

153 FERC ¶ 61,364
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SG Resources Mississippi, L.L.C.

Docket No. RP16-233-000

ORDER ON TARIFF FILING

(Issued December 30, 2015)

1. On November 24, 2015, SG Resources Mississippi, L.L.C (SGRM) submitted for filing revised tariff records¹ proposing to revise its creditworthiness provisions, *force majeure* and reservation charge crediting provisions, and to make what it asserts are housekeeping changes and other minor changes to conform SGRM's tariff, to the extent practicable, with the FERC Gas Tariffs of its affiliates, Pine Prairie Energy Center, LLC (Pine Prairie) and Bluewater Gas Storage, LLC (Bluewater). SGRM requests that the Commission accept these tariff records to be effective December 31, 2015. For the reasons discussed below, the Commission accepts the revised tariff records subject to conditions, to become effective December 31, 2015. In addition, pursuant to section 5 of the Natural Gas Act (NGA), the Commission is investigating whether certain aspects of SGRM's *force majeure* and reservation charge crediting provisions, which it did not propose to change, are unjust and unreasonable and therefore must be modified.

Background

2. In its transmittal letter, SGRM states that its creditworthiness provisions are currently located in two different sections of the General Terms and Conditions (GT&C) of its tariff and therefore it is proposing to consolidate these provisions into one section to minimize the potential for confusion concerning its creditworthiness requirements. In addition, SGRM states that it wants to streamline the process of credit review to make it more closely match the needs of its customers and market practices. SGRM states that it is also revising its *force majeure* and reservation charge crediting provisions to be consistent with Commission policy, and it is making several housekeeping and conforming changes to its tariff including modifications to its: rate schedules, firm

¹ See Appendix.

storage service ratchets, service agreement forms, transmission provider standards of conduct, and disposition of retained gas quantities provisions.

3. Public notice of the instant filing was issued on December 1, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.² Pursuant to Rule 214,³ 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. Seminole Electric Cooperative, Inc. (Seminole) filed adverse comments. On December 14, 2015, SGRM filed a response to Seminole's comments (December 14 Response). On December 16, 2015, SGRM and Seminole filed a joint motion (Joint Motion) requesting the Commission to issue an order accepting SGRM's proposed tariffs as modified by the proposed revisions set out below and subject to a requirement that SGRM submit a compliance filing.

4. While the Commission's Rules of Practice and Procedure generally prohibit answers or responses to protests or comments, pursuant to Rule 213 of the Commission's regulations,⁴ the Commission will accept SGRM's December 14 Response and the Joint Motion in this proceeding to allow a better understanding and resolution of the issues.

Comments of the Parties

5. In its original comments, Seminole stated that it did not oppose SGRM's filing, but argued that SGRM had not met the Commission's requirements because it did not provide a detailed explanation of the need for each change or addition to its tariff. Seminole requested that the Commission require SGRM to meet its obligation to justify the proposed changes and give intervenors an opportunity to review and comment following the explanation.

6. Seminole objected to certain aspects of SGRM's proposed creditworthiness criteria language in section 6.31 of the GT&C of its tariff. Seminole argued that SGRM's determination of creditworthiness is inappropriately narrow and should include an "issuer rating" as part of its acceptable criteria. Seminole also argued that the alternative criteria proposed in section 6.32.3 for customers who are not deemed creditworthy is flawed in at least two respects. First, according to Seminole, the criterion requiring the submission of

² 18 C.F.R. § 154.210 (2015).

³ 18 C.F.R. § 385.214 (2015).

⁴ 18 C.F.R. § 385.213(a)(2) (2015).

Exchange Commission Forms 10-K and 10-Q cannot be met by electric cooperatives, such as Seminole, municipal utilities, or privately held companies. Second, Seminole stated that SGRM lists the materials that customers must submit, but does not provide any indication as to how it will actually measure creditworthiness with the materials. Therefore, Seminole requested that the Commission require SGRM to remove the 10-K and 10-Q submission mandate and to include objective standards to establish creditworthiness that are appropriately tailored to the needs of electric cooperatives and municipalities.

7. Seminole also took exception to SGRM's warehousemen's liens provision in GT&C section 6.3, stating that SGRM inadvertently missed a revision that it should have made. Specifically, Seminole stated that the sentence in section 6.33.2(a) which provides that "[c]ustomer's storage service agreement(s) with all schedules and exhibits *hereto* (emphasis added)...shall be deemed a "warehouse receipt" is incorrect. Seminole claimed that the word "hereto" in the aforementioned sentence should be replaced with "thereto."

8. Finally, Seminole noted that SGRM proposes to revise language from the *force majeure* definition in section 6.17 of the GT&C of its tariff to clarify that it will provide reservation charge credits to firm customers for non-*force majeure* curtailments. However, Seminole pointed out that the change does not appear in the referenced section of the tariff filing.

9. In its December 14 Response, SGRM argued that it described in great detail the proposed tariff changes, many of which SGRM believes to be generally self-explanatory. Nevertheless, SGRM provided explanations and justifications on each of the proposed changes that Seminole questioned. In addition, SGRM agreed to make certain of Seminole's suggested changes to its creditworthiness provisions and to make the requested correction in the warehousemen's lien section. Among these changes, SGRM agreed to: (a) add language in its tariff to include "issuer" credit ratings; (b) allow non-public entities to provide information equivalent to information provided in documents such as the 10-K and 10-Q reports; and (c) set forth objective criteria that would guide SGRM's use of a customer's financial information to evaluate the customer's creditworthiness.

10. Subsequently, in the Joint Motion, the parties agreed that SGRM will: (a) modify the creditworthiness provisions as discussed on pages 3 through 4 of the December 14 Response (with minor changes needed for consistency with the structure of the SGRM tariff); and (b) delete from section 6.8.2(b) of the GT&C the following proposed language: "SGRM determines that such Intraday Nominations will not interfere with the efficient operation of SGRM's system and." The parties state that the foregoing changes to SGRM's initial tariff filing in this proceeding address Seminole's objections and resolve its concerns with respect to that filing. Subject to a requirement that SGRM submit a compliance filing to incorporate the agreed-upon tariff revisions, Seminole

states that it does not object to the Commission's acceptance of the remaining tariff changes pending in the instant proceeding.

Discussion

11. The Commission finds that SGRM's response to Seminole's comments, which includes a detailed explanation of each of the tariff revisions in question, as well as the assurance that it will modify its tariff to include Seminole's suggested revisions, including the conditions both parties have agreed to in the Joint Motion, satisfies the Commission's standards as to the justness and reasonableness of the proposed tariff change. Therefore, the Commission accepts SGRM's proposed tariff revisions, subject to the condition that SGRM file revised tariff records within 30 days of the date of this order, modifying its creditworthiness and warehousemen's lien provisions as described in the Joint Motion. In addition, as discussed below, the Commission initiates a section 5 investigation as to whether several aspects of SGRM's *force majeure* and reservation charge crediting provisions which it did not propose to change are unjust and unreasonable and must be modified.

12. Section 17.1(c) of SGRM's GT&C provides that SGRM will provide full reservation charge credits, when a shipper "does not receive one hundred percent (100%) of its scheduled service" during "non-Force Majeure curtailments." Section 17.1(c) further provides that SGRM will not provide any reservation charge credits during the first ten days of a "curtailment due to Force Majeure events." Thereafter, SGRM will provide full reservation charge credits, if the shipper "does not receive at least ninety-eight percent (98%) of its scheduled service." The Commission finds that these provisions conflict with our reservation charge crediting policy in two respects.

13. First, the use of the terms "scheduled service" and "curtailment" in these provisions can be interpreted as limiting SGRM's obligation to the narrow circumstance where it curtails service after SGRM has scheduled that service. The Commission only permits pipelines to "curtail" service in an emergency situation or when an unexpected capacity loss occurs after the pipeline has scheduled service, and the pipeline is therefore unable to perform the service which it has scheduled.⁵ Moreover, while shippers "nominate" service to be scheduled, only the pipeline actually "schedules" service. However, the Commission requires pipelines to provide reservation credits based on the amount of primary firm service the shipper nominated, but that the pipeline was unable to schedule or deliver.⁶

⁵ *Portland Natural Gas Transmission Sys.*, 76 FERC ¶ 61,123 (1996); *Ryckman Creek Resources, LLC*, 136 FERC ¶ 61,061, at P 68 (2011).

⁶ *CenterPoint Energy Gas Transmission Co.*, 144 FERC ¶ 61,195, at P 46 (2013).

14. Second, the 98 percent requirement with respect to *force majeure* outages would allow SGRM a 2 percent tolerance before it must provide reservation charge credits, following the 10-day Safe Harbor period when SGRM does not need to provide any credits for such outages. Thus, pursuant to its existing tariff, SGRM is required to provide reservation charge crediting during *force majeure* outages of more than 10 days only if it delivers less than 98 percent of the shipper's nominated volumes after the tenth day.

15. The Commission has held that a 98 percent threshold before reservation charge credits must be given is inconsistent with the Commission's policy that pipelines must provide full reservation charge credits during non-*force majeure* outages and is therefore unjust and unreasonable.⁷ Under the Safe Harbor method of providing partial reservation charge credits during *force majeure* outages, the Commission requires the pipeline to provide full reservation charge credits after the tenth day of the outage. Therefore, the Commission finds a 98 percent threshold before reservation charge credits are required after the tenth day of a *force majeure* outage conflicts with Commission policy, for the same reasons such a threshold is inconsistent with Commission policy on all days of a non-*force majeure* outage. Accordingly, SGRM is directed, pursuant to section 5 of the NGA, either to revise GT&C section 17.1(c) consistent with the above discussion or explain why it should not be required to do so.

16. Finally, we note that SGRM's existing definition of the nature of *force majeure* in section 17.2 of its GT&C provides, in part, that a *force majeure* event includes: "interruptions by government or court orders; present and valid orders, decisions or rulings of any governmental or regulatory entity having proper jurisdiction;" and "testing (as required by governmental authority or as deemed necessary by SGRM for the safe operation of the facilities required to perform the services hereunder)." This tariff language conflicts with Commission policy, because it can be interpreted to include regular, periodic maintenance activities required to comply with government actions as *force majeure* events.

17. The Commission has defined *force majeure* outages as events that are both "unexpected and uncontrollable."⁸ The Commission has clarified the basic distinction as

⁷ *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006) (*Rockies I*). *Southern Natural Gas Co.*, 135 FERC ¶ 61,056, at PP 20-21, *reh'g denied*, 137 FERC ¶ 61,050, at PP 30-33 (2011). *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,143, at PP 137-138 (2014).

⁸ *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216, at P 41 (2012) (citing *Tennessee Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,088 (1996)), *order on reh'g*, 149 FERC ¶ 61,143 (2014).

to whether outages resulting from governmental actions are *force majeure* or non-*force majeure* events.⁹ The Commission found that outages necessitated by compliance with government standards concerning the regular, periodic maintenance activities a pipeline must perform in the ordinary course of business to ensure the safe operation of the pipeline, including PHMSA's integrity management regulations, are non-*force majeure* events requiring full reservation credits. Outages resulting from one-time, non-recurring government requirements, including special, one-time testing requirements after a pipeline failure, are *force majeure* events requiring only partial crediting.

18. In *Gulf South*,¹⁰ the Commission explained that this distinction is reasonable for two reasons. First, the pipeline is likely to have greater discretion as to when it performs regular, periodic maintenance on particular pipeline segments than when the government orders special one-time testing, for example, after a pipeline failure. Thus, regular, periodic maintenance required by government regulation may be considered reasonably within the control of the pipeline and expected, in contrast to one-time, non-recurring government requirements, which the pipeline may have to implement within a short timeframe. Second, the recurring costs of regular, periodic maintenance performed in the ordinary course of business may be included in a pipeline's rates in a general NGA section 4 rate case, whereas one-time, non-recurring costs are generally not eligible for inclusion in a pipeline's rates in a section 4 rate case. The Commission explained that, because the full crediting policy is premised on the ability of the pipeline to recover the costs associated with that policy through its rates, it follows that eligibility for such cost recovery is an important factor in distinguishing between the types of government testing and maintenance requirements that trigger the full crediting requirement and those that only trigger a partial crediting requirement.¹¹

19. The portions of SGRM's existing tariff definition of *force majeure* quoted above conflict with Commission policy because they can be interpreted to include regular, periodic maintenance activities required to comply with government actions as *force majeure* events. Accordingly, the Commission requires SGRM, pursuant to NGA section 5, either to modify the definition of *force majeure* so that it will not include outages necessitated by compliance with government standards concerning the regular, periodic maintenance activities a pipeline must perform in the ordinary course of business

⁹ *TransColorado Gas Transmission Co., LLC*, 144 FERC ¶ 61,175, at PP 35-43 (2013). *Gulf South, Pipeline Company*, 141 FERC ¶ 61,224, at PP 28-47 (2012), *order on reh'g*, 144 FERC ¶ 61,215, at PP 31-34 (2013) (*Gulf South*). *Algonquin Gas Transmission, LLC*, 153 FERC ¶ 61,038, at P 104 (2015).

¹⁰ *Gulf South*, 144 FERC ¶ 61,215 at PP 31-34.

¹¹ *See Texas Eastern Transmission, LP*, 149 FERC ¶ 61,143, at P 123 (2014).

to ensure the safe operation of the pipeline, or explain why it should not be required to do so.

20. However, SGRM may include in its filing to comply with this order, a provision permitting partial reservation charge crediting for a transitional period of two years for outages resulting from orders related to pipeline's maximum allowable operating pressure (MAOP) issued by PHMSA pursuant to section 60139(c) of Chapter 601 of Title 49 of the United States Code added by section 23 of the Pipeline Safety, Regulatory and Job Creation Act of 2011 consistent with Commission policy. As the Commission explained in *Gulf South*,¹² section 60139(c) provides that PHMSA requires the pipeline owner or operator to reconfirm the MAOP of each pipeline segment for which it currently has insufficient records to confirm that MAOP as expeditiously as economically feasible, and PHMSA must determine what interim actions are appropriate to maintain safety until a MAOP may be reconfirmed. The Commission found that outages resulting from such PHMSA orders would be one-time, non-recurring events distinguishable from the routine, periodic maintenance which the Commission has held must be treated as non-*force majeure* events for which full reservation charge credits must be given. Accordingly, the Commission permitted pipelines to treat such outages for a transitional two-year period in the same manner as *force majeure* events for which only partial reservation charge credits are required.

21. For the foregoing reasons, the Commission accepts the tariff records set forth in the Appendix to this order, to be effective December 31, 2015, subject to SGRM filing within the 30 days of the date of this order revised tariff records containing the modification it has agreed to make. In addition, the Commission directs SGRM, within 30 days of the date of this order, pursuant to NGA section 5, either to file tariff records revising existing GT&C section 17.1 to conform to the Commission's policy concerning reservation charge crediting and *force majeure*, or explain why it should not be required to do so, as discussed above.¹³

¹² *Gulf South*, 141 FERC ¶ 61,224 at PP 28-47; *Gulf Crossing Pipeline Co. LLC*, 141 FERC ¶ 61,222 (2012), *order on reh'g*, 145 FERC ¶ 61,021 (2013); *Texas Gas Transmission, LLC*, 141 FERC ¶ 61,223 (2012), *order on reh'g*, 145 FERC ¶ 61,100 (2013).

¹³ Given that SGRM states that this filing was made to conform its tariff with the tariffs of its affiliates, we urge SGRM's affiliates to review their tariffs to determine whether their *force majeure* and reservation charge crediting provisions comply with Commission policy and, if not, make an appropriate filing to come into compliance. See *Natural Gas Supply Ass'n*, 135 FERC ¶ 61,055 at P 12, *order on reh'g*, 137 FERC ¶ 61,051 (2011).

The Commission orders:

(A) The tariff records listed in the Appendix to this order are accepted to become effective December 31, 2015, subject to conditions, as discussed in this order.

(B) SGRM is directed to file revised tariff records, within thirty (30) days of the date of this order, revising its (1) proposed tariff records and (2) existing tariff provisions or explain why it should not be required to do so, to conform to the Commission's policy on reservation charge crediting and *force majeure*.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

SG Resources Mississippi, L.L.C.
FERC NGA Gas Tariff
SG Resources Mississippi, L.L.C., FERC Gas Tariff, First Revised Volume No. 1

Accepted Effective December 31, 2015, Subject to Conditions

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