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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 29, 2009

In Reply Refer To:
Gulfstream Natural Gas System, L.L.C.
Docket Nos. RP02-361-078 and
RP09-1080-000
(Not Consolidated)

Gulfstream Natural Gas System, L.L.C.
P.O. Box 1642
Houston, TX 77251-1642

Attention: Janice K. Devers, General Manager
Tariffs and Commercial Development

Reference: September 30, 2009 Filings - Revised Tariff Sheets, Revised Negotiated
Rate Letter Agreements and Revised Exhibit B

Dear Ms. Devers:

1. On September 30, 2009, in Docket No. RP02-361-078, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed revised tariff sheets¹ reflecting revisions to two negotiated rate letter agreements with Florida Power and Light Company (FPL) applicable to firm transportation service under Gulfstream's Rate Schedule FTS. Gulfstream requests that the proposed tariff sheets be accepted effective October 1, 2009. The tariff sheets have been revised to reflect extensions of the terms of the letter agreements to October 1, 2032 and to reflect the addition of delivery points under the related service agreements. Finally, Gulfstream has removed certain provisions from the letter agreements that are included in Gulfstream's Rate Schedule FTS pro forma service agreement. For the reasons discussed below, the tariff sheets referenced in footnote no. 1

¹ First Revised Sheet No. 8.01p, First Revised Sheet No. 8.02n and First Revised Sheet No. 8.02o to FERC Gas Tariff, Original Volume No. 1.

and the negotiated rate letter agreements are accepted effective October 1, 2009, subject to condition.

2. On September 30, 2009, Gulfstream also filed in Docket No. RP09-1080-000 a revised Exhibit B to the Rate Schedule FTS firm service agreement related to one of the negotiated rate agreements filed in Docket No. RP09-361-078.² Gulfstream seeks in Docket No. RP09-1080-000 approval of the exhibit as conforming with its pro forma Rate Schedule FTS service agreement. As discussed further, the revised Exhibit B filed in this docket is accepted effective October 1, 2009, subject to Gulfstream filing to add the contract to its list of non-conforming agreements.

Background

3. In 2001, the Commission issued a certificate of public convenience and necessity authorizing Gulfstream to construct facilities to transport natural gas from supply areas in Alabama and Mississippi across the Gulf of Mexico to new incremental markets in central and southeastern Florida.³ On October 8, 2003, the Commission approved Gulfstream's request to construct new Phases II and III of its system, which extended Gulfstream's system into south Florida in order to provide service to FPL's electricity generators in Manatee County (Manatee Delivery Point) and Martin County (Martin Delivery point).⁴ In 2007, the Commission approved a further extension of Gulfstream's Phase III proposal by extending its system beyond Martin County, Florida to a new delivery point at FPL's West County Energy Center (WCEC Delivery Point) near Palm Beach, Florida.⁵ The Phase III facilities approved in 2007 were placed in service on September 1, 2008.

4. According to Gulfstream, it has two long term agreements with FPL that relate to the expansions described above, the modifications of which are the issue in this proceeding. Gulfstream states it entered into a contract with FPL in connection with Gulfstream's Phase II expansion (the Phase II Contract). Under the Phase II Contract, FPL contracted for 350,000 dekatherms per day (Dth/day) of transportation capacity from receipt points in the Pascagoula, Mississippi and Mobile Alabama area to the Manatee

² Gulfstream filed parts of the same agreement in two dockets. Henceforth, when Gulfstream is seeking approval of a service agreement containing both a negotiated rate and other non-conforming provisions, it should make its filing in a single docket.

³ *Gulfstream Natural Gas System, L.L.C.*, 94 FERC ¶ 61,185 (2001).

⁴ *Gulfstream Natural Gas System, L.L.C.*, 105 FERC ¶ 61,052 (2003).

⁵ *Gulfstream Natural Gas System, L.L.C.*, 119 FERC ¶ 61,250 (2007).

Delivery Point and the Martin Delivery point, with a delivery MDQ at each point equal to the contract MDQ of 350,000 Dth/day. Gulfstream later entered into a contract with FPL in connection with the Phase III expansion (Phase III contract),⁶ pursuant to which FPL subscribed for 345,000 Dth/day of capacity from receipt points in the Pascagoula, Mississippi and Mobile Alabama area to the WCEC Delivery point. The delivery point MDQ at WCEC was 345,000 Dth/day.

5. Gulfstream filed revised tariff sheets and modified negotiated rate letter agreements relating to the Phase II and Phase III contracts to reflect additional delivery point rights that Gulfstream states FPL obtained in accordance with section 4.4 of Rate Schedule FTS⁷ and section 1.14 of the General Terms and Conditions (GT&C) of Gulfstream's tariff.⁸ Specifically Gulfstream seeks to add the Martin Delivery Point to the Phase III contract.

6. In addition, Gulfstream seeks to add the WCEC Delivery Point to the Phase II contract and revise the delivery point MDQs in that contract, as reflected in the revised Exhibit B that Gulfstream filed in Docket No. RP09-1080-000. The revised Exhibit B adds the WCEC Delivery point as a third primary delivery point under the Phase II Contract. The revised Exhibit B also sets forth the revised maximum daily delivery quantities at each delivery point (delivery point MDQs) resulting from the addition of the WCEC Delivery Point to the Phase II Contract. As reflected on the revised Exhibit B, the

⁶ Gulfstream designates the Phase II contract as Contract No. 9000828, and the Phase III contract as contract No. 9028411.

⁷ Section 4.4 of Rate Schedule FTS provides that: "...Shipper shall have the right to redesignate any points listed on Exhibit B as Primary Delivery Point(s), subject to available capacity and the provisions of the General Terms and Conditions." Gulfstream Tariff, Original Sheet No. 24.

⁸ Section 1.14 of the General Terms and Conditions defines the term "Delivery Point MDQ" as: "...the greatest number of Dekatherms that Transporter is obligated to deliver, on a firm basis to or on behalf of Shipper on any Day at the applicable Primary Delivery Point. The aggregate of the Delivery Point MDQs may not exceed the MDQ set forth in the Agreement; provided, however, if Shipper owns an electric generation facility that is connected to Transporter's system that is within the Primary Route and upstream of the terminus of the Primary Route reserved under the Agreement, then Shipper may, subject to the availability of capacity at such delivery point, add each such facility as a Primary Delivery Point with a Primary Delivery Point MDQ up to, but not in excess of, the MDQ of the Agreement; and provided, further, that in no event will Transporter be obligated to deliver on any Day a quantity of gas in excess of the MDQ." Gulfstream Tariff, First Revised Sheet No. 102.

Manatee Plant MDQ remains 350,000 Dth/day, the Martin Plant MDQ is reduced from 350,000 Dth/day to 328,000 Dth/day and the WCEC MDQ is 295,000 Dth/day. The contract MDQ remains at 350,000 Dth/day.

7. The revised Exhibit B also adds footnote no. 1, which provides that on a day when Gulfstream delivers gas to WCEC, the delivery point MDQ at Martin (328,000 Dth/day) will be reduced by an equivalent quantity. Gulfstream states its belief that the footnote conforms to Exhibit B in its Rate Schedule FTS form of service agreement, but out of an abundance of caution requests a Commission determination to that effect. Gulfstream also requests that if the Commission finds that the footnote is a material deviation from its tariff, the Commission approve the exhibit to be effective October 1, 2009, which Gulfstream maintains in its transmittal letter is the effective date set forth in the exhibit.

8. Finally, the revised tariff sheets reflect an extension of the term for which the negotiated rates applicable to the Phase II and Phase III contracts will apply.

Public Notice and Interventions

9. Public notice of Gulfstream's filing in Docket No. RP02-361-078 was issued on October 6, 2009. Public Notice of the filing in Docket No. RP09-1080-000 was issued on October 8, 2009. Interventions and protests in both dockets were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2009)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), 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 proceedings will not disrupt the proceedings or place additional burdens on existing parties. On October 13, 2009, Peoples Gas System, a Division of Tampa Electric Company (Peoples) filed comments questioning the apparent extension of the Phase II Contract's path, the increase in FPL's delivery point capacity at the WCEC Delivery Point under the Phase II Contract and Gulfstream's alleged failure to post such additional capacity as available on Gulfstream's EBB prior to being subscribed by FPL. On October 13, 2009, Gulfstream filed an answer to Peoples' comments.

Peoples' Comments and Gulfstream's Answer

10. In its comments in Docket No. RP02-361-078, Peoples contends that by adding WCEC as a primary delivery point with a contractual MDQ of 295,000 Dth/day to the Phase II Contract, Gulfstream has extended the contract path under that contract beyond its previous terminus at FPL's Martin electric generator. Peoples maintains that the contract path extension has increased FPL's total firm delivery entitlement at WCEC from 345,000 Dth/day under the Phase III Contract to a combined 640,000 Dth/day under the revised Phase II and Phase III Contracts. Peoples asserts that Gulfstream has

accomplished this without posting any additional available capacity on its electronic bulletin board (EBB).⁹

11. In its Answer and in apparent communications with Peoples, Gulfstream explained that section 4.4 of its Rate Schedule FTS, in combination with section 1.14 of Gulfstream's (GT&C), supports the increased total primary point entitlement at the WCEC Delivery Point. Gulfstream states in its Answer that under Section 4.4, all FTS shippers have the right to redesignate primary delivery points subject to available capacity and other tariff provisions.¹⁰ According to Peoples' comments, Gulfstream explained that once the contract path of the Phase II Contract was extended by the designation of WCEC as a primary delivery point pursuant to section 4.4 of Rate Schedule FTS, then Gulfstream was permitted to provide additional delivery point rights to FPL at the upstream Martin Delivery Point pursuant to section 1.14 of its GT&C.¹¹

12. Peoples also questions how Gulfstream notifies shippers of available capacity under section 4.4 because, according to Peoples, Gulfstream's EBB postings have consistently shown that there is no unsubscribed capacity available on its system, including available capacity to the WCEC Delivery Point. According to Peoples, it was surprised to see the filing in Docket No. RP02-361-078 showing additional capacity under the Phase II Contract, which Peoples claims effectively doubled FPL's firm entitlements at the WCEC Delivery Point. Peoples asserts that the Commission's open-access policy required Gulfstream to post any excess available capacity between the Martin and WCEC delivery points.

13. In its answer, Gulfstream contends that its unsubscribed capacity postings are accurate. Gulfstream states that after FPL entered into the Phase III contract, it requested, pursuant to section 4.4 of the GT&C to add the WCEC Delivery Point to the Phase II contract for as much volume as Gulfstream could deliver on a firm basis. After evaluating this request, Gulfstream determined that it could deliver up to 295,000 Dth/day under the Phase II contract. Gulfstream notes, however, that it can only deliver this additional quantity to the WCEC Delivery Point when that quantity is not being

⁹ Peoples' comments at 3.

¹⁰ Gulfstream answer at 3.

¹¹ As noted above, GT&C section 1.14 provides in part that ". . . if Shipper owns an electric generation facility that is connected to Transporter's system that is within the Primary Route and upstream of the terminus of the Primary Route reserved under the Agreement, then Shipper may, subject to the availability of capacity at such delivery point, add each such facility as a Primary Delivery Point with a Primary Delivery Point MDQ up to, but not in excess of, the MDQ of the Agreement . . ."

delivered to the Martin Delivery Point.¹² Gulfstream asserts thus that the additional quantity delivered to the WCEC Delivery Point is not made available from new incremental capacity. According to Gulfstream, Peoples' suggestion that FPL may have been allowed to subscribe additional mainline capacity between the Martin Delivery Point and the WCEC Delivery Point is wrong. Gulfstream states that no mainline capacity was available to any customer on that section of the pipeline because all that capacity was already fully subscribed under the Phase II and Phase III contracts, and thus no shipper other than FPL had the ability to move volumes to the WCEC Delivery Point. Gulfstream also states that there are no receipt points between the Martin and WCEC Delivery Points.

14. Peoples also questions the increase to what it claims is 640,000 Dth/day in total firm delivery entitlements at the WCEC Delivery Point when, according to Peoples, Gulfstream's EBB lists the maximum design capacity for delivery to the WCEC Delivery point as only 427,000 Dth/day. Peoples asserts that the additional 295,000 Dth/d delivery rights provided to FPL at the WCEC Delivery Point under the Phase II Contract coupled with the 345,000 Dth/day of delivery rights at WCEC under the Phase III Contract provides FPL with a total of 640,000 Dth/day of capacity at that point. Peoples contends that Gulfstream could not accommodate the additional capacity absent new construction.¹³

15. Gulfstream answers that it has the mainline capacity available to tender 640,000 Dth/day to FPL at the WCEC Delivery Point. However, Gulfstream states that the current design capacity of interconnection facilities at that point is 427,200 Dth/day. Gulfstream states that it is currently expanding the interconnection facilities at that point pursuant to its blanket construction certificate authority and that when that expansion is complete, the design capacity of the expanded WCEC interconnection will be 640,000 Dth/day. Gulfstream further states that the expansion of the interconnection facilities does not expand the mainline capacity between the Martin and WCEC Delivery Points and that there is no additional mainline capacity to sell on that segment of its pipeline.¹⁴

16. Peoples also expresses concern that such additional unposted incremental capacity has been created for a single customer through the recent construction of facilities such as the Highlands Compressor station, and that Peoples may be providing a subsidy by bearing a part of such compressor's fuel costs once it is placed in service. Gulfstream answers that such a suggestion is without merit and that the purpose of the Highlands

¹² Gulfstream Answer at 4.

¹³ Peoples' comments at 5.

¹⁴ Gulfstream answer at 5.

compressor station project was to enable Gulfstream to increase and maintain the operating pressure on the southeastern portion of its system. Gulfstream notes that no party protested its filing for authorization for the project and that it is now in service.

17. Finally, Peoples states that it reserves its right to challenge, in another proceeding under section 5 of the NGA, whether GT&C section 1.14 is unduly discriminatory because, according to Peoples, it seemingly gives undue preference for valuable delivery point flexibility only to those shippers that own electric generating facilities.

Discussion

18. The Commission has reviewed Gulfstream's filings and Peoples' comments and finds that Gulfstream's proposed tariff revisions reflecting the modifications to the Phase II and Phase III Contracts are just and reasonable. We are not convinced that the various arguments made by Peoples provide any reason for the Commission not to approve the contract modifications presented in this proceeding.

19. First, it appears that the revisions made by Gulfstream are in accordance with the provisions of its existing tariff. As Gulfstream explains (and Peoples agrees), section 4.4 of Rate Schedule FTS provides FPL the right to redesignate the WCEC Delivery Point as the furthest downstream primary delivery point under the Phase II contract. Once FPL designated the WCEC Delivery Point as the primary point under the Phase II contract, FPL had the right under section 1.14 to have the Martin Delivery Point as a primary delivery point under the Phase II Contract. Thus Gulfstream appears to have acted in accordance with the provisions of its tariff. As further explained by Gulfstream, it can only make the deliveries to the WCEC Delivery Point under the Phase II contract if that volume is not delivered to the Martin Delivery Point. Thus, there do not appear to be increased delivery point rights under the Phase II Contract but a re-allocation of those rights as authorized by its tariff.

20. Moreover, it does not appear that there was any additional available unsubscribed capacity to move gas to the WCEC Delivery Point that Gulfstream could have posted. All the capacity on the Phase II and Phase III Expansions (and thus the Martin and WCEC Delivery Points) is under contract to FPL. Thus, after FPL added the WCEC Delivery Point as a primary point under the Phase II Contract, Gulfstream determined that that the only way it could deliver additional quantities to the WCEC Delivery Point under the Phase II Contract was if that quantity was not being delivered to the Martin Delivery Point. Accordingly, the only shipper for which Gulfstream could reallocate Martin Delivery Point rights was FPL and the only shipper with mainline capacity rights to access the WCEC Delivery Point is FPL.

21. The assertion that no additional available capacity was created is further supported by Gulfstream's filing in RP09-1080-000, which describes the revised delivery point rights under the Phase II contract and the maximum quantities that Gulfstream could

deliver on a primary firm basis to those points. As explained in that filing, with the addition of the WCEC Delivery Point as a primary point on the Phase II contract, the delivery Point MDQ for the Martin Delivery Point was reduced from 350,000 Dth/day to 328,000 Dth/day. Moreover, Gulfstream states that if it delivers the full 295,000 Dth to the WCEC Delivery Point, it can only deliver up to 33,000 Dth/day to Martin and up to 22,000 Dth/day to Manatee.

22. With regard to the footnote to Exhibit B, it appears that the footnote does not conform to Gulfstream's tariff because it provides for an additional restriction on FPL's delivery rights than provided for in Rate Schedule FTS. Under section 1.14 of the GT&C, a qualifying shipper may add certain generation facilities as primary delivery points with a primary point MDQ, provided that Gulfstream is not obligated on any day to make deliveries in excess of the MDQ of the agreement. The footnote to Exhibit B, however, places a further restriction on FPL, because it essentially provides that if FPL schedules any quantity of gas to the WCEC Delivery Point, then Gulfstream's Delivery Point entitlements at the Martin Delivery Point are reduced by that quantity. For example, if FPL schedules 8,000 Dth on a given day to WCEC, then under the normal application of section 1.14 of the GT&C, it could still schedule service up to its full 328,000 Dth delivery entitlement at Martin.¹⁵ Under the footnote, however, FPL's delivery rights at Martin would be reduced to 320,000 Dth.

23. Accordingly, we find that footnote 1 to Exhibit B is a material deviation from Gulfstream's tariff. It appears, however, that Exhibit B reflects a unique operational circumstance on Gulfstream's system and therefore is not unduly discriminatory.¹⁶ Moreover, the deviation will not affect the quality of service to any other Gulfstream shippers. Accordingly we approve Exhibit B effective October 1, 2009, subject to Gulfstream filing, within 15 days of the issuance of this order, to add the Phase II contract to its list of non-conforming contracts, as required by 18 C.F.R. §154.112(b)

24. Finally, we find that Gulfstream has not followed the gas tariff pagination guidelines for identifying superseded tariff sheets. Specifically, First Revised Sheet No. 8.01p filed in Docket No. RP02-361-078 is described as superseding "Sub Original Sheet No. 8.01p" rather than its currently effective "Original Sheet No. 8.01p." Further,

¹⁵ As noted, section 1.14 allows the qualifying shipper to add primary delivery points with a primary delivery point MDQ up to the MDQ of the contract, provided that Gulfstream is not obligated to deliver more than the contract MDQ on any one day. Thus, under that section, if FPL schedules 8,000 Dth to WCEC, it still has 320,000 Dth that it may schedule to its other primary delivery points, including the full 328,000 to the Martin Delivery Point if it so chooses.

¹⁶ Columbia Gas Transmission Corp, 97 FERC ¶ 61,221, at 62,004 (2001).

Gulfstream appears to be inconsistently using uppercase and lowercase designations after the Sheet Nos. For example, Original Sheet No. 8.01P is the currently effective tariff sheet, whereas other tariff sheet Nos. 8.01 have lowercase designations. Accordingly, Gulfstream is directed to file, within 15 days of the issuance of this order, a Substitute First Revised Sheet No. 8.01p which supersedes Original Sheet No. 8.01p.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.