

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

January 5, 2006

In Reply Refer To:
Gulf States Transmission Corporation
Docket No. RP06-138-000

Gulf States Transmission Corporation
601 Poydras Street
21st Floor Pan American Life Center
New Orleans, Louisiana 70130

Attention: Lawrence J. Hand, Jr.
Attorney

Reference: Tariff Sheets Reflecting the Revised System License Agreement

Ladies and Gentlemen:

1. On December 6, 2005, Gulf States Transmission Corporation (Gulf States) tendered for filing certain tariff sheets¹ reflecting revisions associated with Article I of the System License Agreement and some ministerial changes as necessitated by Regency Gas Services LLC's (Regency) acquisition of Gulf States. Gulf States also requests waiver of the Commission's regulations so that the proposed tariff sheets can become effective on December 26, 2005, on less than 30 days notice. Gulf States' waiver request is granted and tariff sheets are accepted to be effective December 26, 2005, as requested, subject to the conditions discussed below.

2. Notice of Gulf States' filing was issued on December 8, 2005. Interventions and protests were due as provided in § 154.210 of the Commission's regulations, 18 C.F.R. § 385.210. Pursuant to Rule 214, 18 C.F.R. § 385.214, all timely filed motions to intervene and any motions 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 this proceeding or place additional burdens on existing parties. No protests were filed.

¹ First Revised Sheet Nos. 80-83 and Original Sheet No. 84 to FERC Gas Tariff Original Volume No. 1.

3. Gulf States' tariff includes a form of "System License Agreement" (Agreement), which is an agreement between Gulf States and subscribers to its Customer Activities Web Site. Subscribers use that web site to nominate service on Gulf States under existing service agreements and to release firm capacity to replacement shippers. In its current filing, Gulf States states that, as a result of its purchase by Regency, it is now relying on various consultants and contractors to maintain its web site, rather than using a system provided by its prior owner, El Paso Natural Gas Co. As a result, it is proposing several revisions to the Agreement. Specifically, it states that its revisions are intended to accurately reflect the activities that a customer can perform using Gulf States' web site; to extend the indemnity and defense protections of the Agreement to any contractor or consultant utilized by Gulf States in providing the customer activities web site to customers; to disclaim any warranties with respect to a shipper's use of the system; and to add a customer activities user access request form.

4. In addition, Gulf States proposes to revise the disclaimer of liability and indemnification provisions of the Agreement. Under the current language of the Agreement, Gulf States disclaims "any and all liability" for certain losses to the subscriber, "except for the negligence, bad faith, fraud or willful misconduct of" Gulf States. Further, subscribers must agree to indemnify Gulf States against, *inter alia*, losses, costs and damages resulting from claims against Gulf States, "except for the negligence, bad faith, fraud or willful misconduct of" Gulf States. Gulf States proposes to revise both the disclaimer of liability and indemnification provisions so that the exceptions for "negligence" will now be limited to "gross negligence." Thus, Gulf States proposes to disclaim liability for any losses incurred by its subscribers due to Gulf States' simple negligence and to require subscribers to indemnify Gulf States for its losses even where the losses are the result of Gulf States' simple negligence.

5. The Commission denies Gulf States' request to revise its disclaimer of liability and indemnification provisions to insulate itself from any liability for simple negligence. The Commission has consistently held that a simple negligence standard is appropriate for the liability and indemnification provisions of open access tariffs on the ground that all parties, including the pipeline should be liable for their negligent acts.² However, the Commission has allowed pipelines to limit their liability for simple negligence to direct damages, so that they are only liable for indirect, consequential, incidental, or punitive damages where there is gross negligence, willful misconduct or bad faith.³ Gulf States' instant proposal would improperly insulate it from all damages, direct as well as indirect, for its own simple negligence. Accordingly, Gulf States must modify its proposed

² See, e.g., *Gulf South Pipeline Co.*, 98 FERC ¶ 61,278 at 61,182 & n.56 (2002); *Williams Pipe Line Co.*, 88 FERC ¶ 61,014 at 61,040 & n. 31 (1999); and *Natural Gas Pipeline Co.*, 39 FERC ¶ 61,153 at 61,599 (1987).

³ *ANR Pipeline Co.*, 100 FERC ¶ 61,132 at 61,505 (2002).

disclaimer of liability and indemnification provisions so as to not exclude it from liability for direct damages arising from its own simple negligence. Gulf States is directed to file revised tariff sheets consistent with this requirement within 15 days of the issuance of this order. Gulf States' other tariff revisions are accepted.

6. Gulf States also requests that its proposed tariff sheets be made effective on a shortened notice period of twenty days, so that its shippers can make use of the customer activities section of the web site for January 1, 2006 gas flows. For good cause shown, the requested waiver is granted to permit the revised tariff sheets to take effect on December 26, 2005.

By direction of the Commission.

Magalie R. Salas,
Secretary.

cc: James W. Hunt, President
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