126 FERC ¶ 61,179
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf South Pipeline Company, LP Docket No. RP09-301-000

ORDER ACCEPTING REVISED TARIFF SHEETS, SUBJECT TO CONDITIONS

(Issued February 26, 2009)

1. On January 27, 2009, Gulf South Pipeline Company, LP (Gulf South) filed revised tariff sheets[1] proposing modifications to its tariff in compliance with the capacity release requirements promulgated by Commission Order Nos. 712 and 712-A.[2] Gulf South states that it is also proposing additional modifications pursuant to section 4 of the Natural Gas Act (NGA) to clarify and revise the bidding requirements for capacity release transactions associated with an asset management arrangement (AMA) or a state-approved retail open access program. The tariff sheets listed in the Appendix are accepted effective March 1, 2009, subject to further modifications as discussed below.

Background

2. In Order Nos. 712 and 712-A, the Commission removed the maximum rate ceiling on capacity releases of one year or less which take effect within one year after the pipeline is notified of the release. The Commission also modified its regulations in order to facilitate AMAs by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. The Commission further clarified that its prohibition on tying does not apply to conditions associated with gas inventory held in storage for releases of firm storage capacity. Finally, the Commission waived its prohibition on tying and bidding requirements for capacity releases made as part of a

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[1] *See* Appendix.

[2] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008) (Order No. 712).

state-approved retail access program. Gulf South proposes several changes to the capacity release provisions in Section 29 of its General Terms & Conditions (GT&C) to reflect the various changes in the capacity release regulations made by Order Nos. 712 and 712-A.

Summary of the Proposal

3. Gulf South proposes numerous modifications to section 29 of the General Terms and Conditions (GT&C) of its tariff. According to Gulf South, these changes incorporate the new capacity release rules promulgated pursuant to Order No. 712, including (i) removal of the maximum rate cap on certain short-term releases of firm transportation capacity; and (ii) exemption of certain releases from bidding requirements. Gulf South also asserts that it has deleted some provisions that were redundant or obsolete in light of the new language incorporated to effectuate Order No. 712.

4. In addition, Gulf South states that it has taken this opportunity to further clarify its capacity release provisions by requiring that release notices identify the role of a Prearranged Customer (i.e., whether it is an Asset Manager, Retail Access Marketer, or other entity) and include any other information not already listed that is necessary to describe the capacity release transaction. Lastly, Gulf South asserts that it proposes several ministerial corrections to its capacity release provisions.

Notice and Comments

5. Public notice of Gulf South's filing was issued on January 29, 2009. Interventions and protests were due February 9, 2009, as provided in section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214,[4] all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Atmos Energy Corporation (Atmos) and the United Municipal Distributors Group (UMDG), filed comments. On February 16, 2009, Gulf South filed reply comments to the issues raised by Atmos and UMDG. While the Commission's regulations do not permit the filing of answers to protests,[5] the Commission grants Gulf South's request for leave to answer because it provides additional information that will aid in our decision making process.

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[3] 18 C.F.R. § 154.210 (2008).

[4] 18 C.F.R. § 385.214 (2008).

[5] 18 C.F.R. § 385.213 (2008).

Discussion

6. The Commission finds that Gulf South's proposed tariff revisions are generally consistent with the Commission's capacity release policies and Order Nos. 712 and 712-A. Accordingly, the Commission accepts Gulf South's proposed tariff sheets to be effective March 1, 2009, subject to the conditions discussed below.

7. In its comments, UMDG requests clarification regarding two of the tariff provisions that Gulf South proposes to comply with Order No. 712. First, section 29.1(B)(1) of Gulf South's GT&C lists the information that a releasing shipper must include in its notice to Gulf South that it desires to release capacity. Gulf South proposes to add subsections (k) through (m) to section 29.1(B)(1), requiring the releasing shipper to state whether the release is to an asset manager, the asset manager's delivery or purchase obligation to the releasing shipper, and whether the release is to a retail access marketer. UMDG points out that, by its terms, section 29.1(B)(1) applies to all releases, both those subject to bidding and those exempt from bidding. However, some of the information that section 29.1(B)(1) requires the releasing shipper to include in its notice are only relevant to biddable releases, including for example section 29.1(B)(1)(g) requiring the releasing shipper to specify a bid evaluation method. UMDG requests clarification that a releasing shipper engaging in a capacity release that is exempt from bidding, such as a release to an asset manager, is not required to provide information related to bidding in its notice to Gulf South pursuant to Section 29.1(B)(1).

8. Gulf South's proposed revision to the introductory paragraphs of section 29.1 accurately sets forth the exemptions from bidding contained in section 284.8(h)(1) through (4) of the revised regulations adopted by Order Nos. 712 and 712-A. Therefore, we interpret section 29.1(B) as permitting a releasing shipper giving the pipeline notice of a non-biddable release to state that the items listed in section 29.1(B)(1) relating to biddable releases are not applicable.

9. Second, Gulf South proposes to revise section 29.1(B)(3) of its GT&C to state that it will post the "terms and conditions of all releases" on its web site not later than the first nomination after the release transaction commences. UMDG requests clarification that Gulf South's obligation to post the terms and conditions of all releases is limited and that commercially sensitive information about asset management agreements will remain confidential. UMDG is correct that in Order No. 712 the Commission clarified that it did not intend to require disclosure of commercially sensitive details of an AMA, such as the pricing of any sales of the gas commodity and any profit sharing arrangements between the releasing and replacement shipper. Order No. 712 only requires pipelines to post (1) the fact that a release is to an asset manager, and (2) the delivery or purchase obligation of the AMA, in addition to the information required to be posted for all

capacity releases.[6] Consistent with that fact, Gulf South's revised section 29.1(B)(1) only requires a releasing shipper making a release to an asset manager to provide that information to Gulf South. We interpret Gulf South's revised section 29.1(B)(3) as only providing that Gulf South will post the information which the releasing shipper provides to it pursuant to section 29.1(B)(1). Thus, we find that, consistent with Order No. 712, section 29,1(B)(3) does not require Gulf South to post commercially sensitive information about the asset management aspects of such a release.

10. Accordingly, we find that Gulf South's proposed revisions to section 29.1(B)(1) and (3) comply with the Commission's decisions in Orders 712 and 712-A.

11. In its comments, Atmos asks the Commission to require that Gulf South include provisions allowing the "flow-through" of discounts from releasing shippers to their asset managers. For example, Atmos states that it is unclear whether and to what extent Gulf South will permit a releasing shipper's asset manager to pay the same discounted usage and fuel rates that the pipeline provided to the releasing shipper. Atmos suggests that Gulf South clarify or propose a policy allowing the asset manager/replacement shipper to receive the same discounted usage and fuel rates applicable to the releasing shipper, particularly since a general refusal to allow "pass-through" of such discounts would impede asset management transactions, contrary Order Nos. 712 and 712-A. In its answer, Gulf South argues that Order No. 712 did not address the flow-through of discounted rates from the releasing shipper to an asset manager and thus, Atmos' proposal is outside the scope of this proceeding.

12. The issue of whether a pipeline must provide an asset manager/replacement shipper the same discounted or negotiated usage and fuel rates as it has given the releasing shipper only arises to the extent that the pipeline has provided such discounts or negotiated rates to the releasing shipper. The Commission does not permit pipelines to offer discounts below their minimum rates, which are based on the variable costs allocated to the service to which the rate applies.[7] Therefore, a pipeline such as Gulf South using a Straight-Fixed Variable (SFV) rate design cannot discount its usage charges, because those usage charges only contain variable costs. The Commission has also held that pipelines may not discount their fuel retention rates, because fuel and lost and unaccounted for (LAUF) gas are variable costs.[8] Thus, the issue of the "flow-through" of discounted usage and fuel charges to an asset manager/replacement shipper does not arise on Gulf South's system. However, pipelines with negotiated rate authority

[6] Order No. 712 at P 175.

[7] 18 C.F.R. § 284.10(c)(4)(ii) and (5)(ii)(A) (2008).

[8] *Mississippi River Transmission Corp.,* 98 FERC ¶ 61,119 (2002).

may enter into negotiated rate agreements which are not bounded by their tariff maximum and minimum rates. Gulf South has negotiated rate authority, and thus does have authority to enter into negotiated rate agreements providing for fuel retention rates (and usage charges) that vary from those in its tariff.

13. The Commission has held that the usage charge to be paid by the replacement shipper is a matter between the replacement shipper and the pipeline, and the releasing shipper cannot bind the pipeline to accept any particular usage charge from the replacement shipper. Therefore, the pipeline "generally should not be required to give the replacement shipper the same discount" of the usage charge that it gave the releasing shipper.[9] In *El Paso*, the Commission explained that:

> the discount in the usage charge negotiated between the releasing shipper and El Paso is related only to the contract between the releasing shipper and the pipeline and to the transportation services actually performed by El Paso for the releasing shipper under that contract and is not relevant to other contracts and services to other shippers, including replacement shippers.[10]

14. While pipelines are not subject to a blanket requirement that they must give replacement shippers the same usage charge discounts (or negotiated usage and fuel rates) given to the releasing shipper, pipelines are subject to the Commission's general policy that selective discounts must be given on a not unduly discriminatory basis to similarly situated shippers.[11] These same policies apply to negotiated usage and fuel charges.

15. Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers.[12] Further Order No. 712 did not address any issue concerning the offering of negotiated usage and fuel

[9] *El Paso Natural Gas Co*., 61 FERC ¶ 61,333, at p. 62,309 (1992) (*El Paso*).

[10] *Id.*

[11] *See Williston Basin Interstate Pipeline Co*., 85 FERC ¶ 61, 247, at p. 62,028-30 (1998), and cases cited, for a discussion of this policy.

[12] *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 21 (2008).

charges to replacement shippers. However, Order No. 712's modification of the Commission's regulations to facilitate AMAs does raise the following issues in this proceeding:

(1) whether it would be unduly discriminatory for Gulf South to deny an asset manager/replacement shipper the same negotiated usage and fuel and LAUF charge that was provided to the releasing shipper, at least during periods when the asset manager is using the released capacity to satisfy the delivery or purchase obligation contained in the release to the asset manager;[13]

(2) if a negotiated rate agreement between Gulf South and the releasing shipper provides that the discount or negotiated rate is only applicable at certain specified receipt or delivery points as permitted by Commission policy,[14] should the asset manager/ replacement shipper's use of those points be considered to be within the usage contemplated by Gulf South when it granted the negotiated rate to the releasing shipper? For this reason, should Gulf South be required to offer the same negotiated rate to the asset manager/replacement shipper at those points, but not at any other point?

(3) whether Gulf South should be required to include in its tariff a provision concerning the circumstances under which it would provide similar negotiated usage and fuel charges to an asset manager/replacement shipper; or

(4) whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant negotiated usage and fuel and LAUF charges to the asset manager/replacement shipper on a case-by-case basis, subject to a general requirement of no undue discrimination.

16. Before deciding these issues, the Commission requires additional information from Gulf South, and will give the parties an opportunity to provide supplemental comments. In this regard, the Commission directs Gulf South to file the following information in a compliance filing within 30 days of the date of this order: (1) how many of Gulf South's existing firm shipper contracts include negotiated usage and fuel rates, (2) how many of any such contracts limit the negotiated rate to specific points, (3) a general description of how Gulf South intends to determine whether to grant negotiated usage and fuel charges to asset manager/replacement shippers, and (4) what factors it will consider in determining whether to grant such negotiated rates.

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[13] *See* § 284.8(h)(3) of the Commission's regulations, as revised by Order No. 712-A (defining a release to an asset manager).

[14] *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210, at P 5 and 22, *reh'g denied*, 112 FERC ¶ 61,038, at P 19 (2005).

The Commission orders:

(A) The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on March 1, 2009, subject to conditions and further review, as discussed above in the body of this order and in the Ordering Paragraph below.

(B) Gulf South is directed to file additional information, as discussed in the body of this order, within 30 days of the date of this order. Parties may file additional comments within 20 days of the date of Gulf South's compliance filing.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Gulf South Pipeline Company, LP

FERC Gas Tariff, Sixth Revised Volume No. 1
Tariff Sheets to be Effective March 1, 2009, Subject to Conditions

Second Revised Sheet No. 3600
First Revised Sheet No. 3601
First Revised Sheet No. 3602
First Revised Sheet No. 3603
Third Revised Sheet No. 3604
Second Revised Sheet No. 3605
Sixth Revised Sheet No. 3613