

129 FERC ¶ 61,062
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 23, 2009

In Reply Refer To:
Gulf South Pipeline Company, LP
Docket No. RP09-1065-000

Gulf South Pipeline Company, LP
9 Greenway Plaza, Suite 2800
Houston, TX 77046

Attention: Michael E. McMahon, Sr. Vice President and General Counsel

Reference: Petition and Offer of Settlement and Stipulation and Agreement

Ladies and Gentlemen:

1. On September 22, 2009, pursuant to Rule 207(a)(5),¹ Gulf South Pipeline Company, LP (Gulf South) submitted a Petition For Approval Of Settlement (Petition) and an uncontested Offer of Settlement and Stipulation and Agreement (Settlement) to address uncertainty regarding the proper rates for transportation on Gulf South's Southeast Expansion. Gulf South included *pro forma* tariff sheets² containing the Settlement rates and other conforming changes to its Tariff. As discussed below, the Commission finds that the proposed Settlement is fair, reasonable, and in the public interest. Accordingly, the Commission accepts the Settlement and, consistent with Article VIII of the Settlement, directs Gulf South to file actual tariff sheets identical to the *pro forma* tariff sheets submitted in the Settlement within 10 days after the Settlement becomes effective.

¹ 18 C.F.R. § 385.207(a)(5) (2009).

² *Pro Forma* Sheet Nos. 11, 14, 16-18, 20-23, 24B and 3000.

2. According to Gulf South, its system is divided into three portions, the Legacy system, the East Texas Expansion and the Southeast Expansion.³ Gulf South explains that the Legacy system is a reticulated pipeline that flows gas bi-directionally throughout the Gulf Coast region at varying pressures.⁴ According to Gulf South, the East Texas and Southeast Expansions are large diameter pipes that transport gas primarily from west to east. Gulf South currently uses a zone rate methodology, consisting of four rate zones. The Legacy system includes facilities in all four rate zones. The East Texas Expansion transports gas from Zone 1 to markets near the Perryville area in Louisiana in Zone 2 and existing markets in Zone 3. Gulf South states that the Southeast Expansion extends from the terminus of the East Texas Expansion to an interconnection with Transcontinental Gas Pipe Line Company in Choctaw County, Alabama. According to Gulf South, the Southeast Expansion was intended to provide takeaway capacity for new gas supplies for delivery to new markets in Florida, the Southeast and the Northeast.⁵ Gulf South states that it considers the Legacy system and the East Texas Expansion to be its “Existing System.” Gulf South claims that the Southeast Expansion is functionally separate from its Existing System and that there is no need for customers on the Existing System to use the Southeast Expansion unless they want to deliver gas to the markets served by that system.

3. When the Commission issued a certificate for construction of the Southeast Expansion, it approved an incremental rate for transportation on the Southeast Expansion of \$0.1659 per Dth.⁶ The Commission also determined for the purpose of establishing an incremental rate that the Southeast Expansion facilities were in Zone 3.⁷ In addition, in the order approving the incremental rate for the Southeast Expansion, the Commission held that “existing shippers utilizing the expansion facilities on a secondary basis were not required to pay the incremental rate.”⁸

³ Gulf South Petition at 3.

⁴ Gulf South operates interstate pipeline facilities extending from south and east Texas through Louisiana, Mississippi, southern Alabama and western Florida.

⁵ Gulf South Petition at 3-4.

⁶ *Gulf South Pipeline Company, LP*, 122 FERC ¶ 61,162 (2008).

⁷ *Id.* at P 8.

⁸ *Gulf South Pipeline Co., LP*, Docket No. CP07-32-007 (Jan. 29, 2009) unpublished letter order.

4. Gulf South filed a petition for review of the Commission's orders certificating the Southeast Expansion (Court Petition) in the United States Court of Appeals for the District of Columbia Circuit, captioned *Gulf South Pipeline Company, LP v. FERC* (No. 09-1022), on the grounds that the Commission improperly prohibited Gulf South from charging an incremental rate to customers using the Southeast Expansion on a non-primary basis and that the Commission's order denied it a reasonable opportunity to recover the costs of the Southeast Expansion. In addition, Gulf South further states that since filing its Court Petition it has become clear that there is additional uncertainty regarding how the Southeast Expansion's incremental rate should be applied. Gulf South states that a customer, Texla Energy Management, Inc., recently challenged how the incremental rate should be applied in calculating charges for use of secondary points not located on the Southeast Expansion. Gulf South states the Settlement will alleviate the uncertainty over rates for the Southeast Expansion and ensure that Gulf South has a reasonable opportunity to recover the costs from the customers that use the facilities.

5. According to Gulf South, the Settlement will create a new Rate Zone 5, which consists of only the Southeast Expansion facilities. Gulf South states that the Zone 5 rate will replace Gulf South's existing incremental rate for the Southeast Expansion, and that the costs allocated to, and reflected in, the rates for Zone 5 will include only the facilities approved by the Commission for the Southeast Expansion. Gulf South further states that the establishment of a new Zone 5 and associated transportation rates will not affect the maximum applicable transportation rates on Gulf South's Existing System, i.e., the portion of Gulf South's system that does not include the Southeast Expansion, nor will it affect the rates of any customers with primary firm capacity on the Southeast Expansion because currently all customers with primary firm capacity on the Southeast Expansion are transporting under negotiated rate contracts or utilizing capacity under lease to Gulf Crossing Pipeline Company LLC.

6. According to the Petition, the Settlement establishes a rate of \$0.1558 per Dth for customers who use the Zone 5 facilities on an intrazone basis, which represents a decrease from the current incremental rate of \$0.1659 per Dth. According to the Settlement, customers who use the Zone 5 facilities in addition to facilities in another Zone will pay an additional \$0.0738 per Dth to use the Southeast Expansion as compared to the currently approved incremental rate of \$0.1659. Gulf South claims that the Settlement will have no impact on the rates of Gulf South's Existing System or on the system-wide fuel rate and likewise, the Settlement will not require any changes to Gulf South's existing negotiated rate agreements. In addition, upon approval of the Settlement, Gulf South will voluntarily dismiss with prejudice the Court Petition and also waive any right or claim it may have to recover any additional charges related to certain transactions with Texla. Finally, the Settlement also clarifies that Gulf South will no longer treat the Southeast Expansion as an incremental facility on FERC Form No. 2 in recognition of the Settlement's replacement of the incremental rate with a Zone Rate.

7. Notice of Gulf South's filing was issued on September 24, 2009. Interventions and protests were due October 2, 2009, as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214,⁹ 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 this proceeding or place additional burdens on existing parties. No protests were filed. Accordingly, the Settlement is uncontested.

8. Mobile Gas Service Corporation, Wilmut Gas Company and the City of Vicksburg, Mississippi (Mobile Gas, *et al.*) and the United Municipal Distributors Group (UMDG) filed initial comments. Mobile Gas *et al.* states they distribute natural gas in Alabama and Mississippi using Gulf South's interstate pipeline facilities in Rate Zones 3 and 4 and they do not use the new Rate Zone 5 in any way. Therefore, Mobile Gas, *et al.* states they should not pay or otherwise subsidize any costs for such new rate Zone 5 facilities. UMDG states it does not object to the Settlement; however, its position is premised on the understanding that the Settlement does not establish any precedent and, moreover, that the rulings in the certificate orders in Docket No. CP07-32 will continue to require Gulf South to be at risk for the costs of the Southeast Expansion Project.

9. On October 8, 2009, Gulf South filed reply comments stating that Article IX of the Settlement clearly states that Commission approval of the Settlement does not establish precedent regarding any similar principle or issue in other proceedings and that Gulf South agrees that it will continue to be at risk for the Southeast Expansion. In addition, Gulf South confirmed that its existing customers will not pay for or otherwise subsidize the costs of the Southeast Expansion facilities unless they elect to use such facilities.

10. The Commission may approve an uncontested settlement upon a finding that the settlement "appears to be fair and reasonable and in the public interest."¹⁰ Consistent with the Commission's guidance for settlement outside the context of an existing proceeding as set forth in *Dominion*,¹¹ the agreement resolves rate issues without a hearing and lengthy litigation. The Commission explained in *Dominion* that when a pipeline negotiates an agreement with its customers and others to change its rates or terms and conditions of service, and it desires approval of the agreement before making an actual NGA section 4 tariff filing, it may file, pursuant to Rule 207(a)(5),¹² a petition

⁹ 18 C.F.R. § 385.214 (2009).

¹⁰ 18 C.F.R. § 385.602(g)(3) (2009).

¹¹ *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005) (*Dominion*).

¹² 18 C.F.R. § 385.207(a)(5) (2009).

for approval of the agreement, along with *pro forma* tariff sheets reflecting how the agreement will be implemented.¹³ This is the procedure Gulf South has followed here.

11. The Commission finds that the proposed Settlement resolves rate uncertainty with regards to the Southeast Expansion and appears to be fair and reasonable and in the public interest. The Settlement's creation of a new rate zone for the Southeast Expansion facilities reduces the rate for shippers to access the markets served by the Southeast Expansion on an incremental basis. Accordingly the Settlement is hereby approved, pursuant to its terms. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

12. Consistent with the Article VIII of the Settlement, the Commission directs Gulf South to file actual tariff sheets identical to the *pro forma* tariff sheets submitted in the Settlement within 10 days after the Settlement becomes effective.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹³ *Dominion*, 111 FERC ¶ 61,285 at P 32.