121 FERC ¶ 61,210
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 29, 2007

In Reply Refer To:
Gulf South Pipeline Company, LP
Docket No. RP08-50-000

Gulf South Pipeline Company, LP
9 E. Greenway Plaza, Suite 2800
Houston, TX 77046

Attention: Michael E. McMahon
General Counsel & Senior Vice President

Reference: New Tariff Provisions Authorizing Unbundling of No-Notice Service Transportation and Storage Capacity

Ladies and Gentlemen:

1. On November 1, 2007, Gulf South Pipeline Company, LP (Gulf South) filed Original Sheet No. 1422 and Sheet Nos. 1423 through 1499, to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective December 3, 2007.[1] Gulf South is proposing to add section 7.11 to its General Terms and Conditions (GT&C), concerning the marketing of transportation and storage capacity currently being used to provide No-Notice Service (NNS) service. Specifically, proposed section 7.11 would provide that, if a NNS customer elects to turn back its service or is required to reduce its maximum daily quantity (MDQ) pursuant to section 6 of the NNS Rate Schedule, Gulf South may unbundle the transportation and storage capacity used to serve that customer and re-market that capacity under its Firm Storage Service (FSS-B or FSS)[2] and Firm Transportation Service (FTS). The Commission conditionally accepts Gulf South's proposal, to become effective December 3, 2007, as more fully discussed below.

[1] Sheet Nos. 1423 through 1499 are designated as "Reserved for Future Use."

[2] Gulf South denotes this as Rate Schedule FSS in the instant filing, which does not exist in its tariff, but its proposal focuses on storage services from its Bistineau storage facility, Rate Schedule FSS-B.

2. Gulf South states that it currently provides NNS and other storage service from its Bistineau Storage Facility. Section 2 of Rate Schedule NNS describes no-notice service as a bundled storage and transportation service that entitles a customer to no-notice deliveries at its primary no-notice delivery points up to its applicable daily contract demand. In Gulf South's Order No. 636 restructuring proceeding, the Commission approved Gulf South's proposal to design its rates based upon the following allocation of storage capacity among its services:[3] 10.973 Bcf of storage capacity for NNS, 10 Bcf of storage capacity for operational purposes, 12.553 Bcf of storage capacity for Interruptible Storage Services (ISS),[4] and 30 Bcf for then-effective market-based storage service, Market Responsive Storage and Delivery Service (MRSDS).

3. Gulf South states that when it designed NNS during the Order No. 636 restructuring, it did not include a provision contemplating how it would reallocate storage and transportation capacity in the event NNS customers turned back capacity. Gulf South states that, under its proposal, it will consider NNS capacity to be "turned back" when: (1) an NNS contract has expired and the service is not renewed pursuant to the right of first refusal (ROFR) provisions in section 30.2 of Gulf South's GT&C or awarded pursuant to section 7.4 of Gulf South's GT&C concerning the procedures for bidding on capacity, or (2) the NNS customer must reduce its MDQ pursuant to section 6 of the NNS Rate Schedule.[5] That section permits an NNS customer to reduce its MDQ in the event of (1) a bypass, (2) in certain circumstances when a regulatory entity or statute requires the customer to unbundle its retail service, or (3) where a regulatory or legislative authority formally challenges the prudence of a NNS customer's decision to contract for the MDQ established by its NNS service agreement. Gulf South states that it would not remarket NNS capacity as unbundled FSS and FTS service until it first offers the capacity as available NNS capacity.

4. Gulf South states that its proposal to un-bundle turned-back NNS capacity and offer it as stand-alone firm storage and transportation services is consistent with Commission policy regarding the importance of firm storage capacity in the interstate pipeline infrastructure. Gulf South states that its proposal will benefit its customers by maximizing the availability of Gulf South's storage and transportation services. Gulf South finally states that its proposal will not adversely affect existing NNS customers

[3] *United Gas Pipe Line Co.*, 64 FERC ¶ 61,015, at 61,110 (1993).

[4] The ISS capacity has since increased to 29.5 Bcf pursuant to Docket No. CP05-354.

[5] Gulf South also states that turned-back No-Notice Service – Small Customer Rate Option (NNS-SCO) capacity will be treated in the same way as turned-back NNS capacity.

because the capacity will be offered as FSS and FTS only if NNS customers turn it back and no other NNS customer desires the capacity.

5. The Commission issued notice of Gulf South's filing on November 2, 2007. Interventions, comments, and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2007)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2007)), 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 this proceeding or place additional burdens on existing parties. The United Municipal Distributors Group (UMDG)[6] and Atmos Energy Corporation (Atmos) filed comments on November 13, 2007 and November 15, 2007, respectively. Gulf South filed an answer on November 20, 2007. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Gulf South's answer because it has provided us with information that has assisted us in our decision-making process.

6. UMDG does not oppose Gulf South's filing, so long as Gulf South only un-bundles NNS capacity that no shipper desires for NNS service. However, UMDG argues, the introductory clause of the proposed GT&C section 7.11 is unclear as to whether this is actually the case. The introductory clause of proposed section 7.11 states:

> Any NNS capacity not awarded after being posted for bid pursuant to Sections 7.4, 30.2, or capacity made available pursuant to the MDQ Reduction Provisions outlined in Section 6 of the NNS Rate Schedule ("Turned-back capacity") shall be subject to the following procedures:

UMDG asserts that the references to sections 7.4 and 30.2 of the GT&C make clear that certain posted capacity or capacity made available due to a NNS customer's failure to exercise its ROFR will first be subject to a bidding process before it may be offered on an unbundled basis. However, UMDG contends that there is no specific statement in the proposed tariff language that commits Gulf South to offering capacity turned back under section 6 of the NNS Rate Schedule to NNS customers first before it is made available on an unbundled basis.

[6] UMDG consists of the following municipal-distributor customers of Gulf South: Utilities Board of the City of Atmore, Alabama; City of Brewton, Alabama; Town of Century, Florida; Utilities Board of the Town of Citronelle, Alabama; City of Fairhope, Alabama; Utilities Board of the City of Foley, Alabama; North Baldwin Utilities, Alabama; Okaloosa Gas District, Florida; City of Pascagoula, Mississippi; City of Pensacola, Florida; and South Alabama Gas District, Alabama.

7. UMDG explains that section 6(d) requires an NNS customer providing notice of a reduction to its MDQ to submit a service request form reflecting the necessary reductions in its primary receipt and delivery point MDQ. UMDG asserts that it is not clear that capacity made available under section 6 and for which notice is provided under section 6(d) will necessarily be offered first as a bundled NNS service. UMDG contends that the language in the introductory clause of proposed section 7.11 may be read as permitting Gulf South to unbundle capacity turned back pursuant to section 6 of the NNS Rate Schedule without first subjecting that capacity to bidding by shippers that are interested in securing additional NNS service entitlements.

8. To cure the apparent discrepancy between the appropriate intent to enable NNS capacity to be unbundled only after NNS customers have had an opportunity to bid on such capacity, UMDG requests that Gulf South modify its proposal to make clear that the capacity turned back by an NNS customer pursuant to section 6 of the NNS Rate Schedule will only be made available on an unbundled basis if no NNS customer bids on such turned-back NNS capacity.

9. In its answer, Gulf South does not object to UMDG's request, and proposes the following revision to the introductory paragraph in section 7.11 (revisions in bold) to address UMDG's concerns:

> Any NNS capacity**, including NNS capacity made available pursuant to the MDQ Reduction Provisions outlined in Section 6 of the NNS Rate Schedule,** not awarded after being posted for bid pursuant to Sections 7.4 **or,** 30.2, ~~or capacity made available pursuant to the MDQ Reduction Provisions outlined in Section 6 of the NNS Rate Schedule~~ ("Turned-back Capacity") shall be subject to the following procedures.

We believe that Gulf South's answer satisfies UMDG's concerns and appropriately requires all NNS capacity to be offered for NNS service prior to any unbundling, and accept Gulf South's proposed tariff language, as revised.

10. Atmos argues that Gulf South's proposal permits it to unilaterally change its certificated NNS, FSS and FTS capacities at will, may affect whether Gulf South's approved rates are just and reasonable, and will have a significant impact on Gulf South's operations. Atmos contends that Gulf South does not provide any indication of whether a material increase of its revenues will occur or whether cross-subsidization among its customers will occur. Atmos suggests that if the amount of certificated NNS service available on Gulf South's system is reduced, by converting NNS capacity to FTS and FSS service, then it would likely lead to Gulf South being less likely to engage in negotiated rate transactions for NNS service. Atmos argues that Gulf South's proposal may artificially increase the value of all of its services, and thereby increase its revenues,

all without the comprehensive analysis of rates inherent in a general rate proceeding. Atmos requests that the Commission establish a technical conference to further explore these issues.

11. In its answer, Gulf South states that Atmos's concerns are unfounded, are contrary to the Commission's policies requiring the maximization of pipeline capacity and allocating pipeline capacity to those who value it most, and would be harmful to customers and the market in general. Gulf South asserts that Atmos's concerns about cross-subsidization are misplaced. Gulf South contends that its proposal will not result in cross-subsidization and that the only way capacity is temporarily shifted away from NNS is if no other customer wants to purchase NNS and that capacity then is offered as FTS and FSS service rather than remaining unutilized. Further, Gulf South states that Atmos's concern over Gulf South artificially increasing the value of its services is also unfounded. Gulf South states that pipelines are not required to discount their transportation rates below the maximum rate stated in the tariff, and that Gulf South has and will continue to price its capacity based on the market value of the service being provided. Gulf South asserts that its proposal does not change how its capacity is priced and that no existing NNS customer will be harmed. According to Gulf South, if NNS capacity is turned back and sold as FTS and FSS service, but demand for NNS capacity materializes in the future, Gulf South will make the capacity available to NNS customers on an as-available basis. Gulf South states that because it will be publicly auctioning all turned-back capacity as NNS prior to offering it as FTS and FSS, the market will have control over whether any NNS capacity is ever unbundled and offered as FTS or FSS.

12. The Commission agrees with Gulf South's characterization of its proposal as being designed to give it the flexibility to manage the services it offers, to be responsive to the market, and to maximize the usage of its transportation and storage services. We reject Atmos's unsupported argument that Gulf South will be able to change its certificated capacities "at will." Gulf South has a blanket certificate to provide all types of open access transportation service under section 284.221 of the Commission's regulations. This includes NNS service and unbundled firm and interruptible transportation and storage services.[7] Moreover, pursuant to section 284.221(d), Gulf South's certificate includes pregranted abandonment of any open access service provided by Gulf South, including NNS service, upon the termination of a shipper's contract and subject to the ROFR provided to long-term, maximum rate firm shippers by section 284.221(d)(2). Gulf South's proposal is consistent with section 284.221, since it provides

[7] *See Panhandle Eastern Pipe Line Co.*, 74 FERC ¶ 61,102, at 61,101-2 (1996), and *Mojave Pipeline Co.*, 79 FERC ¶ 61,015, at 62,479 (1997), holding that pipelines with blanket certificates for open access transportation service may implement new open access services in limited Natural Gas Act (NGA) section 4 filings, without filing for additional certificate authorization under NGA section 7.

that Gulf South will only market existing capacity used for NNS service as unbundled transportation and storage service, if the existing NNS shipper has terminated its contract and not exercised any ROFR rights. This ensures that Gulf South will have satisfied the conditions in section 284.221(d)(2) for pregranted abandonment of NNS service, before it offers the capacity for a different type of open access service.

13. Additionally, we agree with Gulf South's explanation that no existing NNS customer will be harmed since Gulf South will make capacity available to NNS customers on an as-available basis should demand for NNS capacity materialize after turned back capacity has been sold as FTS and FSS. We further reject Atmos's claims about cross-subsidization and impermissible rate increases as speculative. The Commission has authorized pipelines to modify their open access service offerings in limited NGA section 4 filings, without filing a general section 4 rate case.[8] Until Gulf South files a new general section 4 rate case, its instant proposal will have no effect on the maximum recourse rates for any of its open access services. When Gulf South does file a new rate case, all issues concerning the appropriate allocation of costs among services may be considered, and Atmos will have an opportunity to contest any proposal that it believes would result in an impermissible rate increase or cross subsidization.[9]

14. The Commission conditionally accepts the tariff sheets, subject to Gulf South filing revised tariff sheets within 15 days of the date this order issues, clarifying language as discussed more fully above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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[8] *Mojave Pipeline Co.*, 79 FERC at 62,479 (1997).

[9] *Natural Gas Pipeline Co.*, 73 FERC ¶ 61,050 at 61,129 (1995) (*Natural*), relied on by Atmos, was a general section 4 rate case. If Gulf South is unsuccessful at remarketing any turned back capacity and seeks in a future section 4 rate case to reallocate the costs of that capacity to its remaining customers, Atmos may raise issues of the type discussed in *Natural* at that time.