

156 FERC ¶ 61,149
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf Crossing Pipeline Company LLC

Docket No. RP16-1162-000

ORDER TERMINATING SERVICE AGREEMENT
SUBJECT TO CONDITION

(Issued August 31, 2016)

1. On August 5, 2016, Gulf Crossing Pipeline Company LLC (Gulf Crossing) filed a tariff record¹ to terminate a firm, negotiated service agreement between Gulf Crossing and Chesapeake Energy Marketing, Inc. (Chesapeake). Gulf Crossing states that the termination of the service agreement will facilitate a sale of assets by Chesapeake while holding Gulf Crossing financially indifferent. Gulf Crossing requests that the Commission accept the termination of the service agreement effective September 1, 2016. The Commission accepts the tariff record, subject to condition, to be effective as requested.

Background

2. Gulf Crossing states that on April 30, 2008, the Commission issued a certificate order authorizing, among other things, the construction of 353.2 miles of pipeline for Gulf Crossing, a new pipeline company.² Gulf Crossing further states that on November 7, 2008, the Commission accepted a negotiated service agreement between Gulf Crossing and Chesapeake (Firm Agreement).³ The Firm Agreement, which is dated

¹ Gulf Crossing Pipeline Company LLC, FERC NGA Gas Tariff, First Revised Volume No. 1, [Section 2.18, Negotiated Rate Agmts - Reserved, 0.0.0.](#)

² *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100 (2008).

³ *Gulf Crossing Pipeline Co. LLC*, 125 FERC ¶ 61,335 (2008).

June 6, 2008, and has an initial term of ten years,⁴ does not have an early termination provision.

Proposal

3. As noted, Gulf Crossing filed in the instant proceeding to terminate the Firm Agreement. Gulf Crossing states that Chesapeake is in the process of selling production assets in the Barnett Shale and that Chesapeake has arranged to sell certain assets to a purchaser. Gulf Crossing requests that the Commission approve the request for a mutual termination of the Firm Agreement upon the acquisition of certain Chesapeake production acreage by the purchaser. Gulf Crossing states that this mutual termination of the Firm Agreement is an integral part of the overall transfer of Chesapeake's assets and that it is consistent with the Commission's policies and precedent. Gulf Crossing states that it anticipates the sale of assets will close on September 1, 2016.

4. Gulf Crossing states that pursuant to this mutual termination it will receive a lump sum payment that will provide it with the present value of all future reservation charges owed under the Firm Agreement. Gulf Crossing states that this transaction eliminates the future credit risk associated with the remaining term of the existing transportation contract with Chesapeake, which is a non-creditworthy entity. Gulf Crossing asserts that on a risk adjusted basis, these factors result in Gulf Crossing being financially indifferent to the mutual termination whereas it may not be financially indifferent to other transactions that Chesapeake may seek to rid itself of its unneeded capacity, such as a permanent release.

5. Gulf Crossing states that, upon termination of the Firm Agreement, it will immediately make the capacity generally available to other customers in accordance with the provision of section 6.8 of the General Terms and Conditions of its FERC Gas Tariff.

Notice, Interventions and Comments

6. Public notice of Gulf Crossing's filing was issued on August 10, 2016, with interventions and protests due August 15, 2016. No timely interventions or pleadings were filed. Pursuant to Rule 214,⁵ any unopposed motions to intervene filed out-of-time 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.

⁴ Gulf Crossing November 21, 2008 filing in Docket No. RP09-61-001 at p. 32-39.

⁵ 18 C.F.R. § 385.214 (2016).

Discussion

7. The Commission accepts Gulf Crossing's tariff record, subject to condition. Gulf Crossing's proposed arrangement, whereby it would terminate the subject Chesapeake Firm Agreement in return for a lump sum payment equal to the present value of all future reservation charges that Chesapeake owes under that agreement, constitutes what the Commission has termed an "exit fee" or payment by Chesapeake to Gulf Crossing to remove the obligation of further payments under the Firm Agreement. The Commission's review of Gulf Crossing's tariff indicates that Gulf Crossing's tariff does not contain such an exit fee provision.⁶ Accordingly, the Commission accepts Gulf Crossing's tariff record, subject to it filing tariff records to incorporate a fully-supported, not unduly discriminatory exit fee provision in its FERC Gas Tariff.⁷

The Commission orders:

The Commission accepts the referenced tariff record effective September 1, 2016, subject to Gulf Crossing filing revised tariff records within 30 days of the issuance of this order, consistent with the above discussion.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶ See, e.g., *Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,146, at P 19 (2015).

⁷ See, e.g., *Columbia Gas Transmission, LLC*, 148 FERC ¶ 61,218, at P 51 (2014); *Northern Natural Gas Co.*, 133 FERC ¶ 61,103, at PP 20-21 (2010); *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,292, at 62,008-10 (2000); see also, *WBI Energy Transmission, Inc.*, 148 FERC ¶ 61,119, at P 6 (2014) ("while a pipeline may place reasonable conditions on the negotiation of such rights, requiring the pipeline to file generally applicable tariff provisions setting forth those conditions is the best means of assuring that those rights are negotiated in a not unduly discriminatory manner.").