

121 FERC ¶ 61,283  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 20, 2007

In Reply Refer To:  
Gulf South Pipeline Company  
Docket No. RP96-320-074

Gulf South Pipeline Company  
9 Greenway Plaza, Suite 2800  
Houston, TX 77046

Attention: Michael E. McMahon

Reference: Acceptance of Negotiated Rate Agreements  
for Filing Subject to Further Review

Ladies and Gentlemen:

1. On November 20, 2007, Gulf South Pipeline Company, LP (Gulf South) filed sixteen negotiated rate contracts executed by Gulf South and its various customers relating to the East Texas to Mississippi Expansion Project, for which the Commission issued a certificate on June 18, 2007.<sup>1</sup> Gulf South's filing may also include non-conforming provisions. Two parties protested the filing. As discussed below, the Commission will accept and suspend the contracts, to become effective as discussed below, subject to further review.

2. On September 1, 2006, Gulf South filed, in Docket No. CP06-446-000, an application for a certificate of public convenience and necessity authorizing Gulf South to construct 241.9 miles of high pressure pipeline and appurtenant auxiliary facilities and compressor stations (the East Texas to Mississippi Expansion Project). The project will connect Gulf South's existing facilities in DeSoto Parish, Louisiana with its pipeline in Simpson County, Mississippi. In its application, Gulf South explained that the expansion project would be capable of transporting up to 1.7 billion cubic feet (Bcf) of natural gas per day, and would connect Texas supply regions to other interstate pipelines for delivery

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<sup>1</sup> See *Gulf South Pipeline Co., LP*, 119 FERC ¶ 61,281 (2007) (June 18 Order).

to the Midwest, Northeast, and Southeast regions of the United States. Completion of the expansion will allow Gulf South to eliminate a historical bottleneck that limited its ability to move gas west to east, making additional new gas supplies available to markets located east of the Mississippi River.

3. On August 3, 2007, Gulf South filed revised tariff sheets in Docket No. RP07-561-000 in order to establish a new “Firm In-the-Path Service” scheduling priority applicable to shippers that have firm capacity on certain new transmission facilities, including the East Texas to Mississippi Expansion Project. The Commission accepted and suspended that filing, subject to further Commission review, to become effective the earlier of further order of the Commission or February 3, 2008.<sup>1</sup>

4. In the June 18 Order, the Commission directed Gulf South to file “either its negotiated rate agreements or a tariff sheet fully describing the transaction, no less than 30 days or more than 60 days, prior to the commencement of interstate service.”<sup>2</sup> In compliance with the June 18 Order, on November 20, 2007, Gulf South filed the sixteen negotiated rate agreements that support the expansion. Gulf South states that it expects to place some or all of the newly certificated facilities into service by December 31, 2007.

5. Gulf South states that it executed the negotiated rate contracts pursuant to Rate Schedule FTS, the Rate Schedule FTS Form of Service Agreement and the Commission-approved Form of Service Letter Agreement used to supplement a customer’s service agreement.<sup>3</sup> According to Gulf South, the negotiated rate contracts disclose all essential elements of the agreement, including the exact legal name of the customer, the negotiated rate, the applicable receipt and delivery points and the transport volume. Gulf South explains that Paragraph 2 of each letter agreement reflects the agreed-upon negotiated rate. The contracts provide that they shall become effective on the date the project is placed into service. Gulf South also certifies that the subject negotiated rate contracts do not contain any material deviations from Gulf South’s tariff that go beyond filling in the blank spaces or that affect the substantive rights of the parties.

6. Finally, Gulf South states that it appears it may commence service on the East Texas to Mississippi Expansion Project for a partial month. If this occurs, Gulf South

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<sup>1</sup> *Gulf South Pipeline Co., LP*, 120 FERC ¶ 61,200 (2007).

<sup>2</sup> *Gulf South Pipeline Co., LP*, 119 FERC ¶ 61,281 at 62,588 (2007).

<sup>3</sup> Gulf South states that its Forms of Letter Agreements were approved by the Commission in an unpublished letter order issued on May 4, 2004 in Docket No. RPO4-256 and in *Gulf South Pipeline Company, LP*, 118 FERC ¶ 61,262 (2007), *order on reh’g*, 121 FERC ¶ 61,047 (2007).

states that it will provide its customers the option of either (1) commencing transportation service mid-month, to be charged for the partial month on a volumetric firm rate basis or (2) commencing transportation service on the first day of the first full month of service.

7. Public notice of the instant filing was issued with interventions, comments, and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2007)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2007)), 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 the proceeding or place additional burdens on existing parties. On December 3, 2007, Merrill Lynch Commodities, Inc. (Merrill) filed a protest and, on December 4, 2007, BP America Production and BP Energy Company (collectively, BP) filed a late intervention, protest and request for a technical conference.

8. On December 10, 2007, Gulf South filed a motion to answer and an answer to the protests. While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, pursuant to Rule 213 of the Commission's regulations (18 C.F.R. § 385.213 (2007)), the Commission will accept Gulf South's answer in this proceeding to have a more complete record.

9. Merrill and BP are existing shippers on Gulf South. Both Merrill and BP interpret the subject negotiated rate contracts as providing shippers on the East Texas to Mississippi Expansion Project with various enhanced rights not available to the existing shippers. For the reasons discussed below, the Commission accepts and suspends Gulf South's filing, to be effective on the date the project is in service, subject to further review of the issues raised in the protests.

10. In its protest, Merrill opposes the filing because it argues that certain provisions create an undue competitive advantage for expansion shippers and an undue competitive disadvantage for existing shippers. Merrill argues that, in addition, certain provisions are non-conforming material deviations from Gulf South's *pro forma* negotiated rate letter agreement. Merrill suggests that the Commission should either require Gulf South to amend the tariff to provide comparable service on the same terms and conditions to all shippers or reject the subject provisions contained in the negotiated rate agreements with expansion shippers.<sup>4</sup> In its protest, BP opposes the filing because it raises concerns about the impact of the agreements (and the underlying rights granted to expansion shippers) on existing shippers. According to BP, the most significant concerns are: (1) expansion shippers should have no greater primary point flexibility than Existing Shippers; (2) expansion shippers must be required to comply with the same tariff provisions as

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<sup>4</sup> Merrill Protest at 1.

existing shippers in order to change their primary points, to change their maximum daily quantity (MDQ) at primary points, or to request secondary or supplemental service; and (3) existing shippers must not subsidize the expansion shippers' services.<sup>5</sup>

11. BP requests that the Commission schedule a technical conference to address the negotiated rate agreements and the impact of the agreements on existing shippers' rights and whether and how the rights of expansion shippers and existing shippers differ. BP states that a technical conference will allow the parties to evaluate and better understand the language included in the negotiated rate agreements and what impact the agreements will have on existing system service. BP asserts the Commission should address various concerns and issues at the conference, including: (1) whether expansion shippers receive the same scheduling priorities at existing system points as existing shippers; (2) whether there is any greater primary point flexibility granted to expansion shippers; (3) whether all shippers are required to comply with the tariff's service request process for changing either primary points or the MDQ at a primary point; (4) whether all shippers are required to comply with the tariff's service request process for secondary or supplemental service; (5) how Gulf South will schedule primary/secondary/supplemental points for expansion shippers; and (6) whether limiting scheduling priorities or granting additional flexibility to only certain shippers will negatively impact other shippers.<sup>6</sup>

12. Further, BP argues that a technical conference is needed to address the issues raised in both this proceeding and in Docket No. RP07-561-000 regarding Gulf South's in-the-path scheduling proposal. BP states that, because the issues raised in Docket No. RP07-561-000 are significantly interconnected with the issues raised in this proceeding, the parties would benefit from discussing these issues at a technical conference. BP contends that the structure of the expansion shippers' negotiated agreements as well as Gulf South's proposed tariff changes regarding in-the-path scheduling should be examined to determine the impact on existing shippers and whether the expansion shippers are granted an undue preference regarding the use of Gulf South's existing system.<sup>7</sup>

13. In its answer, Gulf South responds that the negotiated rate letter agreements do not contain any material deviations from its tariff. It asserts, among other things, that the exhibits attached to each negotiated rate agreement listing the expansion shippers' primary and alternative points and certain other information represent no more than filling in blanks in Gulf South's pro forma service agreements with the appropriate

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<sup>5</sup> BP Protest at 3.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 2-3.

information. Gulf South also points out that the negotiated rate letter agreements contain a provision that in the event of any conflict between the provisions of the letter agreements and Gulf South's tariff, the tariff will control.

14. Gulf South's filing presents the Commission with a large number of service agreements and assertions that those agreements may contain a wide variety of material deviations from its tariff or service agreement that may affect the quality of service provided or present a substantial risk of undue discrimination. The Commission has not completed its review of these numerous provisions and has not determined whether to grant or deny BP's request for a technical conference. The Commission is also still considering the issues raised in Docket No. RP07-561-000 concerning Gulf South's related proposal to provide a within-the-path scheduling priority for shippers on certain expansion facilities, including those at issue here.

15. Accordingly, the Commission finds that the filed service agreements have not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory, or otherwise unlawful. For this reason, the Commission accepts the service agreements for filing, subject to refund, and suspends the service agreements to become effective as of the date the facilities are placed in service, subject to further review and order of the Commission. Gulf South is directed to inform the Commission of that date. Further, Gulf South states that, because it appears the project may be placed into service in the middle of a month, it is giving its customers an option whether to commence service on the in-service date of the first day of the following month, and will offer special partial month rates to any customers who commence service in the middle of a month. Therefore, the Commission requires that Gulf South file those agreements where the customer took the partial month option, if applicable.

By direction of the Commission. Commissioner Spitzer not participating.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.