

127 FERC ¶ 61,315
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf Crossing Pipeline Company LLC

Docket No. RP09-552-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO
CONDITIONS

(Issued June 30, 2009)

1. On April 29, 2009, Gulf Crossing Pipeline Company LLC (Gulf Crossing) filed revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1¹ to revise and redesign its *pro forma* service agreements and to make modifications to all of its existing *pro forma* discounted and negotiated rates letter agreements. The filing represents one portion of a larger initiative on the part of Gulf Crossing's parent company, Boardwalk Pipeline Partners, LP (Boardwalk), to address the issues raised in *Southern Star Central Gas Pipeline, Inc.*,² regarding non-conforming agreements and to create similar contract forms for use across all three of Boardwalk's pipelines. Gulf Crossing's revised tariff sheets are accepted and suspended effective December 1, 2009, or some earlier date specified in a subsequent Commission order, subject to the conditions identified in this order and further Commission review.

Details of the Filing

2. Gulf Crossing states that the filing contains, in addition to other changes, blank exhibits with an instructional paragraph contained in brackets. Gulf Crossing explains that the parties may include additional terms permitted by the tariff and applicable to each point covered by the exhibit. Moreover, Gulf Crossing states that in the *pro forma* service agreements, additional exhibits may be added as necessary. Gulf Crossing states that, for example, the exhibit may include contact information, such as postal addresses, telephone numbers, and email addresses.

¹ See Appendix.

² *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008).

Public Notice, Interventions, and Comments

3. Public notice of Gulf Crossing's filing was issued on April 30, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214⁴, 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. No protests or adverse comments were filed.

Discussion

4. For the reasons set forth below, the Commission accepts and suspends Gulf Crossing's tariff sheets listed in the Appendix effective December 1, 2009, or some earlier date specified in a subsequent Commission order, subject to Gulf Crossing filing revised tariff sheets, within 30 days of the date of this order, consistent with the discussion in the body of this order and further Commission review.

5. The provision in Gulf Crossing's proposed *pro forma* service agreements allowing the insertion of additional exhibits containing undefined "contractual terms" lacks the specificity required by Commission policy. The Commission requires pipelines to include *pro forma* service agreements in their tariffs in order to comply with NGA section 4(c)'s requirement that pipelines file all contracts which affect the pipeline's rates and services "in any manner." The filing of the *pro forma* service agreement gives the Commission and other interested parties an opportunity to review that service agreement in order to ensure that its provisions are just and reasonable and not unduly discriminatory. This enables the Commission to exempt pipelines from filing service agreements with individual customers that conform to the *pro forma* service agreement.⁵ For this procedure to satisfy the filing requirements of NGA section 4, the *pro forma* service agreement must define the information that may be included in its blanks with sufficient clarity for the Commission to understand the nature of the contractual provisions it is authorizing the pipeline to enter into. For example, the Commission has held that allowing a blank section labeled "Other" in a *pro forma* service agreement is too

³ 18 C.F.R. § 154.210 (2008).

⁴ 18 C.F.R. § 385.214 (2008).

⁵ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,001-2 (2001).

broad and vague, and could lead to the inclusion of impermissible terms and conditions of service.⁶

6. Gulf Crossing's proposed language allowing additional exhibits does not sufficiently define the information which could be included in those exhibits without the need to file them with the Commission. Deprived of the opportunity to adequately review the types of provisions which the *pro forma* service agreement would authorize Gulf Crossing to include in such exhibits, the Commission lacks the ability to ensure that those contractual terms would be just and reasonable and not unduly discriminatory.

7. Moreover, the vague *pro forma* service agreement provision allowing for the insertion of undefined exhibits inhibits customers from easily tracking and understanding all of the terms that may be inserted into the service agreements. Such lack of clarity poses a substantial inconvenience to pipeline customers, creates confusion, and increases the risk of undue discrimination.

8. However, the Commission recognizes Gulf Crossing's desire to develop a flexible approach to its *pro forma* service agreements and to minimize the number of non-conforming agreements. In *Northern Natural*, the Commission required the pipeline to list in a section of its General Terms and Conditions (GT&C) the provisions which could be included in its proposed broadly defined "blank" for other information, together with references to the specific tariff provisions authorizing it to negotiate those provisions.⁷ As a condition of the acceptance of this order, Gulf Crossing must add to its GT&C a similar list outlining the content of the exhibits that Gulf Crossing may attach to the proposed *pro forma* service agreement. Consistent with similar tariff sheets accepted by the Commission, the list to be inserted into Gulf Crossing's tariff should reference the specific section of Gulf Crossing's tariff (or other authority) authorizing each particular provision and specifying the rate schedules to which each provision applies.⁸ If no tariff authority is necessary, such as for the type of customer information (names, addresses, etc.) that Gulf Crossing used as an example in its transmittal letter, Gulf Crossing merely needs to state the information that could be included in the exhibit. Also, as a condition of acceptance, Gulf Crossing must revise the open-ended language describing the exhibits

⁶ See *Northern Natural Gas Co.*, 102 FERC ¶ 61,171, at P 19 (2003) (*Northern Natural*).

⁷ *Northern Natural*, 102 FERC ¶ 61,171 at P 19.

⁸ See, e.g., Section 58 of the General Terms and Conditions in Northern Natural Gas Company's Tariff, *Fifth Revised Sheet Nos. 308 and 309*.

that may be inserted to specify that any incorporated exhibits will only include provisions listed in the section of its GT&C that identifies the specific terms which Gulf South can modify. The list will provide clarity and assure that Gulf Crossing implements these provisions in a non-discriminatory manner. As Gulf Crossing negotiates contracts with customers, if the parties desire to include a provision which is not listed in the tariff, Gulf Crossing should submit the agreement as a non-conforming agreement for Commission consideration.

9. The Commission emphasizes that even if a provision is included in the *pro forma* service agreement and considered conforming, the pipeline must post any special details pertaining to pipeline transportation contracts consistent with section 284.13(b)(1)(viii) of the Commission's regulations.⁹ Requiring Gulf Crossing to post special details further increases transparency and provides customers with knowledge regarding the provisions that Gulf Crossing has made available.

10. In addition, the exhibits proposed by Gulf Crossing which identify primary points and supplemental points also contain language that does not adequately specify the terms that Gulf Crossing intends to incorporate.¹⁰ For example, the proposed exhibit to Gulf Crossing's contract for FTS service states that unspecified "additional terms and conditions permitted by the Tariff and related to the Primary Points" may be inserted. Such language does not provide an adequate description of the provisions that may be included in the blank on the exhibit. As a condition of acceptance, Gulf Crossing must specifically identify all terms and conditions that may be inserted onto the proposed exhibits as conforming provisions and identify the tariff provisions that authorize these additional terms.

11. Gulf Crossing's proposed exhibits also include "need not be limited to" language. For example, Exhibit A of the FTS *pro forma* service agreement states:

⁹ 18 C.F.R. § 284.13(b)(1)(viii) (2008).

¹⁰ Proposed First Revised Sheet No. 1401. Similarly, proposed *pro forma* exhibits to the discounted rate FTS *pro forma* service agreement on proposed First Revised Sheet Nos. 1406 through 1408, the discounted rate ITS *pro forma* agreement on proposed First Revised Sheet No. 1411 and *pro forma* exhibits to the negotiated rates agreement on proposed First Revised Sheet Nos. 1415 and 1416 and proposed Original Sheet No. 1417 contain nearly identical language.

“Identify Primary Point(s) covered by the Agreement, which may include but need not be limited to Receipt Point, Name, Receipt SLN, Delivery Point Name, Delivery SLN, and MDQ....”

To the extent that the “need not be limited to” language applies only to additional information that is needed or useful to identify primary points, then the “need not be limited to” language is not problematic. However, this phrase should not be used to justify the insertion of terms and conditions of service that are not otherwise enumerated in the *pro forma* service agreement and exhibits. As a condition of acceptance of this filing, the Commission requires Gulf Crossing to modify its proposed exhibits to clarify that any additional information that is not enumerated will exclusively be used for the purposes of identifying the primary point.¹¹

12. Similar concerns require revisions to other provisions in Gulf Crossing’s proposed *pro forma* service agreements. Gulf Crossing’s proposed “Maximum Daily Quantity(ies)” section identifies the types of contract demand that may be inserted, but states that this information is “not limited to” the types listed.¹² Gulf Crossing is directed to clarify the additional types of contract demand that it proposes to insert and the applicable tariff provisions.

13. The maximum daily quantity provision also refers to information “related to” MDQ ramp ups and “other changes.” The Commission is concerned that such language will allow the incorporation of unidentified terms and conditions of service related to contract demand. As a condition of acceptance of this filing, Gulf Crossing must clarify this provision consistent with this order by listing the applicable provisions related to contract demand in the *pro forma* service agreement and referencing the specific provisions of Gulf Crossing’s tariff which identify such terms and conditions.

14. Similarly the proposed *pro forma* FTS discounted rates letter agreement and negotiated rates letter agreement permit a contractual right of first refusal with terms “that are permitted by the tariff.” The Commission directs Gulf Crossing to reference the specific tariff provisions referred to in the proposed *pro forma* service agreement as a condition of acceptance of this filing.

¹¹ Similar changes should be made to those exhibits that reference supplemental points.

¹² Such contract demand terms appear on proposed First Revised Sheet No. 1400, proposed First Revised Sheet No. 1404 and proposed First Revised Sheet No. 1413.

Suspension

15. 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 shall accept the tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

16. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.¹³ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.¹⁴ Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to accept and suspend these tariff sheets to become effective December 1, 2009, or some earlier date specified in a subsequent Commission order, subject to the conditions identified in this order and further Commission review.

The Commission orders:

(A) The tariff sheets in the Appendix are accepted and suspended effective December 1, 2009, or some earlier date specified in a subsequent Commission order, subject to the conditions identified in this order and further Commission review.

¹³ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁴ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(B) Gulf Crossing is directed to file revised tariff sheets and explanations consistent with this order within 30 days of the date this order issues.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

**Gulf Crossing Pipeline Company LLC
FERC Gas Tariff, Original Volume No. 1**

Tariff Sheets Effective December 1, 2009, Subject to Conditions

First Revised Sheet No.1
First Revised Sheet No. 1400
First Revised Sheet No. 1401
First Revised Sheet No. 1402
First Revised Sheet No. 1403
First Revised Sheet No. 1404
First Revised Sheet No. 1405
First Revised Sheet No. 1406
First Revised Sheet No. 1407
First Revised Sheet No. 1408

First Revised Sheet No. 1409
First Revised Sheet No. 1410
First Revised Sheet No. 1411
Sheet No. 1412
First Revised Sheet No. 1413
First Revised Sheet No. 1414
First Revised Sheet No. 1415
First Revised Sheet No. 1416
Original Sheet No. 1417