

149 FERC ¶ 61,011
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. RP13-1245-001

ORDER DENYING REHEARING

(Issued October 3, 2014)

1. On February 28, 2014, the Commission issued an order (February 2014 Order)¹ that, among other things, accepted a proposed new Alternative No-Notice Service (Rate Schedule NNS-A) offered by Gulf South Pipeline Company, LP (Gulf South), using capacity leased from its affiliate, Petal Gas Storage, L.L.C. (Petal). Willmut Gas Company (Willmut), one of the customers on the Gulf South system, filed on March 18, 2014 (as supplemented on March 31, 2014) to seek rehearing. Willmut argues, pursuant to Rule 713(c)(3), that “matters not available for consideration by the Commission at the time of the final ... order,”² compel the Commission to reconsider its acceptance of the new NNS-A service. In particular, Willmut argues that Gulf South is implementing NNS-A service in a manner that harms customers of the traditional No-Notice Service (Rate Schedule NNS). The request for rehearing is denied for the reasons set forth below.

Procedural Background

2. On August 13, 2013, Gulf South filed tariff records proposing a new Rate Schedule NNS-A service. The service is a bundled service, containing both a storage and transportation component and a shipper under the service is entitled to no-notice deliveries at its primary delivery point up to its Maximum Daily Quantity (MDQ). Gulf South states that the storage component of the no-notice service will be provided using the leased Petal capacity, but other firm storage capacity may be acquired to support

¹ *Gulf South Pipeline Co., LP*, 146 FERC ¶ 61,149 (February 2014 Order).

² 18 C.F.R. § 713(c)(3) (2014). *See also* Willmut Request for Rehearing at 1, 3.

additional NNS-A service. Gulf South states that NNS-A service will have no impact on the contractual and tariff rights of Gulf South's existing firm customers as only unsubscribed capacity will be used.³

3. Willmut and several other parties filed protests to Gulf South's NNS-A filing. The February 2014 Order accepted the NNS-A filing subject to conditions and to refund. Relevant to the instant request for rehearing, the Commission reviewed concerns that the new service would harm existing shippers. Relying upon Gulf South's statements that it would only provide NNS-A service "in a manner that will not adversely affect any other existing firm service," the Commission noted that the proposed tariff language would apply the same standards to NNS-A service as to existing services.⁴ The Commission further found that the existing record "does not support shippers' concerns ... [of] a practical degradation of existing services."⁵ Further, the Commission noted, "In the event that Gulf South were to over-commit and impair the rights of other firm customers, it would be doing so not only in contravention of its answer, but also in contravention of the tariff records on file and the Commission's regulations."⁶

4. The February 2014 Order also rejected concerns that Gulf South's proposed scheduling priorities would harm existing shippers. The Commission noted that a nomination under any firm rate schedule, including NNS-A, could receive the same top level of priority "of primary firm, as long as the receipt point and delivery point are the primary points established in its shippers' service agreements."⁷ Noting concerns that primary firm NNS-A service might bump nominations that did not use the primary points established in its shippers' service agreements, the Commission reminded parties that "scheduling at secondary delivery points is always second in priority to scheduling at firm primary points."⁸ Accordingly, the February 2014 Order found the proposed scheduling priorities consistent with Commission policy.

³ February 2014 Order, 146 FERC ¶ 61,149 at P 41.

⁴ February 2014 Order, 146 FERC ¶ 61.149 at P 57.

⁵ *Id.* P 59.

⁶ *Id.*

⁷ *Id.* P 60.

⁸ *Id.*

Request for Rehearing

5. Willmut seeks rehearing of the Commission's conclusion that NNS-A service will not degrade existing NNS service, based on evidence of actual impairment that occurred soon after the Commission issued its February 2014 Order. Willmut states only five days after the February 2014 Order, Gulf South told Willmut that since NNS-A service was approved, Gulf South had no capacity available to facilitate changes Willmut requested to its NNS service agreement. Willmut states that Gulf South actions impaired Willmut's ability to shift its deliveries from one part of Gulf South's system to another and Willmut's ability to grow its gas distribution business and compete to serve the needs of South Central Mississippi. Willmut has filed two affidavits by its President, Karl Ficken, describing the factual scenario supporting Willmut's request.

6. Mr. Ficken explains that he contacted Gulf South asking "to shift Gulf South NNS capacity for deliveries to Willmut from our main city gate, located north of the City of Hattiesburg, Mississippi, to an existing Gulf South delivery point tap in the Hattiesburg Industrial Park."⁹ In addition, Mr. Ficken states Hattiesburg has grown westward in recent years and Willmut needs an increased part of its NNS deliverability to be shifted west of Hattiesburg to the parts of Gulf South's system located there. Given Willmut's need to compete to grow its business and serve the needs of South Central Mississippi, Willmut requested access to part of Willmut's Gulf South NNS capacity at a new delivery point on the west side of Hattiesburg.¹⁰ Mr. Ficken explains that, without the ability to make the geographical shifts of Gulf South NNS deliverability and NNS MDQ increases, over time Willmut will not be able to support a new economic development Mega Site unveiled recently by the Area Development Partnership located adjacent to the Gulf South Baxterville 16" Line facility.

7. Mr. Ficken states that he corresponded with Gulf South officials "by e-mail, telephone, and in person," but on March 5, 2014, he received an email stating, "I finally got word back from System Design; it appears that there is presently no available capacity on the Baxterville 16" line."¹¹ Mr. Ficken reports that he then spoke with a System Design planner, who said, "since last Friday when NNS-A was approved, there is

⁹ March 18, 2014 Ficken Aff. at P 4.

¹⁰ *Id.* P 5.

¹¹ *Id.* P 7.

no capacity available.”¹² On March 6, 2014, Ficken states that he followed up in person with a Gulf South Vice President, to no avail.¹³

8. Mr. Ficken states that Willmut “did not consider making [] a formal service request when we were summarily told such service was unavailable,” and that “Gulf South did not tell me to request service under Section 6.8 of its Tariff.”¹⁴ Mr. Ficken states without reasonable flexibility to shift Gulf South NNS deliverability capacity for Willmut from one location on Gulf South’s system to another to meet Willmut’s changing competitive circumstances, including NNS MDQ increases over time, Willmut’s ability to grow its business, or to respond to changing demographics across its South Central Mississippi service territory, will be constrained unreasonably.

Answer of Gulf South

9. On March 31, 2014, Gulf South filed an answer to Willmut’s request for rehearing. Gulf South disputes Willmut’s premise that failing to approve a change in primary points would constitute unjustly degraded service, and also argues that Willmut’s request is procedurally invalid. The Commission does not accept answers to requests for rehearing, pursuant to Rule 713(d),¹⁵ and we reject Gulf South’s answer accordingly.

Commission Determination

10. Commission policy allows shippers to change primary points under their existing contracts within the zone for which the shipper pays, as long as primary point capacity is available.¹⁶ Gulf South’s tariff provides shippers the ability to add or delete primary

¹² *Id.* P 8 (formatting omitted).

¹³ *Id.* P 9.

¹⁴ March 31, 2014 Ficken Aff. at P 2.

¹⁵ 18 C.F.R. § 385.713(d) (2014).

¹⁶ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, at 30,429, *order on reh’g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh’g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh’g*, 62 FERC ¶ 61,007 (1993), *aff’d in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

delivery points or request changes in primary delivery point MDQs¹⁷ and states Gulf South will provide the shipper with a reason if Gulf South cannot satisfy the request.¹⁸ In addition, Rate Schedule NNS states shippers may add a point of delivery, if in Gulf South's reasonable determination it is operationally feasible and does not increase the MDQ of the NNS agreement.¹⁹

11. As Gulf South's tariff and Commission policy state, a shipper's ability to shift points is dependent on capacity being available on the pipeline system. The fact that Gulf South did not have capacity available to accommodate Willmut's request to either shift its delivery point or add a new delivery point in the area in question²⁰ as a result of having sold capacity under another service such as NNS-A is not, by itself, a violation of Commission policy. Nor is the fact that Gulf South's marketing of new services using its unsubscribed capacity, such as NNS-A service, which may reduce system flexibility, reason not to approve new pipeline services. Therefore, Willmut's request for rehearing is denied.

12. To the extent Willmut is alleging that Gulf South violated the provisions of its tariff concerning a shipper's right to seek primary point changes or that Gulf South has capacity available to grant Willmut's requested changes but is withholding that capacity from the market, Willmut has options such as use of the Commission's Hotline or filing a Complaint to address these issues. However, that is a separate issue from the Commission's approval of Gulf South's NNS-A service.

¹⁷ Gulf South Pipeline Company, LP, FERC NGA Gas Tariff, General Terms and Conditions, Section 6.6(2).

¹⁸ Gulf South Pipeline Company, LP, FERC NGA Gas Tariff, General Terms and Conditions, Section 6.8(4).

¹⁹ Gulf South Pipeline Company, LP, FERC NGA Gas Tariff, Rate Schedules NNS, Section 2(c).

²⁰ It is not clear exactly what type of point change Willmut formally requested from Gulf South.

The Commission orders:

The request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.