

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Florida Gas Transmission Company, LLC

Docket No. RP07-331-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEET
SUBJECT TO REFUND AND CONDITIONS AND FURTHER REVIEW

(Issued March 30, 2007)

1. On March 1, 2007, Florida Gas Transmission Company, LLC (Florida Gas) filed a revised tariff sheet¹ to recover the depreciation expense and pretax return on certain defined capital expenditures (Capital Costs) through a surcharge (Capital Surcharge) under its rate schedules FTS-1 and SFTS pursuant to Article IX of the stipulation and agreement of settlement (settlement) filed on August 13, 2004 in Docket Nos. RP04-12 and RP00-387² and section 26 of the General Terms and Conditions (GT&C) of its tariff. Florida Gas requests that the Commission permit an effective date of April 1, 2007. The Commission accepts and suspends the proposed tariff sheet, permitting it to become effective April 1, 2007, subject to refund and conditions set forth below and further review.

Background

2. Section 26 of the GT&C of Florida Gas' tariff provides that during the term of the settlement, Florida Gas shall have the right to recover, through a limited Natural Gas Act (NGA) section 4 rate filing, capital costs resulting from capital additions placed into service and retirements of facilities removed from service for those expenditures necessary to: (i) enhance system security (Security Costs); (ii) comply with the provisions of the Pipeline Safety Improvement Act of 2002 (PSIA) and regulations issued thereunder (Integrity Costs); and (iii) relocate or replace portions of Transporter's system to accommodate expansions or improvements to the Florida Turnpike, as required by the Florida Department of Transportation (Turnpike Costs) (collectively, Capital Costs).

¹ Fourth Revised Sheet No. 7 to Florida Gas' FERC Gas Tariff, Fourth Revised Volume No. 1.

² The settlement was conditionally approved by Commission order dated December 21, 2004, in *Florida Gas Transmission Co.*, 109 FERC 61,320 (2004).

3. Pursuant to the settlement and section 26 of its tariff, Florida Gas may recover the depreciation and pretax return on certain defined Capital Costs through a reservation or a volumetric surcharge, the Capital Surcharge. Florida Gas must record Security Costs, Integrity Costs, Turnpike Costs in Account Nos. 101 and 106, separately for the incremental system and the non-incremental system.³

4. Section 26(A)(2) defines Integrity Costs to include costs incurred: (a) to identify and assess the integrity of the pipeline in high consequence areas (HCAs) on its pipeline, including performing in-line inspections of the pipeline (commonly referred to as "smart pigging", which requires pig launchers and receivers not already installed at certain points along the system, the removal of any restrictions or obstructions that would impede the pig, such as certain types of valves, and dents or bends in the pipeline), hydrostatic testing, or other assessment, and (b) to take specific actions to assure the integrity of the pipeline in those areas, and remediate any conditions that exceed the allowable limits (such as re-coating, repairing, or replacing line or equipment).

5. Section 26(B)(1) of Florida Gas' tariff provides that Florida Gas must incur a threshold Capital Cost expenditure of \$20 million on the incremental or non-incremental system, evaluated separately, in order to implement a Capital Surcharge. Section 26(B)(1) further provides that Florida gas shall separately track Capital Costs for the incremental and non-incremental systems and such costs shall be recorded on the respective system's accounting books. Section 26(B)(1) states that Capital Costs that cannot be directly assigned shall be allocated, for purposes of allocating this surcharge, between incremental and non-incremental systems on a 50%/50% ratio basis for the applicable period or year. Section 26(B)(1) also states that "in any Capital Surcharge filing, transporter shall file detailed workpapers and appropriate support for the Capital Costs expended, separately stating such costs for the applicable system (incremental or non-incremental)." Section 26(B)(3)(b) provides that in the event Florida Gas makes a Capital Surcharge filing,⁴ it must make subsequent annual filings to be effective on April 1 to reflect relevant cost adjustments recorded by the preceding December 31. Section 26(B)(3)(c) establishes the Capital Surcharge limits for Florida Gas' initial and subsequent Capital Surcharge filings.

³ The Phase III Expansion facilities established Florida Gas' incremental system and created capacity through which Florida Gas provides service under rate schedule FTS-2. The rate schedule FTS-2 rates became effective March 1, 1995. The FTS-1 rates apply to service on Florida Gas' pre-1995 system (non-incremental system). *See Florida Gas Transmission Co.*, 105 FERC ¶ 61,171 (2003).

⁴ Florida Gas filed to establish its initial Capital Surcharge in Docket No. RP06-255-000. *See Florida Gas Transmission Co.*, 114 FERC ¶ 61,342 (2006) and 115 FERC ¶ 61,182 (2006).

6. Section 26(B)(4) establishes the criteria by which a shipper may challenge Florida Gas' Capital Surcharge. Section 26(B)(4) provides that Shippers shall have the right to challenge the Capital Surcharge only with respect to: (a) whether the capital expenditures included in such Capital Surcharge are eligible Capital Costs, (b) whether such eligible Capital Costs have been incurred prudently, (c) whether the proposed Capital Surcharge is properly calculated, and (d) whether the Capital Costs have been properly allocated and/or assigned to the incremental and non-incremental systems. Finally, section 26(B)(6) sets forth the capital project information that Florida Gas will provide to settling parties which have executed confidentiality agreements.

The Instant Filing

7. Florida Gas proposes to establish a reservation surcharge of \$.02 per MMBtu applicable to rate schedule FTS-1, and a usage surcharge of \$.04 per MMBtu for Rate Schedule SFTS. Florida Gas states that it is not proposing to establish a Capital Surcharge applicable to rate schedule FTS-2 in the instant filing because there were no Capital Cost expenditures for its incremental system through December 31, 2006, that were eligible for recovery through a Capital Surcharge.

8. Florida Gas states that schedule 1, attachment A of its filing sets forth the calculation of the pretax return and depreciation expense applicable to the eligible Capital Costs for Florida Gas' non-incremental system. Florida Gas further states that the calculation results in an FTS-1 reservation surcharge⁵ of \$.025 per MMBtu.⁶ Florida Gas submits that the usage surcharge for rate schedule SFTS of \$0.04 per MMBTU is calculated at a fifty percent (50%) load factor of the maximum allowable FTS-1 Capital Surcharge in accordance with section 26(B)(3)(a) of its tariff.

9. Florida Gas states that schedule 2, attachment A sets forth the derivation of the rate base for the Capital Surcharge calculation for Florida Gas' non-incremental system. Finally, Florida Gas further states that schedule 3, attachment A, provides information on the 53 projects that Florida Gas performed to comply with the provisions of the PSIA.

⁵ Pursuant to section 26(B)(5), the following shippers (and their respective successors, if any) shall receive a discount of fifty percent (50%) of any Capital Surcharge under the service agreements and volumes listed in Appendix L to the settlement: Auburndale Power Partners, LP; Universal City Development Partners, Ltd; Tropicana Products Inc.; and Reedy Creek improvement District.

⁶ Pursuant to the provisions of section 26(B)(3)(c), the Capital Surcharge applicable to rate schedules FTS-1 or FTS-2 may not exceed \$0.02 per MMBtu in any subsequent filings after the initial filing is made during the term of the settlement.

Notice of Filing, Interventions and Protest

10. Public notice of Florida Gas' filing was issued March 6, 2007, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2006)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2006)), 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. Peoples Gas System, A Division of Tampa Electric Company, Florida Power & Light Company, the Florida Municipal Natural Gas Association, and Florida Cities (collectively, Joint Protestors) filed a joint protest. In its intervention, Seminole Electric Cooperative, Inc. (Seminole) raised concerns regarding the claimed capital costs. Florida Gas filed an answer to the Joint Protestors and Seminole.⁷

11. The Joint Protestors contend that Florida Gas' filing raises questions about whether the capital expenditures included in its filing are eligible Capital Costs, whether Florida Gas has properly calculated its proposed Capital Surcharges, and whether the Capital Costs proposed by Florida Gas have been properly allocated and/or assigned to the incremental and non-incremental systems. The Joint Protestors argue that the Commission should direct Florida Gas to submit additional information so that the Joint Protestors and Florida Gas' other customers can determine the answers to the questions raised by Florida Gas' filing and, if necessary, convene a technical conference. The Joint Protestors state that the Commission should direct Florida Gas to provide the information necessary to support its filing and specifically explain why the costs of its work projects that relate to both the non-incremental and incremental systems should not be shared.

12. The Joint Protestors contend that Florida Gas has not demonstrated that projects occurred in HCAs. The Joint Protestors assert that Florida Gas has not demonstrated, for any of 53 projects covered by filing, that the relevant projects consisted of identification or assessment of the integrity of the pipeline "in high consequence areas" or shown that the relevant project consisted of taking specific action to assure the integrity of the pipeline "in those areas" as referred to in section 26 (A)(2) of its GT&C. The Joint Protestors further assert that all of the costs for which Florida Gas seeks recovery in its filing are Integrity Costs.

13. The Joint Protestors assert that, while the language of Florida Gas' tariff contemplates the possibility of recovery of capital costs resulting from compliance with

⁷ Pursuant to 18 C.F.R. § 385.213 (2006), answers to protests are not permitted. In the instant circumstance, the Commission finds that the answer provides information useful in the examination of Florida Gas' filing and, therefore, the Commission accepts Florida Gas' answer.

the PSIA involving activities other than identification or assessment of pipeline integrity in HCAs or specific actions to assure pipeline integrity in HCAs, the central concern of the PSIA and its implementing regulations is with HCAs. The Joint Protestors further assert that the underlying basis for the order issued by the Commission addressing accounting for costs associated with such compliance was the requirement, contained in the PSIA and implementing regulations, to establish pipeline integrity management programs and the central concern of the accounting order is with activities, undertaken pursuant to such programs, conducted with respect to pipelines in HCAs.⁸ The Joint Protestors argue that, therefore, the link to work in HCAs is critical.

14. The Joint Protestors contend that Florida Gas has not demonstrated that the costs it seeks to recover were incurred to identify or assess pipeline integrity in HCAs or to take specific action to assure pipeline integrity in HCAs. The Joint Protestors request that the Commission direct Florida Gas to demonstrate that each of its claimed costs was incurred in connection with projects addressing HCAs, as required by Florida Gas' tariff.

15. The Joint Protestors also argue that it is improper for Florida Gas to directly assign the claimed costs only to the non-incremental system, given the fact that Florida Gas has not presented evidence that these costs are directly related to the non-incremental system or demonstrated it is capable of properly accounting for such direct assignment. The Joint Protestors assert that the direct assignment of many of the costs Florida Gas claims in its filing is not appropriate, and these costs should be allocated equally as shared costs between the FTS-1/SFTS and FTS-2 services pursuant to the 50/50 allocation methodology approved in the settlement and Florida Gas' tariff.

16. The Joint Protestors assert that as a general proposition, the Commission prefers direct assignment of costs to the facilities for which those costs were incurred, where possible, because direct assignment more closely matches cost incurrence with cost responsibility.⁹ The Joint Protestors further assert that, in cases where a pipeline cannot provide a rational explanation for assigning costs directly to particular customers, direct assignment is not appropriate, because it would require the customers to whom the costs are directly assigned to subsidize other customers who benefit from the incurrence of those costs. The Joint Protestors contend that where direct assignment is improper, the

⁸ Citing *Jurisdictional Public Utilities and Licensees, et al.*, Order on Accounting for Pipeline Costs, 111 FERC ¶ 61,501 at P 1 (2005), *reh'g denied*, 112 FERC ¶ 61,309 (2005), *appeal pending sub nom.*, *Interstate Natural Gas Ass'n of America v. FERC*, No. 05-1426 (D.C. Cir. Nov. 15, 2005).

⁹ Citing *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299 at P 190-192 (2004), *order on reh'g*, 112 FERC ¶ 61,170 at P 148-149 (2005).

Commission has approved the use of alternative cost allocation methodologies.¹⁰ The Joint Protestors further contend that Florida Gas has not shown that all of the costs at issue here are directly related solely to the non-incremental system or that it has properly established an accounting system for directly assigning these costs to non-incremental facilities. The Joint Protestors argue that many of the expenditures made by Florida Gas relate to both the non-incremental and the incremental facilities. The Joint Protestors assert that, for example, Florida Gas' filing does not reflect the fact that the St. Petersburg lateral was expanded by uprating as part of the Phase III expansion. The Joint Protestors further assert that to the extent the pipe replacement allowed Florida Gas to pig the St. Petersburg lateral, where facilities were added or uprated in the Phase III expansion, this cost relates to both the incremental and non-incremental systems and should not be directly assigned only to the non-incremental system.

17. The Joint Protestors contend that, similarly, the Jacksonville 16" Lateral was expanded during Florida Gas' Phase V expansion, which added looping that tied into the existing lateral to allow incremental volumes to flow on the entire lateral. The Joint Protestors further contend that the costs of the investigative dig therefore relate to both existing and incremental facilities. The Joint Protestors (at 8) assert that the costs of several other projects¹¹ should be allocated on a shared basis between FTS-1/SFTS and FTS-2 services because the lateral facility at issue was expanded as part of Florida Gas' Phase III expansion.

18. In its intervention, Seminole asserts that some of the costs included in the filing may be considered maintenance costs not capital costs. Seminole further asserts that it is not clear that costs related to hydrostatic testing, for example, are actually capital costs, since the Commission's policies call for costs incurred to inspect, test, and report on the condition of plant to determine the need for repairs or replacement to be charged to maintenance expense.

19. In its answer, Florida Gas includes a narrative response addressing the concerns of the Joint Protestors and Seminole and an appendix containing descriptions of the capital costs and related HCAs. Florida Gas asserts that all of the costs at issue were incurred in connection with projects addressing HCAs. Florida Gas further asserts that there is no merit to the Joint Protestor's proposal to allocate costs equally between FTS-1/ SFTS and FTS-2 services since such costs are directly related solely to the non-incremental system. Florida Gas contends that Seminole's argument concerning hydrostatic testing is without merit since recovery of such costs is specifically authorized by the settlement.

¹⁰ *Citing* 106 FERC ¶ 61,299 at P 190-192.

¹¹ Projects 721082, 721085, 721273, 721275, and 721310.

Discussion

20. Florida Gas must adequately support its filing and respond to the issues raised by the Joint Protestors and Seminole. In its answer, Florida Gas argues that the concerns of the Joint Protestors and Seminole have no merit and should be rejected. However, before we respond to the issues raised by the Joint Protestors and Seminole, we will provide the parties with the opportunity to respond to Florida Gas' answer within twenty (20) days of the date of this order. Therefore, the Commission accepts and suspends the proposed tariff sheets, to become effective April 1, 2007, subject to refund and conditions and further Commission review. Finally, the Joint Protestors' request that the Commission initiate a technical conference is denied as unnecessary.

Suspension

21. Based upon a review of the filing, the Commission finds that the proposed tariff sheet has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts the tariff sheet for filing, subject to refund, and suspends its effectiveness for the period set forth below, subject to the conditions set forth in this order.

22. It is the Commission's policy generally to suspend rate filings for the maximum period permitted by statute if preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.¹² It is also recognized however, that shorter suspensions may be warranted under circumstances in which suspension for the maximum period may lead to harsh and inequitable results.¹³ Such circumstances exist here where the pipeline is filing pursuant to its tariff provisions. Accordingly, the Commission will exercise its discretion to suspend the rates for a nominal period and permit the rates to be effective April 1, 2007, subject to refund and subject to the conditions and further review as set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) The tariff sheet listed in footnote 1 of this order is accepted and suspended, to become effective April 1, 2007, subject to refund and conditions and further review, as discussed in this order and the ordering paragraph below.

¹² See *Great Lakes Gas Transmission Co.*, 12 FERC ¶61,293 (1980) (five-month suspension).

¹³ See *Valley Gas Transmission, Inc.*, 12 FERC ¶61,197 (1980) (one-day suspension).

(B) The parties are permitted to file a response to Florida Gas' answer within twenty (20) days of the date of this order.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.