

120 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf South Pipeline Company, LP

Docket No. RP07-561-000

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

(Issued August 30, 2007)

1. On August 3, 2007, Gulf South Pipeline Company, LP (Gulf South), filed tariff sheets¹ proposing to establish a new “Firm In-the-Path Service” scheduling priority applicable to shippers that have firm capacity on new transmission facilities that Gulf South has constructed, proposed, or been authorized to construct,² and to create four new pooling areas with corresponding paper pooling points on its new expansion system. Gulf South is proposing that the tariff sheets be effective September 3, 2007. For the

¹ First Revised Sheet No. 716, Fourth Revised Sheet No. 804, Third Revised Sheet No. 805, Second Revised Sheet No. 805A, Second Revised Sheet No. 1807, Fourth Revised Sheet No. 1810, Original Sheet No. 1810A, and Third Revised Sheet No. 1811, to its FERC Gas Tariff, Sixth Revised Volume No. 1.

² Gulf South states that on June 23, 2006, in Docket No. CP06-127-000, it was authorized to construct a pipeline from Carthage, Texas to Keatchie, Louisiana, which went into service in December 2006; on June 18, 2007, in Docket No. CP06-446-000, *et al.*, *Gulf South Pipeline Company, LP, et al.*, 119 FERC ¶ 61,281 (2007) (*Gulf South*), it received a certificate of public convenience and necessity for its East Texas to Mississippi Expansion Project from Desoto Parish, Louisiana to Simpson County, Mississippi; and on December 11, 2006, in Docket No. CP07-32-000, it filed an application to construct the proposed Southeast Expansion Project from Simpson County, Mississippi to Choctaw County, Alabama, which is currently pending before the Commission (the three projects are collectively referred to by Gulf South as the “Expansion Facilities”).

reasons discussed below, the Commission accepts and suspends the revised tariff sheets to become effective the earlier of a date established by a subsequent order or February 3, 2008, subject to refund and conditions and further review.

The Instant Filing

2. Gulf South is proposing to modify its tariff to establish Firm In-the-Path Service scheduling rights for firm transportation customers that hold capacity on the Expansion Facilities.³ Gulf South states that it is not proposing to implement Firm In-the-Path Service scheduling on its historical system because that system's reticulated, bi-directional operations still render in-the-path scheduling operationally infeasible. Gulf South asserts that its proposal to provide Firm In-the-Path Service scheduling only on the non-reticulated Expansion Facilities is consistent with Commission decisions approving tariff proposals providing in-the-path scheduling rights only on non-reticulated discrete portions of a pipeline system, without providing such rights on reticulated portions of the pipeline's system. Gulf South states that it would continue to schedule capacity on its historical system based on non-pathed primary point pairs. Gulf South further states that to the extent a customer holds firm transportation capacity on both the Expansion Facilities and the historical system, Firm In-the-Path Service scheduling rights will apply only to capacity scheduled on the Expansion Facilities, and will not apply to capacity scheduled on Gulf South's historical system. Gulf South asserts that this distinction will ensure that customers transporting gas on the historical system are not placed at a competitive disadvantage with respect to Expansion Facility shippers who also may elect to schedule capacity on the historical system.

3. Gulf South states that it is proposing to add the terms "Firm In-the-Path Service" and "Expansion Facilities"⁴ to the definitions section of its General Terms and Conditions (GT&C). Gulf South further states that it is also proposing to amend section 11.4 of its GT&C to create a new Firm In-the-Path Service scheduling priority for firm transportation service only on the Expansion Facilities. Gulf South states that, currently, it has three levels of scheduling priority for (i) Firm Primary Service, (ii) Firm Secondary

³ Gulf South states that it is not proposing to implement segmentation on the Expansion Facilities at this time. Gulf South further states that it does intend to develop a segmentation proposal for the Expansion Facilities until after the Southeast Expansion Project goes into service, but prior to the in-service date of the Gulf Crossing Project in Docket Nos. CP07-398-000, *et al.* Gulf South asserts that this time period will provide Gulf South actual operating experience upon which to base its segmentation proposal.

⁴ Gulf South proposes that "Expansion Facilities" be defined as "the pipeline and associated facilities associated with Gulf South Index Nos. 816-1, 816, and 817, such facilities extending from the Carthage, Texas area to Transco Station 85 in Choctaw County, Alabama."

Service, and (iii) Firm Supplemental Service. Gulf South maintains that, under the proposed tariff sheets, the new scheduling priority, on the Expansion Facilities, would be as follows: (i) Firm Primary Service, (ii) Firm In-the-Path Service, (iii) Firm Secondary Service, and (iv) Firm Supplemental Service. Gulf South further maintains that the Firm In-the-Path Service scheduling priority is applicable only when scheduling mainline capacity on the Expansion Facilities under firm service agreements that specifically contracted for Expansion Facilities capacity. Gulf South states that, therefore, to qualify for such scheduling priority, one point must be a primary point with "Available Quantities"⁵ and the other point must be a supplemental point⁶ located either (i) on the Expansion Facilities between the contracted primary point pair locations, or (ii) off the Expansion, only for such portions of the capacity scheduled on the Expansion Facilities between the primary point and the point at which the capacity is delivered to or received from the historical system. Gulf South maintains that all capacity utilized on the Expansion Facilities must have Available Quantities. Gulf South further maintains that any expansion shipper with primary receipt points on the historical system will be deemed to enter the Expansion Facilities in the vicinity of Carthage Junction and will have the same Firm In-the-Path rights on the Expansion header system as those expansion shippers with primary receipt points on the Expansion header system. Gulf South states that, if a customer selects a secondary point not located on the Expansion Facilities, the customer will be subject to the scheduling rules applicable to the historical system for the capacity utilized on that system.

4. Gulf South contends that its proposal is consistent with Commission policy regarding in-the-path scheduling. Gulf South asserts that allowing in-the-path scheduling only on its Expansion Facilities is consistent with Commission decisions authorizing pipelines to implement in-the-path scheduling only on discrete non-reticulated portions of a pipeline's system. Gulf South further asserts that its Expansion Facilities have a different physical configuration than those of the reticulated, bi-directional historical system and will be operated in a different manner, and its proposal recognizes the

⁵ "Available Quantities" are defined in Gulf South's current tariff provisions to be the applicable point or contract MDQ, MSQ, MDIQ, or MDWQ as established in the service agreements or, for interruptible services, the quantities nominated and confirmed, divided by (24) twenty-four and multiplied by the remaining hours in the day plus the Elapsed-Prorated-Scheduled Quantity, if any.

⁶ "Firm Supplemental Service" is defined in Gulf South's tariff as "the scheduling priority for service under firm service agreements where either (1) both points are supplemental points; or (2) both points are primary points without Available Quantities; or (3) one point is a supplemental point and the other point is a primary point without Available Quantities."

specific operational characteristics of Gulf South's historical system and Expansion Facilities. Gulf South states that, consistent with Commission policy, on the Expansion Facilities, a shipper using secondary points within its primary path will be granted a scheduling priority over a shipper using a secondary point outside of its primary path and, under its current tariff, shippers have the ability to change primary points, subject to the availability of capacity. Gulf South asserts that this proposal will not affect any rights of existing shippers on Gulf South's historical system or place shippers using the historical system at either a competitive advantage or disadvantage.

5. Gulf South is also proposing to modify Rate Schedule PS to add four new pooling areas, each with one paper pooling point, to its system. Gulf South states that it currently has 11 pooling areas on its historical system and that each pooling area contains one paper pooling point. Gulf South further states that the new pooling areas will be located on the expansion system, and will allow expansion and existing shippers to manage supplies at the new pools under Rate Schedule PS.⁷ Gulf South states that, due to the higher operating pressures on the Expansion Facilities, Gulf South is proposing to create discrete pools for its Expansion Facilities. Gulf South further states that the new pooling areas and paper pooling points will ensure that shippers on the Expansion Facilities have the same ability to pool gas receipts as shippers on the historical system.

Public Notice, Interventions, Protests and Answer

6. Public notice of Gulf South's filing was issued on August 15, 2007. Interventions 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 (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 the proceeding or place additional burdens on existing parties. BP American Production Company and BP Energy Company (BP), Merrill Lynch

⁷ Gulf South's new pooling areas include the following: Pool Area 16, located in Panola County, Texas, consisting of Station Location Nos. 22116, 21921, 21922, and 21923; Pool Area 17, located in Ouachita Parish, Louisiana, consisting of Station Location Nos. 22117, 22095, 22106, 22107, 22110, 22111, and 22133; Pool Area 18, located in Madison Parish, Louisiana, consisting of Station Location Nos. 22118, 22113, and 22112, and; Pool Area 19, located in Simpson County, Mississippi, consisting of Station Location Nos. 22118, 22129, 22128, and 22108.

Commodities, Inc., and ConocoPhillips Company (ConocoPhillips)⁸ filed protests. Gulf South filed an answer to the protests.⁹

7. The protestors generally contend that the Commission should reject Gulf South's proposal as unduly discriminatory or require Gulf South to offer in-the-path service to existing system shippers. In the alternative, BP and ConocoPhillips request a technical conference to examine how an in-the-path scheduling priority and segmentation rights can be provided to all shippers on a non-discriminatory basis. The protestors argue that, by proposing a higher scheduling priority and new pooling points for expansion shippers only, Gulf South's proposal is unduly discriminatory and preferential. The protestors assert that, despite Gulf South's assertions that the proposed Firm In-the-Path Service scheduling priority only applies to capacity on Expansion Facilities, the specific tariff language proposed by Gulf South appears to grant expansion shippers a scheduling priority for their use of Gulf South's existing system as well as new pooling points.

8. The protestors argue that the proposed definition of "Firm In-the-Path Service" is ambiguous and should be clarified. They request the addition of language to the proposed tariff language to clarify that expansion shippers will have a higher scheduling priority on the expansion system only, and not on the existing system. The protestors propose the addition of the following emphasized language to the proposed tariff language:

where one point is a primary point *on Expansion Facilities* with Available Quantities and the other point is a supplemental point located either (i) on the Expansion between the contracted primary point pair locations *on Expansion Facilities* or (ii) off the Expansion, only for such portions of the capacity scheduled on the Expansion Facilities between the primary point *on Expansion Facilities* and the point *on Expansion Facilities* at which the capacity is delivered to or received from the non-Expansion system. All capacity utilized on the Expansion must have Available Quantities.

⁸ ConocoPhillips states that it agrees with the arguments made by BP, and adopts and incorporates-by-reference BP's protest and request for technical conference.

⁹ The Commission's Rules of Practice and Procedure do not permit answers to protests (18 C.F.R. § 385.213(a)(2)(2007)). However, the Commission finds good cause to admit Gulf South's answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record.

9. The protestors further argue that, even if their requested clarification is made, the in-the-path priority of the scheduling of receipts in the vicinity of Carthage Junction on Gulf South's existing system grants expansion shippers preferential access to supplies. The protestors also contend that Gulf South's proposal to allow expansion shippers the right to backhaul service between points on the expansion system, "regardless of their actual path relationship," without granting similar rights to existing shippers is unduly discriminatory and preferential.

10. BP argues that Gulf South's proposal establishing four new pooling points is intended to enhance service to expansion shippers, while potentially degrading service to existing shippers. The protestors assert that the Expansion Facilities will likely cause changes in current gas flows on Gulf South's existing system to the detriment of existing shippers. The protestors assert that Gulf South will utilize the Expansion Facilities to make deliveries for existing shippers because such facilities will cause a major change in gas flows. The protestors contend that such an impact will cause deliveries into Kosciusko, a popular delivery point for existing shippers, to be made by gas supplies transported by the Expansion Facilities. The protestors assert that Gulf South's Expansion Facilities should not be carved out for special operational preferences, particularly where, as here, such facilities will be operated on an integrated basis with Gulf South's existing system. The protestors further assert that Gulf South's existing shippers, with similar receipt and delivery points, are entitled to the same scheduling priorities and segmentation rights as expansion shippers.

11. The protestors argue that Gulf South should be required to offer in-the-path scheduling priority to existing shippers because the limitation of such a term and condition to expansion shippers is unduly discriminatory, unjust, unreasonable, and unnecessary. BP asserts that Gulf South has not demonstrated that its existing system cannot accommodate in-the-path scheduling priorities. BP asserts that Gulf South has provided no valid reason that such scheduling priorities and related segmentation should only be limited to the Expansion Facilities. BP further asserts that, although Gulf South suggests that such rights cannot be provided to existing system shippers because of the reticulated and bi-directional nature of the Gulf South existing system, it is not clear that its existing system or the majority of the existing system is still a reticulated, bi-directional system. BP argues that large discrete portions of Gulf South's system appear to now perform like a long-line pipeline flowing gas from west to east and other discrete portions, including its 500,000 Mcf/d capacity on its affiliate, Texas Gas Transmission, LLC (Texas Gas), have a uni-directional north-south flow. BP further contends that, with the significant changes to the Gulf South system resulting from the number of mainline expansions occurring on Gulf South plus the acquisition of 500,000 Mcf per day of capacity on Texas Gas from its interconnect at Lonewa to southeast Louisiana, it would be unduly discriminatory and preferential to deny the existing shippers on Gulf South's existing system the same in-the-path scheduling priorities that Gulf South now proposes to offer to expansion shippers.

12. BP contends that Gulf South appears to be limiting its in-the-path scheduling proposal to expansion shippers because Gulf South asserts that it can charge existing shippers for services that would otherwise qualify for segmentation under Commission policy. BP asserts that, currently, an existing shipper can change the points to which it can deliver; however, for the shipper to change to a point within its path, Gulf South maintains that it can assess a supplemental charge on that shipper as if it were providing an additional backhaul service. BP argues that the segmenting of the expansion system would give expansion shippers the ability to segment their contracts, not incur any additional charges, and receive priority scheduling.

13. The protestors argue that Gulf South's proposal would result in undue discrimination among the existing and expansion shippers in a manner contrary to the Commission's decision in *Gulf South* on the East Texas to Mississippi Expansion Project certificate. The protestors assert that the proposal disregards the fact that the Commission has already determined that because the majority of the contracted-for capacity is to be received in Carthage in Zone 1 and delivered to delivery points in Zone 3, the expansion shippers will pay the same rate as the existing shippers for service and will not pay a lower incremental rate. The protestors further assert that given that shippers paying the same maximum recourse rate for flowing gas from the same or similar receipt and delivery points would have substantively different rights under Gulf South's proposal, the Commission should reject it. The protestors contend that large portions of Gulf South's existing system are in fact no longer bi-directional and there are discreet flow paths on the existing system which should now qualify for an in-the-path scheduling priority or perhaps on Gulf South's overall system an in-the-path scheduling priority should be based on receipt and delivery points. The protestors conclude that expansion and existing shippers with similar receipt and delivery points should have similar in-the-path scheduling priorities. The protestors argue that the Commission should require Gulf South to demonstrate why in-the-path scheduling priority should not be available on its existing system.

14. The protestors state that the Commission noted in *Gulf South* that the Expansion Facilities include new or upgraded existing pipeline interconnections and the expansions are mainline expansions. The protestors assert that, if the expansion shippers are allowed the proposed in-the-path scheduling priority, they will have an advantage because they will be better able to react to constraints on the existing system than existing shippers. The protestors further assert that shippers paying the same rate for the same service should not receive disparate treatment simply because one shipper contracts for service on a mainline expansion/loop that the pipeline has decided to treat differently than the rest of its system. The protestors also argue that Gulf South's proposal is an attempt to circumvent the Commission's finding in *Gulf South* that all shippers, including existing shippers, have equal rights to the expansion points on a secondary basis. The protestors contend that Gulf South's proposal supersedes such secondary rights because only

expansion shippers will have in-the-path scheduling rights and thus will always have priority over existing shippers wanting to use an expansion point as a secondary point.

15. The protestors argue that this type of scheduling priority appears to be what Gulf South had proposed in its *pro forma* negotiated rate letter agreements that shippers opposed and Gulf South revised in Docket No. RP07-179.¹⁰ The protestors assert, in that proceeding, Gulf South's proposal initially (1) did not require separate Maximum Daily Quantities (MDQs) for each path between a specific primary receipt point and a specific primary delivery point, and (2) allowed additional eligible primary points to be listed in an agreement. The protestors further assert that, since such flexibility is not provided to recourse rate and discount rate shippers on Gulf South's system, following protests by shippers of the undue discriminatory nature of such provisions, Gulf South revised its proposed *pro forma* negotiated rate agreement to clarify that a negotiated rate shipper may not simply list multiple primary receipt and delivery points in the exhibits of its negotiated rate letter agreement along with a total contract MDQ and not specify the contract MDQ for each primary point pair. The protestors contend that, under the proposal here, expansion shippers will have the right to designate points that have a priority less than primary point priority but greater than secondary point priority and will receive different terms and conditions of service and greater flexibility than existing system shippers.

16. The protestors contend that to the extent the Commission does not summarily reject Gulf South's proposal to limit the in-the-path priority only to expansion shippers or, alternatively, require the in-the-path scheduling priority to apply to both existing and expansion shippers, then the Commission should clarify that the in-the-path priority cannot apply to points that are either on the existing system or which interconnect with the existing system. The protestors assert that it is unclear what pipeline interconnections Gulf South considers as Expansion Facilities and which are considered existing facilities. The protestors further assert that Gulf South should clarify what facilities are Expansion Facilities for purposes of scheduling priority. The protestors assert that the Commission should also clarify that an expansion shipper cannot have in-the-path priority along the expansion until it reaches the existing system point. The protestors argue that any in-the-path priority should not allow the expansion shipper to get closer to an existing system point, particularly when existing shippers do not have similar rights.

17. Finally, BP argues that while Gulf South's underlying rationale that only expansion shippers should have in-the-path scheduling priorities because such the flow paths on Expansion Facilities are uni-directional and existing shippers will not be harmed is mistaken. BP asserts that, the existing system *now* has discrete flow paths on which existing shippers should have in-the-path scheduling and segmentation rights and expansion shippers will access receipt and delivery points on Gulf South's existing

¹⁰ *Gulf South Pipeline Company, LP*, 118 FERC ¶ 61,262 (2007), *reh'g pending*.

system. BP further asserts that the expansion shippers would have higher scheduling priority over existing shippers to existing points and interconnects that compete with existing service. BP contends that the Expansion Facilities will change the gas flows on Gulf South's existing system in a manner which will adversely affect existing shippers, if expansion shippers are allowed to take advantage of such operational changes in a manner not proposed for existing shippers. BP asserts that a record on Gulf South's flow paths and the effect on existing shippers needs to be developed to demonstrate how in-the-path scheduling priorities and segmentation can be applied in a non-discriminatory manner to both existing and expansion shippers. BP and ConocoPhillips request that the Commission establish a technical conference to examine these issues and to respond to data requests, due to the technical nature of these issues, in advance of the technical conference.

18. In its answer, Gulf South asserts that it will treat customers using the same points on the historical system in a consistent manner. Gulf South contends that the protestors' assertions concerning tariff revisions to allow in-the-path scheduling on other portions of its system have failed to meet the burden of proof required by NGA section 5. Finally, Gulf South argues that the other challenges raised in the protests are meritless.

Discussion

19. The Commission accepts and suspends the proposed tariff sheets, to become effective the earlier of a date established by a subsequent order or February 3, 2008, subject to refund and conditions and further Commission review. The Commission finds that Gulf South's answer does not fully address the protestors' concerns. The Commission directs Gulf South, within twenty days of the date of this order, to provide further information and explanations with adequate support necessary to fully address the issues raised by the protestors. For example, Gulf South must respond to the protestors' assertions that the in-the-path scheduling priority is operationally feasible on portions of Gulf South's historical system. More information regarding these matters is necessary and will allow the protestors, other parties, and the Commission to fully understand and thoroughly analyze Gulf South's filing. The Commission will permit parties ten days from the date Gulf South's response is filed to file reply comments. Finally, the requests that the Commission initiate a technical conference are denied as unnecessary at this time.

Suspension

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

21. 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.¹¹ 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.¹² Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to suspend the tariff sheets for the maximum period and permit the tariff sheets to be effective the earlier of a date established by a subsequent order or February 3, 2008, subject to refund and 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 sheets listed in footnote No. 1 of this order are accepted and suspended, to become effective the earlier of a date established by a subsequent order or February 3, 2008, subject to refund and conditions and further review, as discussed in this order.

(B) Within twenty days of the date this order, Gulf South shall file further information and explanations with adequate support necessary to fully address the issues raised by the protestors, as discussed in the body of this order.

(C) Parties may file comments on Gulf South's filing required by Ordering Paragraph (B) above within 10 days from the filing date of that filing.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶61,293 (1980) (five-month suspension).

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