

127 FERC ¶ 61,314
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf South Pipeline Company, LP

Docket No. RP09-550-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO
CONDITIONS

(Issued June 30, 2009)

1. On April 29, 2009, Gulf South Pipeline Company, LP (Gulf South) filed revised tariff sheets to its FERC Gas Tariff, Sixth Revised 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 South'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 South'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 South states that the filing contains, in addition to other changes, blank exhibits with an instructional paragraph contained in brackets. Gulf South explains that the parties may include additional terms permitted by the tariff and applicable to each point covered by the exhibit. Moreover, Gulf South states that in the *pro forma* service agreements, additional exhibits may be added as necessary. Gulf South states that, for

¹ See Appendix.

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

example, the exhibit may include contact information, such as postal addresses, telephone numbers, and email addresses.

Public Notice, Interventions, and Comments

3. Public notice of Gulf South'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 adverse comments or protests were filed.

Discussion

4. For the reasons set forth below, the Commission accepts and suspends Gulf South's tariff sheets listed in the Appendix effective December 1, 2009, or some earlier date specified in a subsequent Commission order, subject to Gulf South 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 South'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 South'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 South 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 South'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 South must add to its GT&C a similar list outlining the content of the exhibits that Gulf South 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 South's tariff should reference the specific section of Gulf South'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 South used as an example in its transmittal letter, Gulf South merely needs to state the information that could be included in the exhibit. Also, as a condition of acceptance, Gulf South must revise the open-ended language describing the exhibits 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

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

⁷ *Northern Natural*, at P 19 (2003).

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.

list will provide clarity and assure that Gulf South implements these provisions in a non-discriminatory manner. As Gulf South negotiates contracts with customers, if the parties desire to include a provision which is not listed in the tariff, Gulf South 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 South to post special details further increases transparency and provides customers with knowledge regarding the provisions that Gulf South has made available.

10. In addition, the exhibits proposed by Gulf South which identify primary points and supplemental points also contain language that does not adequately specify the terms that Gulf South intends to incorporate.¹⁰ For example, the proposed exhibit to Gulf South's contract for FTS/NNS 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 South 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 South's proposed exhibits also include "need not be limited to" language. For example, Exhibit A of the NNS/FTS *pro forma* agreement states:

"Identify Primary Point(s)/Pairs (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...."

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

¹⁰ Proposed Original Sheet No. 4100A. Similarly, proposed Second Revised Sheet No. 4501, proposed First Revised Sheet No. 4601, the proposed *pro forma* exhibits to the discounted rate NNS/FTS *pro forma* service agreement on proposed Third Revised Sheet No. 4752 and proposed Second Revised Sheet Nos. 4753 and 4754, the proposed *pro forma* exhibits to the discounted rate ITS *pro forma* agreement on proposed First Revised Sheet No. 4762 and the proposed *pro forma* exhibits to the NNS/FTS negotiated rates agreement on proposed First Revised Sheet Nos. 4766 through 4768 contain nearly identical language.

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 South 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 South’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 “not be limited to” the types listed.¹² Gulf South 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 South 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 South’s tariff which identify such terms and conditions.

14. Similarly the proposed *pro forma* NNS/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 South to reference the specific tariff provisions referred to in the proposed *pro forma* service agreement as a condition of acceptance of this filing.

15. Finally, Gulf South’s revised agreements appear to have eliminated certain provisions that previously were provided with NNS and FTS service. For example, the previous No Notice Service Agreement contained a place to clearly state the Maximum Storage Quantity for the service. This has been eliminated from the proposed NNS/FTS agreement. Gulf South is directed to clarify whether it intends to provide this

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

¹² Such contract demand terms appear on proposed Fourth Revised Sheet No. 4100, proposed Third Revised Sheet No. 4750 and proposed First Revised Sheet No. 4764.

information under its Maximum Daily Quantities section, and to either demonstrate that this exclusion is just and reasonable, or else modify the agreement to include a place to provide that information. In addition, the current Negotiated Rates Letter Agreement for No Notice Service and Firm Transportation Service provides shippers the opportunity to select the contract MDQ for the Receipt and Delivery Points listed in the Exhibits. This provision appears to have been eliminated from the proposed agreements. Gulf South is directed to clarify why these provisions have been eliminated or include the provisions in its proposed agreements.

Suspension

16. 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.

17. 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 to this order 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 South 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 South Pipeline Company, LP
FERC Gas Tariff, Sixth Revised Volume No. 1**

Tariff Sheets Suspended to Become Effective December 1, 2009, Subject to Conditions

Sixth Revised Sheet No.2
Fourth Revised Sheet No. 4100
Original Sheet No. 4100A
Third Revised Sheet No. 4200
Sheet No. 4300
Third Revised Sheet No. 4500
Second Revised Sheet No. 4501
Sheet No. 4502
Third Revised Sheet No. 4600
First Revised Sheet No. 4601
Sheet No. 4602
Third Revised Sheet No. 4750
Second Revised Sheet No. 4751
Third Revised Sheet No. 4752
Second Revised Sheet No. 4753

Second Revised Sheet No. 4754
Sheet No. 4755
Second Revised Sheet No. 4760
Second Revised Sheet No. 4761
First Revised Sheet No. 4762
Sheet No. 4763
First Revised Sheet No. 4764
First Revised Sheet No. 4765
First Revised Sheet No. 4766
First Revised Sheet No. 4767
First Revised Sheet No. 4768
First Revised Sheet No. 4769
Sheet No. 4770
Third Revised Sheet No. 4804