern Natural Gas Company; Tennessee Gas Pipeline Company; Texas Eastern Transmission L.P.; Texas Gas Transmission, LLC; and Transcontinental Gas Pipe Line Corporation.

LMGA states that the pipelines are being asked to refrain from assessing ancillary penalties or charges that might otherwise be assessed during normal operations, for example, with respect to imbalances, overruns, nomination or scheduling problems, the timing for protesting invoices, and the timing for making payments without incurring interest. LMGA's September 6, 2005 filing requests the Commission to grant waiver of such penalties, fees, and charges.

Public Notice, Interventions, and Comments

4. Public notice of LMGA's September 6, 2005 filing was issued on September 13, 2005. Interventions and protests were due by September 20, 2005, in accordance with section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2005)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

5. Crosstex LIG, LLC (LIG) responded to LMGA's request, stating that although LIG is in no way wishing to diminish the overall impact of Hurricane Katrina, it is not known to LIG how each individual LMGA municipality served by LIG was impacted by the hurricane. LIG further states that it is willing to assist those communities that have been impacted, but that it is also sensitive to the need to treat all customers in a nondiscriminatory fashion and avoid actions that would provide "blanket" relief to parties not directly impacted, especially if such relief were subsidized by discriminating against other LIG customers.

6. Transcontinental Gas Pipe Line Corporation (Transco) states that it does not oppose LMGA's request for waiver of any penalties incurred as a result of the Hurricane Katrina emergency; however, Transco seeks clarification that the waiver of such penalties will not exempt LMGA from resolving its transportation imbalances in accordance with Transco's tariff.[3]

7. Tennessee Gas Pipeline Company (Tennessee) states that Hurricane Katrina and the impact it had and will have on the members of LMGA are exactly the type of unusual circumstances that warrants discretionary action on the part of pipelines with regard to shipper obligations, including obligations that, under normal circumstances, would result in the assessment of penalties. Tennessee notes that, as of the date of its filing, none of the LMGA-identified Tennessee customers are incurring penalties as a result of Hurricane Katrina, nor have they defaulted into any of Tennessee's unscheduled services

[3] Transco filed an intervention and comments, in slightly different forms, on September 19 and 20, 2005.

since Hurricane Katrina struck. Tennessee states that it has the ability to identify such Hurricane Katrina-related events, and can address waivers related to such occurrences. Should the Commission determine to issue a blanket waiver, Tennessee recommends that such a waiver be deliberate, specifically directed towards what the Commission intends, and provide sufficient detail as to how the Commission intends for the affected pipelines to comply. Such a waiver should set forth the time period it would be in effect, establish its uniqueness, and include with sufficient specificity the mechanics of compliance, according to Tennessee.

8. Southern Natural Gas Company (Southern) states, as does Tennessee, that it is not opposed to the basic premise underlying LMGA's request, but that a global waiver of any and all of any penalties, fees, and charges is more than what is needed in these circumstances. Southern contends that, in the event any specific situation arises that warrants a waiver of a penalty, Southern believes it has the ability to address the appropriate waivers related to such Hurricane Katrina-related events. Further, Southern joins Tennessee in stating that, in the event that a circumstance is not specifically addressed in its tariff, Southern submits that this can be handled through Southern filing an emergency request for waiver.[4] In addition to requesting that any generally applicable waiver be specific with regards to which tariff provisions are being addressed and how affected pipelines should comply, Southern states that given that a generic waiver of all tariff provisions is highly unusual, the granting of such a request should be applicable only to the LMGA members who are parties to the request. Further, because of the adverse impact to Southern's own system, it is critical that Southern maintain control and minimize service disruptions by preserving its ability to take unilateral action and issue operational flow orders (OFO). Finally, Southern requests that the Commission establish a specified period for when the waiver begins and when it ends.

9. Gulf South Pipeline Company (Gulf South) states that, since LMGA during August will not incur an imbalance penalty, the Commission should clarify that Gulf South's cash in/out mechanism will be unaffected by LMGA's broad waiver request. Gulf South requests that the Commission take a measured, pipeline by pipeline, response to ensure that any relief granted is not overly broad or results in shifting the burden from one party to another.

10. Marathon Oil Company (Marathon) states that a nondiscriminatory waiver of penalties and related charges for all shippers and producers (adversely affected by Hurricane Katrina) is justified. Moreover, the extraordinary situation created by the hurricane fits squarely within the *force majeure* provisions in the tariffs of the pipelines, according to Marathon.

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[4] Southern at 4 (citing *Gulf South Pipeline Co., LP*, 112 FERC ¶ 61,294 (2005) (granting request for waiver of tariff provisions dealing with issuance of invoices)).

11. Texas Eastern Transmission, LP (Texas Eastern) states that it is not aware of any adverse impact due to Hurricane Katrina on transportation service Texas Eastern provides to three of the LMGA cities, but will discuss LMGA's concerns and fashion an appropriate solution.

12. Cypress Gas Pipeline System and Acadian Gas Pipeline System state that LMGA's waiver request is vague.

13. The American Public Gas Association strongly supports the requested waiver.

Discussion

14. We agree that Hurricane Katrina and the impact it has had and will have on the members of LMGA are exactly the type of extraordinary circumstances that warrant discretionary action on the part of pipelines, to the extent their tariffs require or permit, to relieve their customers of penalties, fees, and other charges that would not have occurred but for Hurricane Katrina. As noted above, the above-named pipelines have generally stated their intention to work with their customers and, to the extent permitted by their tariffs, to avoid the imposition of such financial burdens. There may be instances where the pipelines agree with their customers that penalties, fees, or other charges were incurred as a result of Hurricane Katrina and should be waived. However, the pipelines may believe that they do not have the authority under their tariffs to waive such penalties, fees, and other charges. In those instances, to facilitate the process by which their customers may be relieved of penalties, fees, or other charges that result from Hurricane Katrina, the Commission hereby grants, the above-named pipelines the authority to waive, on a non-discriminatory basis, penalties, fees, or other charges that are the direct result of Hurricane Katrina.

15. We recognize, however, the possibility that the above-named pipelines may decline to waive such penalties, fees, or other charges. Therefore, the Commission will establish the following waiver procedures and will defer action on LMGA's blanket request for waiver as it is premature at this juncture. If the pipeline denies a waiver, the customer may file a waiver request with the Commission and the Commission will consider those requests for waiver on a case-by-case basis at that time and the underlying penalties, fees, or other charges will be stayed pending Commission action on such requests. Accordingly, the Commission will defer consideration of the waivers requested in LMGA's request until an actual case, if any, arises where one of the above-named pipelines actually attempts to impose such penalties, fees, or other charges. Further, the Commission will entertain requests from pipelines for a grant of tariff authorization to waive penalties, fees, and other charges, if the pipelines do not believe they have waiver authority in their tariffs to address similar issues directly arising from hurricane-related events.

16. Finally, we will require each of the above–named pipelines to include any waivers granted or denied under the provisions of this order on the written log and to post these waivers on their Internet web site as required by the Commission's regulations.[5]

The Commission orders:

The Commission defers action on LMGA's request at this time, grants, to the extent necessary, the above-named pipelines the authority to waive, on a non-discriminatory basis, penalties, fees, or other charges incurred by their customers as a direct result of Hurricane Katrina, and establishes waiver procedures, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[5] 18 C.F.R. § 358.5(c)(4) (2005).