

132 FERC ¶ 61,058  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

July 22, 2010

In Reply Refer To:  
Gulf South Pipeline Company, LP  
Docket No. RP10-872-000

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

Attention: J. Kyle Stephens, Vice President, Regulatory Affairs and Rates

Reference: Changes to Negotiated Rate Contract Tariff Provisions

Dear Mr. Stephens:

1. On June 22, 2010, Gulf South Pipeline Company, LP (Gulf South) filed Fifth Revised Sheet No. 2901 to its FERC Gas Tariff, Sixth Revised Volume No. 1. The tariff sheet makes changes to section 23.4 of Gulf South's General Terms and Conditions (GT&C) related to when Gulf South files negotiated rate agreements and how short term capacity release agreements containing previously approved negotiated rate provisions will be handled. Gulf South requests that Fifth Revised Sheet No. 2901 become effective July 22, 2010. For the reasons discussed below, we accept the revised tariff sheet effective July 22, 2010, subject to condition.

2. Section 23.4 of Gulf South's GT&C currently requires it to file all negotiated rate letter agreements with the Commission by the earlier of (1) two business days following contract execution or (2) the day of execution if gas is expected to flow within two days of contract execution. Gulf South proposes two changes to Section 23.4 of its GT&C. First, Gulf South seeks to change the deadline for its filing of negotiated rate letter agreements from one based on the execution date to one based on the service commencement date. Gulf South states that the Commission has approved deadlines

based on service commencement date for other pipelines.<sup>1</sup> However, in Docket No. RP96-320-029,<sup>2</sup> the Commission required Gulf South to file negotiated rate letter agreements within two days of contract execution, in part, because Gulf South had a marketing affiliate which held a significant level of capacity on the system and the Commission determined that additional review time for third parties of the negotiated rate agreements was prudent.

3. Gulf South states that it has not had a marketing affiliate since December 29, 2004, and, as such, review of negotiated rate agreements on Gulf South's system should require no more time than the review of negotiated rate agreements on any other pipeline. Accordingly, consistent with the approved tariff provisions of other pipelines, Gulf South proposes to revise Section 23.4 to require that it file negotiated rate agreements "no later than the business day on which Gulf South commences service at a negotiated rate (or if the day on which Gulf South commences such service is not a business day, then the next business day after Gulf South commences service)."

4. Gulf South's second proposed tariff revision concerns its filing of negotiated rate agreements with replacement shippers obtaining capacity through a capacity release. In *Texas Eastern Transmission, LP*,<sup>3</sup> the Commission found that "while the negotiated rate program is inapplicable to the reservation component of the replacement shipper's rate, pipelines may use their negotiated rate authority to negotiate usage and fuel charges with replacement shippers." The Commission also held that pipelines must, as with any negotiated rate agreement, comply with the Commission's policy concerning the filing of negotiated rate agreements.<sup>4</sup> Under that policy, the pipeline must file either the negotiated rate agreement itself or a tariff sheet describing the agreement.<sup>5</sup>

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<sup>1</sup> See *Discovery Gas Transmission LLC*, Original Vol. No. 1, GT&C § 29.3; *Southern Star Central Gas Pipeline, Inc.*, Original Vol. No. 1, GT&C § 31.5; *Natural Gas Pipeline Co. of America*, Seventh Revised Vol. No. 1, GT&C § 491.(e); and *North Baja Pipeline, LLC*, Original Vol. No. 1, GT&C § 24.2.

<sup>2</sup> See *Gulf South Pipeline Company, LP*, 94 FERC ¶ 61,258 (2001); *Order Denying Rehearing and Providing Clarification*, 95 FERC ¶ 61,196 (2001).

<sup>3</sup> 129 FERC ¶ 61,025, at P 11 (2009) (*Texas Eastern*), *reh'g*, 130 FERC ¶ 61,189 (2010).

<sup>4</sup> *Id.*, P 21.

<sup>5</sup> *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 114 FERC ¶ 61,042, at P 2 (2006).

5. Gulf South seeks a limited exception from this policy in order to allow it to post on its Informational Postings Website, in lieu of filing with the Commission, its short-term capacity release agreements of 27 days or less which contain the same negotiated rate provisions as the Commission has approved for the releasing shipper. Gulf South would still be required to file with the Commission any negotiated rate capacity release agreement that has a term of 28 days or longer or that includes a rate different than the negotiated rate previously approved by the Commission.

6. Gulf South states that since the beginning of 2010 it has had customers with negotiated rate agreements who have consistently released capacity for one-day or two-day terms and that it has filed with the Commission forty-four short term negotiated rate capacity release agreements that reflect the same negotiated rate that the Commission approved for the releasing shipper. Gulf South further states that, in the majority of these cases, the capacity was released the day before service was to commence and terminated before the Commission had time to review the transaction and issue an order. Gulf South explains that, in addition to ensuring that the subject capacity release agreement information is promptly made public, Gulf South's proposal will relieve the Commission of the burden of reviewing and approving capacity release agreements that have already been reviewed and approved when the negotiated rate agreement with the releasing shipper was filed.

7. Public notice of the filing was issued on June 23, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2010)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any motion 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. The United Municipal Distributors Group (UMDG) filed a motion to intervene and limited protest on July 6, 2010.

8. In its limited protest, UMDG offers its support of Gulf South's proposed change; however, UMDG points out that the actual tariff language in the proposed tariff sheet is inconsistent with what Gulf South proposes in its transmittal letter. UMDG states that, according to Gulf South's transmittal letter, in order to qualify for the filing exemption the capacity release must be for 27 days or less and the replacement shipper's negotiated rate must be the same as the releasing shipper's negotiated rate that has already been filed with and approved by the Commission. However, UMDG argues that these restrictions are not spelled out in the proposed tariff language. According to UMDG, the proposed language only refers to "short-term capacity release agreements containing negotiated rate provisions." Therefore, according to UMDG, under a literal reading, Gulf South could avoid filing capacity release agreements even if the negotiated rate were completely different from the releasing customer's rate, or if the term were for longer than 27 days. UMDG requests that, to correct this deficiency, the Commission condition

any acceptance of Gulf South's filing on a requirement that the relevant portions of the proposed tariff language be corrected to provide that, to qualify for the filing exemption, the release must be for 27 days or less and the replacement shipper's negotiated rate must be the same as the releasing shipper's negotiated rate filed with and approved by the Commission.

9. Gulf South's proposed revision to the deadline for filing negotiated rate agreements is consistent with the Commission's negotiated rate policy. Under that policy, the Commission requires the pipeline to file either the negotiated rate agreement itself or a tariff sheet describing the agreement at the time it intends the rate to go into effect.<sup>6</sup> The Commission previously required Gulf South to file its negotiated rate agreements based on the date of execution, rather than the commencement of service, because it had a marketing affiliate, but Gulf South no longer has such an affiliate. Therefore, Gulf South's proposal to file negotiated rate agreements no later than the business day on which Gulf South commences service is approved.

10. The Commission also accepts Gulf South's proposal concerning the posting of short-term capacity release agreements of 27 days or less containing negotiated rate provisions, subject to conditions. As described above, in *Texas Eastern* the Commission clarified that pipelines may use their negotiated rate authority to negotiate usage and fuel charges with replacement shippers, but held that pipelines entering into such negotiated rate agreements with replacement shippers must comply with the Commission's policy concerning the filing of negotiated rate agreements. The Commission stated that, even if the negotiated usage or fuel charge the pipeline agrees to with the replacement shipper is the same as the releasing shipper's negotiated usage or fuel charge already on file with the Commission, the filing of the negotiated rate agreement with the replacement shipper is necessary, because "it is also critical that the identity of the replacement shipper is made known."<sup>7</sup>

11. The Commission finds that Gulf South's proposal to post 27-day or less capacity releases with negotiated rates on its Informational Postings Website, instead of filing them, is reasonable in light of the short-term nature of such releases. Gulf South's proposal is limited not only to very short-term releases, but also to releases in which the

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<sup>6</sup> See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241, *order on clarification*, 74 FERC ¶ 61,194, *order on reh'g*, 75 FERC ¶ 61,024 (1996).

<sup>7</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241 (1996).

replacement shipper receives the same negotiated rate as has already been approved for the releasing shipper. Gulf South states that it has filed with the Commission forty-four short term negotiated rate capacity release agreements that reflect the same negotiated rate that the Commission approved for the releasing shipper; and, in the majority of these cases, the capacity was released the day before service was to commence and terminated before the Commission had time to review the transaction and issue an order. Therefore, given the short-term nature of these transactions, the Commission finds that the Gulf South's posting proposal sufficiently accomplishes the Commission's regulatory objective of providing the Commission and interested parties with an accessible vehicle for monitoring the transactions, while reducing the burdens of both the pipeline and the Commission of processing such negotiated rate filings.

12. However, the Commission finds that Gulf South's proposal must be clarified in several respects. First, Gulf South's proposed tariff language refers broadly to short-term capacity release agreements "containing negotiated rate provisions." However, consistent with *Texas Eastern*, Gulf South's negotiated rate authority with respect to capacity releases is limited to the usage and fuel charge components of a replacement shipper's rate. Therefore, the Commission requires Gulf South to revise the reference to "negotiated rate provisions" in its proposal to limit it to negotiated usage and fuel charge provisions.<sup>8</sup>

13. In addition, the Commission agrees with UMDG that the language in Gulf South's proposed tariff sheet does not clearly state the specifics of its proposal as described in the transmittal letter. Therefore, Gulf South is directed to file revised tariff sheets to clearly provide that, in order for capacity release negotiated rate transactions to qualify for the filing exemption, the release must be for 27 days or less and the replacement shipper's negotiated usage and/or fuel charge must be the same as the releasing shipper's Commission approved negotiated usage and/or fuel charge.

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<sup>8</sup>If the replacement shipper in a short-term release is subject to the pipeline's recourse rate usage and fuel charges, the pipeline need not file the replacement shipper's contract as a negotiated rate contract, even if the releasing and replacement shippers agreed that the replacement shipper would pay the same negotiated reservation rate as in the releasing shipper's contract with the pipeline. As explained in *Texas Eastern*, 129 FERC ¶ 61,025 at P 13, the Commission's section 284.8 capacity release regulations govern the determination of the replacement shipper's reservation rate. Section 284.8(b)(2) permits the releasing and replacement shippers to agree to a market-based reservation charge for short-term releases of one year or less, and "there is no requirement that the pipeline file the agreed-upon market based reservation rate in a short-term release with the Commission as a negotiated rate." *Id.*

14. Accordingly, Gulf South's Fifth Revised Sheet No. 2901 to its FERC Gas Tariff, Sixth Revised Volume No. 1 is accepted effective July 22, 2010, subject to Gulf South making further revisions, as discussed above, within 15 days of the issuance of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.