

123 FERC ¶ 61,263
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 13, 2008

In Reply Refer To:
Southern Natural Gas Company
Docket No. RP01-205-016

Southern Natural Gas Company
Post Office Box 2563
Birmingham, AL 35202-2563

Attention: Patricia S. Francis
Senior Counsel

Reference: Master Service Agreement No. FSNG284

Dear Ms. Francis:

1. On May 14, 2008, Southern Natural Gas Company (Southern) filed Master Service Agreement No. FSNG284 (contract) under Southern's Rate Schedule FT. This contract is a single service agreement between Southern and Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company and Southern Power Company (SCS Affiliates), and is dated March 1, 2006. Southern requests that the Commission accept and approve this contract as a conforming agreement.
2. Southern explains that, for ease of administration, several existing firm transportation agreements between Southern and the SCS Affiliates have been combined into one Master Agreement, with no change in the underlying terms of service. Southern asserts that this arrangement is appropriate for these affiliated utilities which have long operated as an integrated public utility electric service through the joint commitment and

economic dispatch of their generating resources to meet their collective load obligations.¹ Under this form of operation the firm capacity on any given day may be nominated by the agent (SCS) and used to transport gas to one or more of the generating facilities of the affiliates comprising the shipper who are the buyers of and hold title to, the gas shipped under this contract.

3. Southern asserts that the contract is a conforming service agreement because it reflects all of the substantive terms of the *pro forma* Service Agreement and does not provide any additional or different terms of service that are unavailable to other firm shippers. Southern explains that the SCS Affiliates, acting through their agent, are the Shippers under the contract and that they have the same flexibility as all other firm shippers under Southern's tariff. Southern asserts that the only atypical feature of the instant contract is that SCS is acting as agent on behalf of all of the SCS Affiliates, which are defined individually and collectively as the "Shipper" under the contract. Southern explains that the SCS Affiliates are jointly and severally liable for the obligations of the Shipper under the contract.

4. Southern submits a red-lined version of the contract to identify each deviation from the *pro forma* service agreement, but asserts that the only arguable differences between the contract and its *pro forma* service agreement are references to SCS "as agent for" and the fact that "Shipper" under the contract is defined as the named SCS affiliates. Southern argues that these are not material deviations because they do not change the terms under which service is provided. Southern also provides a table listing what it describes as minor deviations between the contract and its form of service agreement. For consistency purposes, the Commission will use this table and its numbers to reference these specific deviations.

5. Southern requests that should the Commission determine the contract is non-conforming, the Commission accept and approve the contract as a nondiscriminatory, nonconforming, agreement with all necessary waivers so that it can be effective according to its terms. Southern states that it will thereafter file a revised tariff sheet listing that agreement as nonconforming as required by Section 154.112(b) of the Commission's regulations.

6. Public notice of the instant filing was issued on May 16, 2008. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. §385.214 (2007)), all timely filed motions to intervene

¹ This integrated operation is governed by the Southern Company System Intercompany Interchange Contract, which is a rate schedule on file with the Commission pursuant to the Federal Power Act. *See* Southern Company Services, Inc., Second Revised Rate Schedule FERC Number 138.

and any motions to intervene out-of-time filed before the issuance date of this order are granted. The Alabama Municipal Distributors Group, the Austell Gas System, and The Southeast Alabama Gas District (Municipals) filed comments requesting that the Commission accept the subject contract subject to conditions and subject to additional procedures such as a technical conference to ensure that Southern will provide the same arrangements for similarly situated firm shippers as it does for the SCS affiliates.

7. Southern submits an agreement between it and SCS, who is acting as agent for several generating affiliates, and requests that the Commission find that it conforms with Southern's *pro forma* service agreement. While the Commission agrees with the assertions of Southern that such an arrangement is convenient for the affiliated utilities which are jointly and severally liable for the demand charges of Southern and hold title to the gas transported under this contract, the Commission must examine the contract pursuant to its policies as set forth below.

8. Section 154.1(d) of the Commission's regulations requires the pipeline to file a contract which materially deviates from the pipeline's form of service agreement.² In *Columbia Gas Transmission Corporation (Columbia)*,³ the Commission clarified that a material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties. Such a filing enables the Commission and interested parties to determine whether the contract with the material deviations complies with the requirements of the Natural Gas Act (NGA), including the prohibition of undue discrimination.⁴ Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination. The Commission finds that the material deviations at issue here fall into both categories, as more fully discussed below.⁵

9. Upon review of the instant contract, the Commission finds that Southern's use of a single Master Agreement for several shippers constitutes a material deviation from its *pro forma* service agreement. Southern identifies several changes made to the contract in

² 18 CFR §154.1(d) (2007). See also 18 CFR § 154.112 (b) (2007) which states in pertinent part, "[c]ontracts for service pursuant to part 284 of this chapter that deviate in any material aspect from the form of service agreement must be filed."

³ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001). (*Columbia*)

⁴ *Columbia* at p. 62,004.

⁵ See *ANR Pipeline Co.*, 97 FERC ¶ 61,252, at pp. 62,115-16 (2001).

order to accommodate its master contract status. First, Southern notes several additions or changes to reflect the fact that SCS was an agent and that the new agreement was superseding other agreements.⁶ Southern states that these changes reflect Southern's change in contracting, and the conversion of contracts of more limited scope into master contracts.⁷ At issue in the instant proceeding is whether this single master contract under which multiple shippers are able to obtain service is consistent with Southern's *pro forma* service agreement. The Commission finds that neither Southern's tariff, nor the *pro forma* service agreement clearly offer this option as a generally available tariff provision or set forth the conditions that must be met for shippers to qualify for this option. Thus, other shippers forming a business model such as SCS and its affiliates do not appear to be able to demand service on the same terms as SCS and its affiliates from Southern. As discussed above, the Commission finds that this arrangement, under the conditions presented in this proceeding, is acceptable and convenient for the parties to the contract. However, the very fact that this type of arrangement does have value for eligible shippers requires that it be offered in a not unduly discriminatory manner through generally applicable provisions in the pipeline's tariff and *pro forma* form of service agreement.⁸ Therefore, the Commission directs that Southern either file to remove this feature from the contract at issue here no later than 30 days from the issuance of the instant order or file a revised *pro forma* service agreement, pursuant to section 4 of the NGA, that reflects these features so that it may be offered to all eligible shippers in a manner that is not unduly discriminatory as part of its generally applicable tariff.

10. Second, Southern identifies several changes that it deems non-substantive, which includes minor word changes.⁹ The Commission finds that these modifications do not constitute material deviations from the *pro forma* service agreement, because they do not affect the substantive rights of the parties.¹⁰

⁶ Deviation Nos. 1, 2, 3, 4 and 12.

⁷ Southern asserts that the Master Service Agreement was introduced as part of its SoNet Premier system. *Southern Natural Gas Co.*, 86 FERC ¶ 61,334 (1999).

⁸ *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,334, at 62,029-30 (2001).

⁹ Deviation Nos. 5, 6, 8, and 9.

¹⁰ Deviation Nos. 7 and 10 were blank spaces to be filled, which were appropriately filled, thus under Commission policies as described above they do not constitute impermissible material deviations from the *pro forma* service agreement.

11. Lastly, Southern asserts that it did not include sections 8.7 and 8.9 of the *pro forma* agreement in the contract because they were not applicable to SCS.¹¹ Southern states that section 8.7 provides for firm contract demand reductions under certain circumstances. Southern explains that section 8.7 was part of a settlement that was only applicable to certain local distribution companies, and that the provision would only be applicable to them if elected by the shipper.¹² Southern asserts that, because SCS and its affiliates are not local distribution companies, section 8.7 does not apply to them. However, the tariff does not contain any express provision which limits eligibility for the section 8.7 contract demand reduction option to local distribution companies. However, even assuming that this means SCS and its affiliates must be included in the class of shippers eligible for the section 8.7 contract demand reduction option, according to terms of section 8.7 of the *pro forma* service agreement, the provision is an option which the shipper may or may not choose to include in its service agreement. Therefore, the fact that this section is absent from the contract does not, by itself, render the contract non-conforming. It may be that the parties to the contract did not wish to exercise this right. However, given that section 8.7 of the *pro forma* service agreement appears to have originated in a settlement provision applicable only to local distribution companies, but the current tariff does not reflect such a limit, the Commission directs Southern to file revised tariff sheets to clarify the availability of this contract reduction right, and the types of shippers that may qualify for this right.

12. In addition, Southern states that the omission of section 8.9 (Deviation No. 11) from the contract is appropriate because that section is only applicable if shippers were using off-system capacity, which is not the case under this contract. The Commission finds that section 8.9, of the *pro forma* service agreement is identified in the *pro forma* service agreement to be used only “If Applicable.” Since it is not applicable to the instant contract, the Commission does not find that the instant contract materially deviates from the *pro forma* service agreement because it is not present in the contract.

13. Lastly, given the action taken in the instant order, the Commission finds that the technical conference requested by the Municipals is not necessary.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹¹ Deviation No. 11.

¹² Southern cites the March 15, 1995 Stipulation and Agreement approved by the Commission in *Southern Natural Gas Co.*, 72 FERC ¶ 61,322 (1995).