

152 FERC ¶ 61,025
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 10, 2015

In Reply Refer To:
Gulf South Pipeline Company, LP
Docket No. RP15-1058-000

E. Adina Owen, Senior Counsel
Gulf South Pipeline Company, LP
9 Greenway Plaza, Suite 2800
Houston, TX 77046

Reference: Accepting Revised Evergreen Provision

Dear Ms. Owen:

1. On June 12, 2015, Gulf South Pipeline Company, LP (Gulf South) filed tariff records¹ to expand its ability to offer evergreen and contractual Right of First Refusal (ROFR) contract terms,² to be effective July 12, 2015. As discussed below, the Commission accepts Gulf South's proposed tariff records, effective July 12, 2015 as requested.

2. Gulf South states that its existing evergreen and contractual ROFR clauses differ from rate schedule to rate schedule. For example, some rate schedules require a shipper

¹ See Appendix.

² Section 284.221(d)(2) of the Commission's regulations (18 C.F.R. § 284.221(d)(2)) requires pipelines to offer a right of first refusal to firm shippers with contracts of one year or more at the maximum rate. Gulf South has implemented this regulatory ROFR in section 6.10 of its General Terms and Conditions (GT&C). In addition, the Commission permits pipelines to offer a contractual ROFR to firm shippers who do not qualify for the regulatory ROFR. Gulf South's instant filing is limited to revising its tariff provisions concerning the contractual ROFR it offers to shippers who do not qualify for the regulatory ROFR and does not address the regulatory ROFR provided for in GT&C section 6.10.

to choose either an evergreen or ROFR option, but not both; some allow a single term extension, while others allow multiple consecutive term extensions. Gulf South proposes to adopt a uniform, more liberal evergreen and ROFR clause for its firm rate schedules. As proposed, the evergreen and ROFR clause would read:

Gulf South and Customer may agree at the time of initial service agreement execution to (1) a contractual Right of First Refusal and/or (2) evergreen option(s) provided such option(s) shall not exceed the initial service agreement term and MDQ.³

3. Gulf South states that it will continue to offer these contracting rights on a not unduly discriminatory basis. It notes that variations on its proposed clause have already been approved for some of its rate schedules, and argues that its overall proposal is consistent with Commission policy. Finally, Gulf South argues that its proposal would enhance flexibility and help Gulf South retain its long-term firm contracts.

4. Notice of Gulf South's filing was issued on June 16, 2015. Interventions, comments and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely-filed motions to intervene and any unopposed motions to intervene out-of-time 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. The United Municipal Distributors Group (UMDG) filed comments.

5. UMDG requests that the Commission require Gulf South to clarify that the proposal does not discriminate against pre-existing customers. UMDG notes that the proposed evergreen and ROFR clause contains the phrase "initial service agreement." UMDG argues that pre-existing customers are capable of contracting for an "initial service agreement," but it expresses concern that Gulf South might claim that their "initial service agreements" are the decades-old agreements that each customer signed the very first time that it sought service on the Gulf South system. UMDG states that, if it receives clarification that any customer, old or new, who signs a new service agreement may qualify for the proposed evergreen and ROFR clause, then it would have no objection, and would support Gulf South's proposal.

³ MDQ refers to Maximum Daily Quantity. Some rate schedules, such as FSS-B, use slightly different wording because they use quantities other than MDQ, but these differences are not material to the issue at hand.

⁴ 18 C.F.R. § 154.210 (2014).

⁵ 18 C.F.R. § 385.214 (2014).

6. The Commission finds that Gulf South's proposal is just and reasonable. We find that the phrase "initial service agreement" must be read to cover any customer, old or new, who signs a new service agreement. The phrase "initial service agreement" was in virtually every Gulf South evergreen and contractual ROFR tariff provision before the instant filing. Most of Gulf South's proposed revisions in its instant filing replace singular nouns and exclusive conjunctions with plural nouns and inclusive conjunctions. Since the phrase "initial service agreement" is not new tariff language proposed in Gulf South's instant tariff filing, it suffices to note that the pre-existing tariff has been understood to allow both old and new customers to negotiate a new contract with term extension clauses. The instant proposal only expands that option, without placing any new restrictions on customers. Separately, we find that a restrictive reading of the tariff language would go against Gulf South's stated purpose of helping it to retain its long-term firm contracts. On either ground, then, we find that the phrase "initial service agreement" should be read to include a new service agreement entered into by any firm shipper, regardless of whether that shipper was previously taking service on Gulf South.

7. Gulf South's proposal, as clarified above, expands the power of Gulf South and its customers to negotiate appropriate and flexible contract durations, consistent with the Commission's evergreen and contractual ROFR clause policy. Accordingly, the Commission accepts the tariff records in the Appendix, effective July 12, 2015 as requested.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

**Gulf South Pipeline Company, LP
FERC NGA Gas Tariff
Tariffs**

Tariff Records Accepted Effective July 12, 2015

[Section 5.1, Rate Schedules - FTS, 6.0.0](#)

[Section 5.2, Rate Schedules - FTS-SCO, 6.0.0](#)

[Section 5.3, Rate Schedules - EFT, 3.0.0](#)

[Section 5.4, Rate Schedules - NNS, 3.0.0](#)

[Section 5.5, Rate Schedules - NNS-SCO, 5.0.0](#)

[Section 5.6, Rate Schedules - NNS-A, 4.0.0](#)

[Section 5.11, Rate Schedules - FSS-B, 5.0.0](#)

[Section 5.12, Rate Schedules - FSS-P, 3.0.0](#)

[Section 5.20, Rate Schedules - FTS-P, 2.0.0](#)

[Section 7.3, Form\(s\) of Service Agreements - FSS-B, 6.0.0](#)

[Section 7.8, Form of Agmt - Firm Services Disc Rates Ltr Agmt, 9.0.0](#)

[Section 7.10, Firm Services Neg Rate Letter Agmt, 8.0.0](#)