

152 FERC ¶ 61,002
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf South Pipeline Company, LP

Docket Nos. RP15-1030-000
RP15-1031-000
RP15-1032-000
RP15-1033-000

ORDER ACCEPTING NEGOTIATED RATE AGREEMENTS

(Issued July 1, 2015)

1. On June 1, 2015, Gulf South Pipeline Company, LP (Gulf South) filed revised tariff records to reflect the addition of certain capacity release agreements to its tariff.¹ Gulf South requests that the revised tariff records become effective June 1, 2015. Waiver of the Commission's 30-day notice requirement is granted and the referenced tariff records are accepted, effective June 1, 2015, as proposed. The Commission also orders that in the future, in the case of temporary capacity releases, when filing replacement shipper agreements that include negotiated usage and or fuel charges with the Commission, Gulf South must file a tariff record summarizing the negotiated rate and may no longer choose to file the contract itself.

I. Background

2. Gulf South states that section 6.9.3 of the General Terms and Conditions of Gulf South's tariff authorizes it to execute service agreements for transportation service at negotiated rates, pursuant to the Commission's Alternative Rate Policy Statement.² That

¹ See the Appendix for a list of the proposed tariff records.

² *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996) (Alternative Rate Policy Statement); *clarification granted*, 74 FERC ¶ 61,194 (1996), *order on reh'g*, 75 FERC ¶ 61,024 (1996). *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006).

policy statement requires that a pipeline must file all negotiated rate agreements with the Commission to become part of its tariff, or in the alternative, a tariff record summarizing the essential elements of the negotiated rate agreements, including the legal name of the shipper, the negotiated rate, the rate schedule, the receipt and delivery points, and the contract demand volume.

3. Gulf South states that it had previously submitted, and the Commission accepted, certain negotiated rate agreements that are now subject to capacity releases.³ In the instant filings, Gulf South included seven (7) new negotiated rate agreements with the replacement shippers of the original agreements. According to Gulf South, the negotiated usage, overrun and fuel components of the original agreements were passed through to the replacement shipper agreements that it submitted with the instant filings.⁴ Gulf South further states that the subject replacement agreements do not deviate in any material respect from the form of service agreement in its tariff.

4. Public notice of the filing was issued on June 2, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2014)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2014)), all timely filed motions to intervene and any unopposed 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 protests or adverse comments were filed.

II. Discussion

5. The Alternative Rate Policy Statement requires that when a pipeline enters into a negotiated rate service agreement with a customer, it must either file the contract or a tariff record describing the negotiated rate for acceptance by the Commission.⁵ The Commission has found that the disclosure of the contract terms of a negotiated rate transaction is necessary to provide transparency and to permit shippers that believe they

³ See, e.g., *Gulf South Pipeline Co., LP*, Docket No. RP11-1880-000, *et al.* (Apr. 13, 2011) (delegated letter order).

⁴ See *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,025, at PP 11-15 (2009) (*Texas Eastern*) (explaining that, while the reservation charge in a capacity release is established by the capacity release agreement between the releasing and replacement shipper, the pipeline is not required to provide a replacement shipper the same negotiated usage or fuel charge as it has provided the releasing shipper. Thus, a replacement shipper must bargain directly with the pipeline for any negotiated usage or fuel charge).

⁵ Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,241-242.

are similarly situated with respect to a particular negotiated rate shipper to make such a determination.⁶ The Commission has held that this policy applies to the filing of a pipeline's negotiated rate agreements with replacement shippers concerning their usage and fuel charges.⁷ As noted, in accordance with its tariff and this policy, Gulf South chose to file the actual negotiated replacement shipper contracts in lieu of a tariff record summary of those agreements.

6. Because the subject agreements are temporary capacity releases with negotiated rates, the electronic version of the agreements are in the "Award Download" form required by NAESB Standard No. 5.4.26.⁸ Upon review of the Award Downloads related to Gulf South's filings, the Commission has identified several issues that contravene the purpose of filing such contracts for transparency. The Award Downloads files, which become a part of the pipeline's tariff, are extremely voluminous and contain superfluous data.⁹ In addition to the size of the Award Download files, the Award Download format is designed for electronic processing thereby making it extremely difficult to decipher or to even identify the actual negotiated rate being charged. This result renders the electronic version of the agreements ineffective as a transparency tool and thus contrary to the very purpose for filing such agreements.

7. The purpose of the requirement in the Alternative Rate Policy Statement to disclose the details of all negotiated rate agreements by filing the contract or a summary of the essential terms was to allow the Commission to determine whether the transaction is unduly discriminatory, as well as for shippers to be able to assess the transaction to determine if they are similarly situated to the negotiated rate shipper. At the time of the implementation of the Alternative Rate Policy Statement, the Commission did not anticipate that the NAESB standard format for downloading the electronic version of negotiated replacement shipper agreements would render agreements filed in this format ineffective as tools for transparency. Accordingly, given the limited usefulness of the NAESB standard electronic format for filed negotiated rate agreements, the Commission orders that in the future, in the case of temporary capacity releases, when filing

⁶ *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011, at 61,037 (1996) (*NorAm*).

⁷ *Texas Eastern*, 129 FERC ¶ 61,025 at P 21.

⁸ The Commission required pipelines to incorporate by reference in their tariffs NAESB Wholesale Gas Quadrant, Version 2.0, Standard No. 5.4.26. *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-V, FERC Stats. & Regs. ¶ 31,332 (2012).

⁹ The seven (7) agreements filed by Gulf South result in nearly 2000 pages of contracts to be included in Gulf South's tariff.

replacement shipper agreements that include negotiated usage and or fuel charges with the Commission, Gulf South must file a tariff record summarizing the negotiated rate and may no longer choose to file the contract itself. The Commission expects tariff filings that summarize negotiated usage rates between the pipeline and the capacity release replacement shipper to include: the legal name of the Shipper, the negotiated rate, the rate schedule, the type of service, any affiliate relationship between the pipeline and the shipper and any other applicable term or condition applicable to the negotiated rate, such as receipt points, delivery points, total volume and contract terms.¹⁰

The Commission orders:

(A) The Commission grants waiver of section 154.207 of our regulations and accepts the tariff records referenced in the Appendix effective June 1, 2015; and

(B) In the future, Gulf South must report replacement shipper agreements resulting from temporary releases, which contain negotiated usage and/or fuel charges, by filing a narrative tariff record summary of the negotiated rate as described above, and may no longer report such transactions by filing the contract itself.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ See *NorAm*, 77 FERC ¶ 61,011 at 61,037; *Texas Gas Transmission Corp.*, 92 FERC ¶ 61,188, at 61,649-650 (2000).

Appendix

Tariff records accepted effective June 1, 2015

Gulf South Pipeline Company, LP
FERC NGA Gas Tariff
Tariffs

RP15-1030-000

[Section 3.2, Capacity Release Agmts-Encana 37663 to BP 44703, 11.0.0](#)

RP15-1031-000

[Section 3.11, Capacity Release Agmts-CenterPoint 35484 to BP 44727, 18.0.0](#)

[Section 3.13, Capacity Release Agmts-CenterPoint 35483 to BP 44728, 11.0.0](#)

[Section 3.15, Capacity Release Agmts-CenterPoint 35485 to BP 44729, 4.0.0](#)

[Section 3.17, Capacity Release Agmts-CenterPoint 44554 to BP 44725, 8.0.0](#)

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[Section 3.18, Capacity Release Agmts-Willmut 35221 to BP 44724, 6.0.0](#)

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[Section 3.24, Capacity Release Agmts-Atlanta Gas Light 8438 to Various, 3.0.0](#)