

153 FERC ¶ 61,326
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

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In Reply Refer To:
Gulf South Pipeline Company, LP
Docket Nos. RP15-65-001
RP15-65-002
RP15-65-004

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Ladies and Gentlemen:

1. On September 25, 2015, Gulf South Pipeline Company, LP (Gulf South) filed a Stipulation and Agreement of Settlement and related Appendices (Settlement). Gulf South filed comments on October 2, 2015, and Commission Trial Staff (Staff), Atmos Energy Corporation, the Louisiana Municipal Gas Authority and Magnum Gas Marketing, LLC, the Indicated Shippers,¹ the Distributor Coalition,² and the United Municipal Distributors Group (UMDG)³ filed comments on October 15, 2015.

¹ Indicated Shippers here refers to BP Energy Company; Chesapeake Energy Marketing, LLC; ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation; and Petrohawk Energy Corporation.

² Distributor Coalition here refers to CenterPoint Energy Resources Corp.; Mobile Gas Service Corporation; Willmut Gas Company; and the City of Vicksburg, MS.

³ UMDG consists of the following municipal-distributor customers of Gulf South: City of Bay Springs, MS; City of Brewton, AL; Canton Municipal Utilities, MS; Chickasawhay Natural Gas District, MS; Town of Century, FL; Utilities Board of the Town of Citronelle, AL; City of Fairhope, AL; Utilities Board of the City of Foley, AL; City of Moss Point, MS; the Municipal Gas Authority of Mississippi; North Baldwin Utilities, AL; Okaloosa Gas District, FL; City of Pascagoula, MS; City of Pensacola, FL; and the South Alabama Gas District.

On November 30, 2015, the Presiding Judge certified the uncontested partial Settlement to the Commission.⁴ The major provisions of the Settlement are summarized below.

2. Article I provides the procedural background to this proceeding. It notes that if approved, the Settlement will resolve all issues in this proceeding, with the exception of certain parties' claims under section 5 of the Natural Gas Act (NGA)⁵ regarding segmentation and pathing.

3. Article II details the scope of the Settlement.

4. Article III provides the settlement rates for all of Gulf South's services (Settlement Rates). Section 3.1 states that the Settlement Rates are based upon a postage-stamp rate design that applies to all of Gulf South's system, excluding the Lake Charles System, the Destin lease, the Petal Storage Field, and the Petal Storage Pipeline. Section 3.2 sets forth procedures for a tracking mechanism whereby Gulf South will make annual filings to establish separate rates for Gulf South's general system and the Southeast Market Expansion facilities (SEME). Section 3.3 provides refunds for customers paying the effective rates (Motion Rates), and Section 3.4 gives Gulf South the option to file the Settlement Rates on an interim basis prior to the Settlement's effective date (Effective Date).

5. Article IV sets forth the Settlement's tariff provisions. Tariff records in Appendix C, which went into effect on May 1, 2015, will no longer be subject to refund as of the date the Settlement was filed. Gulf South will file the tariff records listed in Appendix D within fifteen (15) days of the Effective Date, to be effective upon the Effective Date.

6. Article V discusses the Settlement's depreciation rates. The depreciation rate for all of Gulf South's on-shore transmission facilities, excluding the Lake Charles facilities, is 2.08 percent with a 0.10 percent negative salvage rate. Appendix E sets forth all other depreciation rates. Article V notes that the depreciation rates shall become effective on May 1, 2015.

7. Article VI provides the roll-in of certain Gulf South facilities. Section 6.1 states that on the Effective Date, the Bastian Bay facilities, Mobile Bay facilities, Little Tex facilities, East Texas to Mississippi Expansion facilities, and Haynesville Expansion facilities will be afforded rolled-in rate treatment as a settled practice. Section 6.2 provides that for the purposes of the Settlement, the facilities associated with the

⁴ *Gulf South Pipeline Co., LP*, 153 FERC ¶ 63,016 (2015).

⁵ 15 U.S.C. § 717d (2012).

Southeast Expansion (Southeast Expansion Facilities) will be included in Gulf South's postage-stamp rate design solely for the purposes of determining the Settlement Rates. The future rate treatment of Southeast Expansion Facilities will be determined as set forth in Section 6.4, while the future rate treatment of the SEME facilities will be determined in Gulf South's next rate case. Section 6.3 notes that to provide transparency in future proceedings, Gulf South will separately track data for the Southeast Expansion Facilities. Gulf South will annually post updated data on the Southeast Expansion Facilities by way of an informational posting on Gulf South's website. This will begin on April 1, 2016 and will continue until the earlier of May 1, 2025 or the effective date of Gulf South's next general rate case. Section 6.4 describes Gulf South's burden with respect to supporting rolled-in rate treatment for the Southeast Expansion Facilities going forward.

8. Article VII describes both the Moratorium Period and Contract Extensions. Section 7.1 provides that neither Gulf South nor any customer will make filings under sections 4 or 5 of the NGA⁶ with respect to revising Settlement Rates or re-proposing substantive tariff revisions to be effective before May 1, 2023 (Moratorium Period), except as otherwise provided in Article IV. Section 7.2 provides that No-Notice Service (NNS) customers, excluding No-Notice Service-Small Customer Option (NNS-SCO) customers, shall extend their contracts under Rate Schedule NNS through at least the end of the Moratorium Period (NNS Contract Extensions), at the maximum applicable rate provided in the Settlement Rates and at their same maximum daily quantity (MDQ) subject to MDQ reduction elections provided in Section 7.3. Section 7.3 provides that NNS customers shall maintain 100 percent of the seasonal MDQ levels (Base MDQ) (as of May 1, 2015) through March 31, 2016. From April 1, 2016 through March 31, 2020, NNS customers agree to maintain 94 percent of their Base MDQ level. Beginning April 1, 2020 through at least April 30, 2023, NNS customers shall maintain at least 88.36 percent of their Base MDQ level. Section 7.4 details the City of Pensacola, Florida's option to modify its obligations pursuant to Article VII of the Settlement. Section 7.5 provides that Gulf South may make a limited NGA section 4 filing to establish a tracking mechanism to recover Gulf South's costs associated with compliance with new federal safety and integrity or methane regulations issued between May 1, 2015 and the end of the Moratorium Period. Section 7.6 states that Appendix G lists the SCO contracts that will be modified or terminated.⁷

9. Article VIII provides for the allocation of storage component services provided under Gulf South's NNS and NNS-SCO rate schedules. Gulf South's NNS and NNS-

⁶ 15 U.S.C. §§ 717c, 717d (2012).

⁷ Appendix G to the Settlement, as amended, was attached to the comments filed by Louisiana Municipal Gas Authority and Magnum Gas Marketing, LLC to reflect corrections to the MDQs of the cities of Delcambre and Tangipahoa.

SCO customers' contracts between the Bistineau Storage Field and the Jackson Storage Field will be 60 percent and 40 percent, respectively.

10. Article IX describes Settling Parties and Contesting Parties. Article IX also addresses settlement procedures and all parties' rights in the event there is a Contested Party to the Settlement.

11. Article X sets forth the criteria for making the Settlement effective.

12. Article XI gives the Settlement's effective date. The Settlement will be effective on the first day following the first full month after the date on which a Commission order approves the Settlement, without modifications or conditions that are adverse or unacceptable to Gulf South, becomes final.

13. Article XII contains the various reservations regarding the Settlement. Section 12.3 provides:

To the extent the Commission considers any changes to the terms of this Settlement during the term of this Settlement, the standard of review for such changes shall be the most stringent standard permissible under applicable law.

14. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

15. Because the Settlement provides that the standard of review for changes to the Settlement is "the most stringent standard permissible under applicable law," we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement.⁸

16. The *Mobile-Sierra* "public interest" presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra*

⁸ *Wyoming Interstate Co., L.L.C.*, 145 FERC ¶ 61,005, at P 14 (2013).

presumption. In *New England Power Generators Ass'n, Inc. v. FERC*,⁹ however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

17. The Settlement resolves all issues set for hearing in Docket No. RP15-65-000, except issues relating to segmentation and pathing. We direct the Presiding Judge to resume hearings in Docket No. RP15-65-000 on those remaining issues.

18. Section 12.9 provides that following Commission approval of the Settlement, Settling Parties will withdraw their requests for rehearing. Within thirty (30) days, Settling Parties who have filed requests for rehearing are ordered to withdraw such requests from Docket No. RP15-65-001.

19. On April 29, 2015, Gulf South filed a Motion to Replace Suspended Tariffs and Move into Effect. The Commission issued an Order Granting Motion to Place Tariff Records into Effect on June 30, 2015 in Docket No. RP15-65-002. Approval of the Settlement terminates Docket Nos. RP15-65-002 and RP15-65-004.

20. The Commission directs Gulf South to file revised tariff records in eTariff format¹⁰ to replace the *pro forma* tariff records in Appendix B of the Settlement, following the timetable specified in the Settlement.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ 707 F.3d 364, 370-371 (D.C. Cir. 2013).

¹⁰ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).