

148 FERC ¶ 61,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Gulf South Pipeline Company, LP

Docket No. RP13-12-001

ORDER DENYING IN PART, GRANTING IN PART REHEARING AND
DIRECTING FURTHER COMPLIANCE

(Issued August 28, 2014)

1. This order addresses the United Municipal Distributors Group's (UMDG) request for rehearing of the Commission's November 29, 2012 order¹ pertaining to Gulf South Pipeline Company, LP's (Gulf South) Order No. 587-V² compliance filing and the incorporation of NAESB WGQ Standards in its tariff. For the reasons discussed below, the Commission denies in part and grants in part the request for rehearing filed by UMDG.

Background

2. On October 1, 2012 (October 1 filing), in Docket No. RP13-12-000, Gulf South filed revised tariff records to comply with Order No. 587-V.³ In Order No. 587-V, the Commission incorporated by reference into its regulations Version 2.0 of the NAESB WGQ Standards. On October 15, 2012, United Municipal Distributors Group (UMDG) filed adverse comments regarding Gulf South's Order No. 587-V compliance filing. UMDG took issue with numerous instances in which Gulf South revised tariff records to replace detailed tariff language with the phrase "in accordance with the NAESB WGQ

¹ *Order on Filing in Compliance with Order No. 587-V*, 141 FERC ¶ 61,167 (2012) (November 29 Order).

² *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-V, FERC Stats. & Regs. ¶ 31,332 (2012).

³ *Id.*

Standards.” UMDG argued that the modifications to Gulf South’s tariff provided insufficient guidance to shippers as to which of the specific Version 2.0 Standards govern the given activity delineated in the General Terms and Conditions of Gulf South’s tariff. In the November 29 Order, the Commission accepted Gulf South’s tariff records to become effective and did not require Gulf South to revise its tariff because it complied with the Commission’s policy on the incorporation of NAESB Standards by pipelines.⁴ Specifically, the Commission found that the language of the NAESB WGQ Standards is copyrighted and the Commission cannot require a pipeline to reproduce the Standards in its tariff.⁵ In addition, the use of parenthetical references in specific tariff provisions is a reasonable means of incorporating Standards into a pipeline tariff.

3. On December 21, 2012 (December 21 rehearing), in Docket No. RP13-12-001, UMDG requests rehearing of the Commission’s November 29 Order and requests the Commission reconsider its request for specificity regarding the incorporation of NAESB WGQ Standards in Gulf South’s tariff.

Request for Clarification or, in the Alternative, Rehearing

4. In its December 21 rehearing, UMDG submits that the Commission should grant rehearing of the November 29 Order and reconsider the request to require Gulf South to modify its tariff to remove the general references to the NAESB WGQ Standards. UMDG contends that Gulf South’s proposal is inconsistent with the Commission’s policy which requires pipelines to refer specifically to any standards that are being incorporated by reference.⁶ UMDG suggests that the acceptance of Gulf South’s general reference to the NAESB WGQ standards violates the requirement of the Natural Gas Act that all classifications, practices, and regulations affecting a pipeline’s rates and changes be on file with the Commission. UMDG asserts that Commission misunderstood its original comments and asks the Commission require Gulf South to refer specifically to each

⁴ See November 29 Order, 141 FERC ¶ 61,167 at P 55.

⁵ NAESB has granted pipelines the right to reproduce in their tariffs standards 1.3.2 and 5.3.2 in their entirety. See Docket Nos. RM05-5-000, *Standards for Business Practices and Communications Protocols for Public Utilities* and RM96-1-000, *Standards for Business Practices of Interstate Natural Gas Pipelines*, Report of the North American Energy Standards Board, NAESB Copyright Policy at p. 4 (filed November 20, 2012).

⁶ See December 21 rehearing at P 3 (citing *Honeoye Storage Corp.*, 103 FERC ¶ 61,366 (2003)).

standard by its number and version, to the extent Gulf South chooses to incorporate the NAESB WGQ Standards by reference.

5. UMDG identifies three tariff sections in which Gulf South replaced a detailed tariff language with a generic language “in accordance with the NAESB WGQ Standards.”⁷ UMDG argues that the generic references are impermissibly vague such that it gives Gulf South authority to apply NAESB WGQ Standards the Commission has never reviewed or approved. UMDG contends that the language allows Gulf South to apply any existing and future NAESB WGQ Standards that Gulf South deems applicable, absent Commission review or acceptance.

Discussion

6. The Commission will deny in part and grant in part UMDG’s request for rehearing.

7. With regard to UMDG’s request for rehearing on the incorporation by reference of certain NAESB Standards, we note that Gulf South’s incorporation by reference of the NAESB WGQ Standards specifies which standard and version it is incorporating by reference.⁸ Gulf South complies with the Commission’s policy on the incorporation of NAESB Standards by pipelines. The language of the NAESB WGQ Standards is copyrighted and the Commission cannot require a pipeline to reproduce the Standards in its tariff.⁹ We find the use of incorporation by reference to be a reasonable means of incorporating the NAESB Standards into a pipeline tariff. For each of the sections identified by UMDG, Gulf South incorporates by reference the NAESB Standard associated with the removed language. For example, the language of section 6.16[A](1) that was deleted is contained in NAESB WGQ Standard 1.3.54, which is incorporated by

⁷ December 21 rehearing at P 5 (citing Gulf South Pipeline Company, LP, FERC NGA Gas Tariff, Tariffs, [Section 6.12, GT&C - Nominations, Confirmations, & Scheduling, 3.0.0](#), [Section 6.16.1, GT&C - Capacity Release - Posting & Bidding Procedures, 2.0.0](#), [Section 6.16.7, GT&C - Capacity Recall, 2.0.0](#)).

⁸ Gulf South Pipeline Company, LP, FERC NGA Gas Tariff, Tariffs, [Section 6.1, GT&C - NAESB, 3.0.0](#).

⁹ NAESB has granted pipelines the right to reproduce in their tariffs standards 1.3.2 and 5.3.2 in their entirety. See Docket Nos. RM05-5-000, *Standards for Business Practices and Communications Protocols for Public Utilities* and RM96-1-000, *Standards for Business Practices of Interstate Natural Gas Pipelines*, Report of the North American Energy Standards Board, NAESB Copyright Policy at p. 4 (filed November 20, 2012).

reference in another section of Gulf South's tariff. As the Commission has explained in prior orders, its incorporation by reference of the NAESB Standards is consistent with the requirements of the National Technology and Transfer Act.¹⁰ Under these requirements, the Commission is obligated to respect the copyright of the standards organization,¹¹ which helps defray the standards organization's administrative costs.¹²

8. As such we find it reasonable to allow Gulf South to remove the text of the NAESB Standards and replace it with the incorporation by reference contained elsewhere in its tariff. Further, the Commission does not allow duplicative reference of the NAESB WGQ Standards by including the text of a NAESB WGQ Standard and incorporating by reference the same standard. The policy is in place to diminish the chances of conflicting tariff language and obligations within one tariff.

9. However, we grant UMDG's request for rehearing of certain Gulf South tariff language and find that the tariff language "in accordance with the NAESB WGQ Standards" is too vague. As noted by UMDG, the NAESB Standards may change and not every NAESB WGQ Standard is incorporated by reference into the Commission's

¹⁰ Pub L. No. 104-113, section 12(d), 110 Stat. 775 (1996), 15 U.S.C. § 272 note (1997). This act requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as means to carry out policy objectives or activities.

¹¹ See OMB Circular No. A-119 (Revised February 10, 1998), at 6J, *available at* <http://www.whitehouse.gov/omb/rewrite/circulars/a119/a119.html> ("if a voluntary standard is used and published in an agency document, your agency must observe and protect the rights of the copyright holder and any other similar obligations"), 28 U.S.C. § 1498 (federal government may be liable for copyright infringement). Other government agencies similarly have denied requests to publish copies of privately developed standards. *Updating OSHA Standards Based on National Consensus Standards*, 74 *Federal Register* 46,350-46,361 (2009) ("OSHA notes that copyright laws protect national consensus standards"); *Airworthiness Directives; Airbus Model A300 Airplanes*, 72 *Federal Register* 6,923 (2007) (finding that incorporated by reference materials "do not lose their copyright protection").

¹² See *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-E, FERC Stats. & Regs. ¶ 31,299, at PP 115-121 (discussing Commission's obligation to preserve copyright); *Trans-Union Interstate Pipeline L.P.*, 141 FERC ¶ 61,167, at P 55 (2012) ("language of the NAESB WGQ Standards is copyrighted and the Commission cannot require a pipeline to reproduce the Standards in its tariff").

regulations.¹³ As such, Gulf South is required to file revised tariff records within 15 days from the date of this order to clarify the language in the tariff records identified in footnote 7 to remove the generic references to the NAESB WGQ Standards. Gulf South at its discretion may either delete the references entirely, or include a specific cross-reference identifying the specific NAESB Standards at issue.

The Commission orders:

(A) UMDG's request for rehearing of the November 29 Order is granted in part and denied in part as discussed above.

(B) Gulf South must file revised tariff records within 15 days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³ See, e.g., *Standards for Business Practices for Interstate Natural Gas Pipelines*, Final Rule, Order No. 587-T, FERC Stats. & Regs. ¶ 31,289, at P 5 & n.9 (2009).