125 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Gulf South Pipeline, LP Docket No. CP07-32-005

ORDER REJECTING TARIFF SHEETS AND DENYING REHEARING

(Issued November 18, 2008)

1. In an order issued September 28, 2007, the Commission authorized Gulf South Pipeline Company, LP (Gulf South) to construct and operate its proposed Southeast Expansion Project, consisting of approximately 111 miles of pipeline extending from Harrisville, Mississippi to an interconnection at Transcontinental Pipe Line Corporation's (Transco's) Station 85 in Alabama, and nearly 45,000 horsepower (hp) of compression.[1] The Commission required Gulf South to file revised tariff sheets prior to commencing service, and on May 27, 2008, Gulf South filed such revised tariff sheets.

2. In a letter order issued June 30, 2008, the Commission accepted Gulf South's revised tariff sheets to be effective on June 1, 2008,[2] subject to further revision clarifying the Commission's rejection of Gulf South's proposal to charge incremental plus pricing for the Southeast Expansion Project.[3] On July 15, 2008, Gulf South requested rehearing of the June 30 letter order. Also on July 15, 2008, Gulf South submitted revised tariff sheets that it avers meet the requirements of the June 30, 2008 Order.[4] If the

[1] *Gulf South Pipeline Co., LP*, 120 FERC ¶ 61,291 (2007) (September 28, 2007 Order).

[2] On June 3, 2008, Gulf South notified the Commission that it had commenced service on the Southeast Expansion Project pipeline and meter station facilities on June 1, 2008.

[3] *Gulf South Pipeline Co., LP*, 123 FERC ¶ 61,322 (2008) (June 20, 2008 Order).

[4] Substitute Fourteenth Revised Sheet No. 20, Substitute Eleventh Revised Sheet No. 21, Substitute Eleventh Revised Sheet No. 23, Substitute Ninth Revised Sheet No. 24 and Original Sheet No. 24B.

Commission should accept the revised tariff sheets, Gulf South requests that the Commission dismiss the request for rehearing.

3. For the reasons set forth below, the Commission is rejecting Gulf South's revised tariff sheets and denying its request for rehearing.

Background

4. In its application for the Southeast Expansion Project, Gulf South proposed to charge customers that use both the Southeast Expansion Project facilities and Gulf South's existing facilities an incremental rate for service on the expansion facilities plus the generally applicable system rates for service provided on the existing system. In the September 28, 2007 Order, the Commission found that the Southeast Expansion Project will be integrated and operated as part of Gulf South's existing pipeline system and, in accordance with Commission policy regarding integrated system facilities, it rejected the incremental plus pricing proposal.

5. The Commission also rejected Gulf South's proposed incremental rates as initial rates for services using the expansion capacity and required Gulf South to use its higher, generally applicable maximum firm and interruptible system rates as initial recourse rates for service on the expansion facilities. The September 28, 2007 Order explained that for integrated mainline expansion facilities, such as the Southeast Expansion Project, the Commission has permitted pipelines to charge an incremental rate for service utilizing such facilities if such rate is higher than the generally applicable firm transportation rate. On the other hand, the September 28, 2007 Order pointed out, the Commission has required pipelines to charge their generally applicable transportation rate if that rate is higher than the cost-based incremental rate for service utilizing the expansion.

6. The September 28, 2007 Order determined that the appropriate rate for comparison purposes was Gulf South's FTS firm transportation rate for firm transportation within Zone 3, as the bulk of the contracted-for capacity is to be received at receipt points in Zone 3 and likewise delivered to new delivery points in Zone 3. After recalculating Gulf South's proposed incremental rate to correct certain deficiencies, the Commission found that a revised firm incremental rate of $0.154 per Dth per day was lower than Gulf South's existing, generally applicable rate for Zone 3 to Zone 3 service. Accordingly, the Commission required Gulf South to charge its existing Part 284 rates for service on the Southeast Expansion Project.

7. On rehearing, in an order issued February 21, 2008, the Commission affirmed its determination that the expansion facilities will be integrated and operated as part of Gulf South's overall system, and, accordingly, that incremental plus pricing is not

appropriate.[5] The Commission explained that the Southeast Expansion Project is the downstream delivery component of Gulf South's East Texas to Mississippi Expansion Project which the Commission also determined will be integrated with the Gulf South system.[6] The Commission noted that, of the 660,000 Dth per day of capacity already under contract for the Southeast Expansion Project facilities, 560,000 Dth per day will be delivered into the new facilities through the East Texas to Mississippi Expansion Project. Moreover, the Commission stated, as part of the Southeast Expansion Project, Gulf South is installing compression upstream of the Southeast Expansion Project. That compression will increase the pressure of gas received from other pipelines at Perryville, Mississippi to the pressure of Gulf South's East Texas to Mississippi Expansion Project facilities so that gas may be introduced into the Southeast Expansion Project facilities. The Commission explained while the Commission has approved incremental plus pricing for lateral service in instances where new facilities were constructed to serve a discrete market or supply,[7] it is contrary to Commission policy to approve such a pricing mechanism involving a major system expansion, such as the Southeast Expansion Project, that broadly enhances a pipeline system's capabilities and can deliver over 1.2 Bcf per day.

8. The February 21, 2008 Order, however, did grant rehearing of Gulf South's proposal to charge an incremental rate for the Southeast Expansion Project. The Commission recalculated the cost of service and the annual billing determinants and found that the appropriate firm incremental daily rate for the Southeast Expansion Project would be higher than Gulf South's existing Part 284 Zone 3 to Zone 3 rate. Accordingly, the Commission found that an incremental rate for the Southeast Expansion Project is appropriate for firm service on the expansion facilities.

9. On May 27, 2008, Gulf South submitted a compliance filing containing actual tariff sheets reflecting an incremental rate applicable to firm transportation service when a shipper elects to utilize the Southeast Expansion facilities. The Commission's June 30, 2008 Order accepted the tariff sheets but directed Gulf South to revise its proposed tariff sheets so that they "clearly state that the approved incremental rate applies to those customers contracting for capacity on the Expansion Facilities." The June 30, 2008 Order also stated that, "the revised tariff sheets should not require that existing shippers

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[5] *Gulf South Pipeline Co., LP*, 122 FERC ¶ 61,162 (2008) (February 21, 2008 Order).

[6] *See Gulf South Pipeline Company, L.P.*, 122 FERC ¶ 61,162, at P 10 (2008).

[7] *See, e.g., Wyoming Interstate Company, Ltd.*, 119 FERC ¶ 61,251 (2007); *East Tennessee Natural Gas, LLC*, 114 FERC ¶ 61,122 (2006).

with primary rights in Zone 3 pay the incremental rate in addition to their current rate when using the Southeast Expansion Facilities on a secondary basis."

Gulf South's Revised Tariff Sheets

10. On July 15, 2008, Gulf South submitted for the Commission's approval revised tariff sheets that it asserts conform to the directives of the June 30, 2008 Order. Gulf South has removed the following language from its prior tariff sheets: "The above charges shall be increased to include an incremental charge … for use of the Southeast Expansion Facilities." In addition, Gulf South has created a separate tariff sheet reflecting an incremental rate applicable to firm transportation on the Southeast Expansion facilities. Gulf South asserts that the draft tariff sheets follow the model of Transco's statement of rates approved by the Commission for the Leidy East Expansion Project.[8]

Commission Response

11. Although Gulf South has created a separate tariff sheet for the incremental rate for the Southeast Expansion Project, language in the tariff sheet stating that the incremental rate will apply to any firm transportation services using receipt and delivery points accessed via the Southeast Expansion Facilities and to any paths which utilize the Southeast Expansion facilities continues the incremental plus pricing for existing shippers that use delivery points on the Southeast Expansion Project facilities on a secondary basis. The Commission has rejected incremental plus pricing for any shipper using the Southeast Expansion Project. As the Commission stated in the September 28, 2007 Order and the February 21, 2008 Order, the incremental rate established for the Southeast Expansion Project applies to those parties contracting for firm primary receipt and delivery point capacity on the expansion facilities. Gulf South must charge these shippers only the incremental rate for the Southeast Expansion Project. Shippers that currently pay the generally applicable rate for capacity in Gulf South's Zone 3 and utilize the expansion facilities on a secondary basis may not be required to pay the additional incremental rate to do so.[9]

12. A review of the tariff sheet listing the rates for Transco's Leidy East Expansion Project[10] shows that the incremental rates are applied to the Leidy East Expansion Project

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[8] *Citing Transcontinental Gas Pipe Line Corporation*, 97 FERC ¶ 61,094 (2001).

[9] The Commission will address the appropriate rate zone for the Transco interconnect below.

[10] Substitute Seventeenth Revised Sheet No. 400, FERC Gas Tariff, Third Revised Volume No. 1.

and to the parties contracting for firm primary delivery point capacity on the expansion facilities. The incremental rates are not applied as a cost adder to parties that transport gas on a secondary basis to those specific points that constitute the Leidy East Expansion Project, as they would be applied under Gulf South's proposed Original Sheet No. 24B. Gulf South must revise Original Sheet No. 24B, accordingly.

Gulf South's Rehearing Request

13. Gulf South contends that a necessary effect of the Commission's authorizing Gulf South to charge an incremental rate for the expansion facilities in the February 21, 2008 Order on rehearing was to remove the expansion facilities from Gulf South's Zone 3 for rate purposes and treat them separately from Zone 3. Gulf South argues that the Southeast Expansion facilities should be considered as incremental to its system, not a part of Zone 3, because shippers on the existing system cannot physically access the expansion facilities.[11] Gulf South asserts, however, that the June 30, 2008 Order appears to preclude Gulf South from charging the approved incremental rate to any shipper that already has primary rights in Zone 3 when such a shipper nominates service on the expansion facilities on a secondary or supplementary basis. This, it asserts, effectively nullifies the Commission's determination that Gulf South may charge an incremental rate for service on the expansion facilities.

14. Gulf South argues that, because customers paying Zone 3 system rates are not paying the costs associated with the Southeast Expansion facilities, these customers would be using the expansion facilities on a secondary basis for free, unless they pay the incremental rate. This result, Gulf South asserts, is contrary to the Commission's policy that shippers using incremental facilities should bear the costs associated with those facilities. Gulf South states that expansion shippers contracting for capacity on the new facilities on a primary firm basis should not be required to subsidize existing shippers' use of facilities that are not covered by the shippers' current contract rates. Applying the incremental rate to these existing shippers does not affect the rates they are being charged under existing contracts, Gulf South argues; rather, the incremental charge recognizes that the existing customers are electing to use discrete facilities that provide access to markets previously unavailable on the Gulf South system.

[11] The Southeast Expansion facilities are directly accessible only through transportation on the recently authorized East Texas to Mississippi Expansion facilities. Customers on the historical system will be able to access the Southeast Expansion facilities only through displacement because of differences in operating pressures.

Commission Response

15. Contrary to Gulf South's suggestion, the Commission did not authorize an incremental rate for the Southeast Expansion because the project was a discrete, separate facility. Rather, the Commission authorized an incremental rate because the rate was higher than the Gulf South existing part 284 rate for the zone containing the bulk of the new project's facilities. The February 21, 2008 Order affirmed the Commission's earlier finding in the September 28, 2007 Order that the Southeast Expansion Project will be operated on an integrated basis with Gulf South's other mainline facilities. Because the expansion facilities will be integrated with Gulf South's existing pipeline system, both orders, in accordance with Commission policy, specifically rejected Gulf South's attempt to apply incremental plus pricing that would require existing shippers on its system to pay the incremental rate in addition to their current FT rate to access on a secondary basis the Southeast Expansion Project facilities within the zone for which they are paying a reservation charge for capacity.[12] Despite the Commission's clearly stated findings, Gulf South, nevertheless, submitted tariff sheets that would implement incremental plus pricing for shippers that use the Southeast Expansion Project facilities on a secondary basis and continues to urge that the Commission accept this pricing methodology. The June 30, 2008 Order is fully consistent with the Commission's determinations in the prior two orders. Gulf South's arguments lack merit and are rejected.

16. The Commission's Certificate Policy Statement[13] encourages efficient investment and contracting decisions by pipelines and shippers concerning the construction of new capacity by generally requiring that expansions be priced incrementally, so that expansion shippers will pay the full costs of new capacity without subsidy from the existing customers through rolled-in pricing. This helps ensure that the market finds the project viable, because either the expansion shippers or the pipeline must be willing to fully fund the project, and existing customers of an expanding pipeline will not have to subsidize a project that does not serve them. This policy also leaves the pipeline responsible for the costs of new capacity that is not fully utilized.

17. An incremental rate is appropriate for Gulf South's Southeast Expansion Project because the expansion rate is higher than Gulf South's existing Part 284 rate. Applying an incremental rate for the Southeast Expansion Project, however, does not remove those facilities from Zone 3 for rate purposes or require that they be treated as separate from Zone 3. Permitting the incremental rate simply recognizes that the cost of the expansion

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[12] *See* 120 FERC ¶ 61,291 at P 25, and 122 FERC ¶ 61,162 at P 10.

[13] *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

is greater than the Gulf South system rate, and that existing shippers' rates therefore would increase if Gulf South were allowed to roll the costs of the expansion into its current system rates.

18. The fact that existing customers paying the generally applicable rate will be able to access the new facilities on a secondary basis without an additional fee when capacity is available does not constitute a subsidy, as Gulf South suggests, but rather reflects the fact that those customers have paid for the underlying pipeline facilities with which the expansion is integrated.[14] The Commission's longstanding policy is that shippers should have access to secondary receipt and delivery points in the zone for which they pay a reservation rate. In Order No. 636-A, the Commission stated that: "a shipper gets flexibility in receipt and delivery points for the part of the system for which it pays a reservation charge. Thus, if a pipeline has zone rates, a shipper gets flexibility within its zone."[15] When a pipeline constructs an integrated expansion project, such as Gulf South's Southeast Expansion Project, existing shippers that have primary rights within the zone in which the new facilities are being constructed are provided access to those facilities on a secondary basis without paying an additional incremental cost. Similarly, as the Commission explained in the September 28, 2007 Order, Southeast Expansion shippers will have the same rights to secondary access to other points on the Gulf South system. Providing existing customers with access to the Southeast Expansion Project on a secondary basis at their current rates does not constitute a subsidy, as Gulf South alleges. These shippers will have access to the Southeast Expansion facilities on a secondary basis only, and their ability to utilize the facilities will be determined by the availability of capacity.

19. The Commission has addressed the issue of shippers transporting gas on a secondary basis on incrementally priced facilities. In a Transco rate proceeding,[16] the Commission rejected an argument that Transco's existing Zone 6 shippers should not be given secondary receipt point rights on Transco's Leidy facilities[17] because some, but not

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[14] Although the Southeast Expansion Project provides deliveries to a new market, the Commission has determined in the September 28, 2007 Order and the February 21, 2008 Order that the expansion is integrated with Gulf South's existing facilities.

[15] *Order No. 636-A*, FERC Stats. & Regs. ¶ 30,950, at 30,585 (1992).

[16] *Transcontinental Gas Pipe Line Corporation*, 73 FERC ¶ 61,361, at p. 62,127 (1995).

[17] Transco's Leidy line consists of a series of incremental projects, situated geographically in Transco's Zone 6. Some of the Leidy line costs are not rolled into Transco's general system costs.

all, of the Leidy facilities costs were within the rolled-in rate that Part 284 shippers pay for receipt point rights in Zone 6. Even though some of the Leidy costs were not borne by Zone 6 shippers, but rather were borne by incremental Leidy shippers, the Commission found as a policy matter that Zone 6 shippers should receive secondary receipt point rights on the Zone 6 Leidy facilities – even Zone 6 Leidy facilities whose costs are recovered in incremental rates. The Commission found that, if a Part 284 shipper pays a share of the costs of facilities in a zone, it should have secondary point access in that zone at no additional expense.[18] The Commission stated that unless Transco created and obtained approval of a special Leidy zone, the Zone 6 customers should have the right to access Leidy line facilities geographically located in Zone 6. Any other approach, the Commission explained, would unduly balkanize the system and inhibit open-access operations.

20. As we explained in the February 21, 2008 Order, the Commission has allowed incremental plus pricing for new services in limited situations involving a lateral to specific customers or where the facilities are not integrated with the pipeline's existing system. In these situations, the rate is an additive rate (i.e., the shipper will pay a mainline rate plus the rate for the lateral or non-integrated facilities), and a shipper that pays only an incremental rate for the lateral or non-integrated facilities is not entitled to use points on the mainline (e.g., secondary receipt and delivery points) unless the shipper also pays the mainline rate.[19] Here however, the Southeast Expansion Project is not a lateral for specific customers; rather, the Commission has determined that the new facilities will be integrated with the existing Gulf South system. Therefore, the conditions that Gulf South attempts to apply to its Southeast Expansion Project (incremental plus pricing and limitations on flexible receipt and delivery points) are not appropriate.

<u>Alternative Request</u>

21. Gulf South requests that, if the Commission does not grant Gulf South's request for rehearing or accept its revised tariff sheets, the Commission find that not all the Southeast Expansion facilities are located in Gulf South's Zone 3. Specifically, Gulf South requests that the Commission find that (1) the Southeast Expansion transmission facilities extending from Harrisville, Mississippi east to the Mississippi-Alabama border are in Gulf South's Zone 3, and that (2) the Southeast Expansion transmission facilities

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[18] This treatment of FT receipts is consistent with Transco's application of its IT rate for Leidy service. In other words, Transco does not have a separate IT rate for Leidy; it uses its Zone 6 IT rate for Leidy service.

[19] *See, e.g., Colorado Interstate Gas Co.*, 122 FERC ¶ 61,256, at P 60 (2008); *Wyoming Interstate Co.*, 119 FERC ¶ 61,251, at P 20 (2007).

extending from the Mississippi-Alabama border east to Transco's Station 85 in Alabama are in Gulf South's Zone 4. Gulf South avers that this determination would be consistent with the zone delineation of other transmission facilities on Gulf South's system.

22. The September 28, 2007 Order and the February 21, 2008 Order used the Zone 3 rates as the best available basis for comparison with the incremental rates being proposed by Gulf South because most of the transportation over the Southeast Expansion facilities will occur in Zone 3. In order to determine whether the transmission facilities from the Alabama border to Transco Station 85 should be included in Zone 4, Gulf South must provide further information within 15 days of this order clearly supporting its contention that that determination would be consistent with the zone delineation of other transmission facilities on Gulf South's system.

The Commission orders:

(A) The revised tariff sheets submitted by Gulf South on July 15, 2008 are rejected. Gulf South is directed to file revised tariff sheets consistent with the discussion in the body of this order within 15 days of the date this order is issued.

(B) Gulf South's request for rehearing of the Commission's June 30, 2008 Order is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.