

125 FERC ¶ 61,099
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 27, 2008

In Reply Refer To:
Gulfstream Natural Gas System, L.L.C.
Docket Nos. RP02-361-073 and
CP07-51-001

Gulfstream Natural Gas System, L.L.C.
2701 North Rocky Point Drive, Suite 1050
Tampa, FL 33607

Attention: P. Martin Teague, Associate General Counsel

Reference: Negotiated Rate Agreement – Contract No. 9035943

Dear Mr. Teague:

1. On October 1, 2008, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed a proposed tariff sheet,¹ a negotiated rate letter agreement with a *pro forma* version of the tariff sheet attached (Letter Agreement), and a non-conforming service agreement (Service Agreement) for firm transportation service under Rate Schedule FTS to implement a negotiated rate transaction between Gulfstream and Florida Power Corporation (Florida Power). The agreements are for service on Gulfstream's Phase IV expansion project, for which the Commission issued a certificate in September 2007.² The substantive provisions of the Service Agreement and Letter Agreement are set forth on the proposed tariff sheet. Gulfstream states that the Service Agreement to which the negotiated rate applies deviates materially from the Form of Service Agreement contained in its tariff, but does not present a risk of undue discrimination. Gulfstream has filed a clean and redline version of the non-conforming Service Agreement. Gulfstream requests waiver of the notice period³ to permit the subject tariff sheet and Service Agreement to be effective September 1, 2008. For good cause shown the Commission

¹ Original Sheet No. 8.02p to FERC Gas Tariff, Original Volume No. 1.

² *Gulfstream Natural Gas System, L.L.C.*, 120 FERC ¶ 61,225 (2007).

³ 18 C.F.R. § 154.207 (2008).

grants waiver of the notice period. The proposed tariff sheet, Letter Agreement, and the Service Agreement are accepted effective September 1, 2008, as proposed. This acceptance is subject to the condition set forth below.

2. Public notice of the filing was issued on October 6, 2008. Interventions and protests were due on or before October 14, 2008. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), 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. No protests or adverse comments were filed.

3. Gulfstream states that the first page of the Letter Agreement has the sole purpose of indicating the parties' agreement to the negotiated rate provisions on the *pro forma* tariff sheet attached to the Letter Agreement, which sheet is identical to the proposed Original Sheet No. 8.02p in all respects.⁴ In summary, the proposed tariff sheet and Service Agreement provide for a reservation rate of \$0.5900 per Dth per day of MDQ under the Service Agreement, a usage-1 rate of \$0.0055 per Dth per day, and a usage-2 rate that will apply to service as specified from time to time in section 3 of Rate Schedule FTS, and payment of all applicable surcharges. The service period commences on September 1, 2008 and extends until the first day of the first month after the twenty-third anniversary of the Service Commencement Date, as defined in the precedent agreement between Gulfstream and Florida Power. The receipt and delivery points are set forth in footnotes 3 and 5 respectively of the referenced tariff sheet. Lastly, the MDQ during the Test Gas Period is 80,000 Dth/day and becomes 155,000 Dth/d on the Service Commencement Date.

4. Gulfstream states that the last two sentences of Paragraph 4 (Term) of the Service Agreement do not conform to the form of service agreement in its tariff. Gulfstream states that the second to last sentence of Paragraph 4 provides that the Service Agreement will terminate if the parties' precedent agreement concerning the Phase IV expansion project is terminated for a reason other than the commencement of service on the Phase IV expansion project. Gulfstream states that the precedent agreement includes certain conditions that must be satisfied or waived prior to the commencement of service under the Service Agreement. If such conditions are not timely satisfied or waived, the parties have a right to terminate the transaction, which would also terminate the Service Agreement. Footnote 4 of the referenced tariff sheet includes this condition. Gulfstream asserts that this sentence reflects that pre-service termination right, which is a common

⁴ Gulfstream states that a redline version of the Letter Agreement is not included because it would illustrate every line as an addition. However, it states that its Tariff specifically contemplates that negotiated rate agreements will be documented separately from the Rate Schedule FTS service agreement. *Citing* section 3.4 of Rate Schedule FTS, Original Sheet No. 22, FERC Gas Tariff, Original Volume No. 1.

provision for an agreement associated with an expansion. Gulfstream avers that this is not a material deviation, and the Commission has recognized that pipelines must reflect the in-service date of expansion projects in service agreements with anchor shippers.⁵

5. Also, Gulfstream states that the final sentence of Paragraph 4 of the Service Agreement describes the timing of the service that is unique to its Phase IV Project. Specifically, Gulfstream states that the precedent agreement and Service Agreement with Florida Power contemplate a Test Gas Period that extends through May 31, 2009. Gulfstream states that during the Test Gas Period, Florida Power can be served using existing Gulfstream capacity that is available until June 1, 2009, at which time the capacity is committed to another party under another expansion service agreement. Gulfstream asserts that, as of June 1, 2009, compression facilities that Gulfstream is currently constructing as part of the Phase IV Project are required to provide service under the Service Agreement. Gulfstream avers that the final sentence of Paragraph 4 provides that if the necessary Phase IV compression facilities are not completed by June 1, 2009, service under the Service Agreement must cease until the Phase IV compression facilities are complete and available for service. Footnote 4 of the referenced tariff sheet also reflects the same timing of service to Florida Power. Gulfstream states that this provision is unique to Phase IV and does not present a risk of undue discrimination. Accordingly, Gulfstream requests that the Commission accept this provision.

6. The Commission's regulations require that pipelines include in their tariff a Form of Service Agreement, and file any contract that deviates materially from the Form of Service Agreement.⁶ The regulations also require non-conforming service agreements to be referenced in FERC Volume No. 1.⁷ The filing of non-conforming service agreements

⁵ Citing, e.g., *Cheyenne Plains Gas Pipeline Company, L.L.C.*, 109 FERC ¶ 61,188, at P 2 (2004) (accepting negotiated rates and tariff sheets to be effective as of the "latter of November 22, 2004, or the actual in-service date"); *East Tennessee Natural Gas Co.*, 105 FERC ¶ 61,162, at P 2 (2003) (accepting negotiated rates, service agreements, and a tariff sheet, subject to conditions to be effective as of "the latter of November 1, 2003, or the in-service date of the Patriot Project").

⁶ 18 C.F.R. §§ 154.1(d) and 154.110 (2008). The Commission has held that a material deviation includes any provision in a service agreement that is not in the approved language of the Form of Service Agreement and (1) goes beyond filling-in-the-blank spaces with the appropriate information allowed by the tariff or (2) affects the substantive rights of the parties. *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 27 (2003).

⁷ 18 C.F.R. § 154.112(b) (2008).

enables the Commission and other interested parties to review the contract to determine whether the material deviations comply with the requirements of the Natural Gas Act, including that the pipelines have not engaged in undue discrimination.

7. In *East Tennessee Natural Gas Company*, the Commission found that any difference in the language between the negotiated agreement and the *pro forma* service agreements constitutes a material deviation.⁸ However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination the Commission may permit the deviation.⁹ The Commission finds that the deviations contained in footnote no. 4 of Gulfstream's tariff sheet and the Service Agreement are permissible deviations because they address unique circumstances concerning the commencement of service on the Phase IV expansion project and accordingly do not present a substantial risk of undue discrimination. Therefore, for good cause shown the Commission grants waiver of the notice period and accepts the tariff sheet, Letter Agreement, and Service Agreement effective September 1, 2008, subject to Gulfstream filing a revised tariff sheet, within 15 days of the issuance of this letter order, listing the instant FTS agreement as a non-conforming service agreement in its tariff as required by section 154.112(b).

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁸ *East Tennessee Natural Gas Company*, 107 FERC ¶ 61, 197, at P 16 (2004).

⁹ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,004 (2001).