

153 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf South Pipeline Company, LP

Docket Nos. RP15-1030-001
RP15-1031-001
RP15-1032-001
RP15-1033-001

ORDER GRANTING CLARIFICATION

(Issued December 4, 2015)

1. On July 1, 2015, the Commission accepted records filed by Gulf South Pipeline Company, LP (Gulf South) to reflect the addition of certain capacity release agreements to its tariff.¹ The Commission also ruled “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.”² On August 14, 2015, Gulf South filed a Request for Clarification, seeking “up to six months from the date of this request, to fully comply” with that requirement.³ As discussed below, we grant the requested clarification.
2. The July 2015 Order accepted revised tariff records that reflected certain new capacity release agreements on Gulf South’s system which included negotiated usage and fuel rates. In compliance with the requirement in the Commission’s Alternative Rate

¹ *Gulf South Pipeline Co., LP*, 152 FERC ¶ 61,002 (2015) (July 2015 Order).

² July 2015 Order at P 1.

³ Gulf South Request for Clarification at 1.

Policy Statement⁴ 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 Gulf South filed the subject agreements in the Award Download format required by North American Energy Standards Board (NAESB) Standard No. 5.4.26.⁶

3. The July 2015 Order found that this Award Download format, while useful for other purposes, is “ineffective as a transparency tool and thus contrary to the very purpose for filing such agreements.”⁷ The Commission noted that the Award Download format resulted in extremely voluminous files that were not designed for critical review by the Commission (or third-party shippers) seeking to determine whether the transaction is unduly discriminatory. Accordingly, the Commission ordered that in the future, when filing temporary capacity release agreements that include negotiated usage and/or fuel charges, Gulf South must file a tariff record summarizing the negotiated rate and may no longer choose to file the contract itself.

4. Gulf South seeks clarification of the July 2015 Order and requests “sufficient time, up to six months from the date of this request, to fully comply with” the Commission’s newly elaborated policy on filing negotiated capacity release agreements.⁸ Gulf South

⁴ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (Alternative Rate Policy Statement), *order granting clarification*, 74 FERC ¶ 61,194, *order on reh’g*, 75 FERC ¶ 61,024 (1996). *Natural Gas Pipelines 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, *order dismissing reh’g and denying clarification*, 114 FERC ¶ 61,304 (2006).

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

⁶ 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).

⁷ As the July 2015 Order explained, the Alternative Rate Policy Statement adopted these requirements to “provide transparency and to permit shippers that believe they are similarly situated with respect to a particular negotiated rate shipper to make such a determination.” July 2015 Order at P 5.

⁸ Gulf South Request for Clarification at 1.

states that when a shipper with a negotiated rate service agreement releases its capacity, Gulf South passes through any negotiated usage and fuel charges in the releasing shipper's service agreement to the replacement shipper. Gulf South states that it adopted this practice, because it has determined that replacement shippers are generally similarly situated to their releasing shippers. Gulf South states that section 6.9.3(4) of its General Terms and Conditions requires it to file all negotiated rate agreements of more than 27 days no later than the business day on which service commences.⁹ Gulf South states that many releasing shippers are making relatively short-term capacity releases only a few days before service is to commence, and this gives Gulf South only a very short time to file any releases containing negotiated usage or fuel charges, Gulf South states that its previous practice of filing such agreements in Award Download format was fairly automatic and administratively simple. Gulf States notes, by contrast, "narrative tariff record summaries would have to be done manually,"¹⁰ which it contends would be burdensome on a system like Gulf South that oversees a large number of very short-term capacity release agreements.

5. Gulf South states that it intends to comply with the July 2015 Order but requests additional time to allow it to "either: (1) [] make the computer system changes that will automatically generate the information necessary to timely file the negotiated rate capacity release information in the format desired by the Commission; or (2) [] file a tariff provision expanding Gulf South's existing tariff provisions related to the posting of negotiated rate capacity release agreements." Gulf South further states that if the Commission grants the additional time, "Gulf South would comply with the Commission's requirements until the amended tariff language is effective by filing summarized negotiated rate capacity release agreements as soon as possible once the summary document is complete, but no later than fourteen days following the date of flow, similar to the timeframe granted for compliance under the July 31 Order."¹¹ Gulf South proposes that, in the meantime, it would "continu[e] to file negotiated rate capacity release agreements as it does today."¹² Gulf South asserts that in each such

⁹ Section 6.9.3(4) permits Gulf South to post on its Informational Postings Website capacity release agreements of 27 days or less which contain the same negotiated rates as the releasing shipper's service agreement, rather than filing those agreements.

¹⁰ Gulf South Request for Clarification at 7.

¹¹ Gulf South Request for Clarification at 10 (citing *Gulf South Pipeline Co., LP*, 152 FERC ¶ 61,091 (2015) (July 31 Order)).

¹² Gulf South Request for Clarification at 9.

filing, Gulf South would include “an express statement that the negotiated usage and fuel charges, if any, remain unchanged” from those in the releasing shipper’s service agreement.¹³

6. We grant clarification in order to provide Gulf South until February 14, 2016 to fully comply with the July 2015 Order. In its Request for Clarification, Gulf South stated that it will take various actions which should minimize any short-term harm to shippers from the reduced transparency of the Award Download format. In particular, Gulf South asserts that during the six-month interval before it can fully comply with the July 2015 Order, Gulf South would include “an express statement that the negotiated usage and fuel charges, if any, remain unchanged,”¹⁴ and Gulf South will file a summary of the negotiated rate agreement within 14 days after service commences. In the long term, it will be necessary for Gulf South to file its contracts in a more convenient format that allows the Commission and third parties to readily confirm the veracity of Gulf South’s claims on rates and charges. In the short term, however, we will allow Gulf South to “continu[e] to file negotiated rate capacity release agreements as it does today,”¹⁵ so long as the rates, charges, terms, and conditions of the release agreements are materially unchanged from the original. For any contracts in the interim that do feature material changes, Gulf South should clearly summarize such changes in the manner that the July 2015 Order requires.¹⁶

¹³ Gulf South Request for Clarification at 9.

¹⁴ Gulf South Request for Clarification at 9.

¹⁵ Gulf South Request for Clarification at 9.

¹⁶ As a further point of clarification, the fourteen-day deadline for filing the negotiated rate capacity release agreements granted in the July 2015 Order only established an administrative deadline for complying with the directive in that docket. Consistent with the reasons stated in that order, we hereby clarify that between now and the February 14, 2016 deadline for Gulf South to comply with the July 2015 Order, Gulf South must continue to comply with the Commission’s requirements to file summarized negotiated rate capacity release agreements as soon as possible once the summary document is complete, but no later than fourteen days following the date of flow. To facilitate market transparency we urge Gulf South to make these filings as expeditiously as possible and to not wait the full 14 days when possible.

The Commission orders:

The Commission clarifies its previous order in these dockets, as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.