

125 FERC ¶ 61,395
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 31, 2008

In Reply Refer To:
Southern LNG, Inc.
Docket No. RP08-25-001

Southern LNG, Inc.
Attention: Patricia S. Francis, Senior Counsel
P.O. Box 2563
Birmingham, Alabama 35202-2563

Reference: Southern LNG, Inc. Negotiated Rate Agreement

Dear Ms. Francis:

1. On November 24, 2008, Southern LNG, Inc. (Southern LNG) filed the above referenced negotiated rate agreement between Southern LNG and BG LNG Services, LLC (BG LNG).¹ Southern LNG requests an effective date of January 1, 2009. The negotiated rate agreement was protested. The Commission accepts the agreement, as filed, effective the later of January 1, 2009, or the date Phase A Slip Modifications at Elba Island are placed in service, subject to conditions and further review, as discussed below.

2. In the instant filing, Southern LNG asserts that the referenced agreement includes the negotiated rate for firm terminal service related to the construction and installation of the Phase A Slip Modifications at the Elba Island Terminal consistent with the design and description of such modifications contained in the application approved by the Commission on September 20, 2007 in Docket No. CP06-470.² Southern LNG contends

¹ Exhibit "D" to LNG-1 Service Agreement No. SLNG9 dated August 28, 2007.

² *Southern LNG, Inc.*, 120 FERC ¶ 61,258 (2007) (September 20, 2007 Order), *reh'g denied*, 122 FERC ¶ 61,137 (2008). Southern LNG entered into precedent agreements with Shell NA LNG LLC and BG LNG for the entire firm capacity of Phase A and Phase B of the Elba III Expansion, respectively, and proposes to provide service for the Elba III Expansion under its new Rate Schedule LNG-3. September 20, 2007 Order, 120 FERC ¶ 61,258, at P 6.

that this agreement allows BG LNG, an existing Southern LNG customer, to use the expanded dock facilities as soon as they become available. Southern LNG also avers that the negotiated rate will be effective on the date that the Slip Modifications are placed into service until the earlier of (i) the date service commences from the send-out facilities associated with the Elba III Phase A terminal expansion; or (ii) the date service commences on the Elba Express Pipeline; or (iii) December 31, 2010.

3. Southern LNG states that the rate will be based on such actual cost information to the extent it is available on the date that the Slip Modifications are placed in service and estimates of cost information when actual information is not available. Southern LNG maintains that this filing comports with the Commission's orders granting it the authority to negotiate rates for its services. Southern LNG states that, in those orders, the Commission directed the company to file the negotiated rate agreements themselves or to file the tariff sheets reflecting the essential elements of such agreements. Southern LNG states that it has filed the negotiated rate agreement, Exhibit "D" to LNG Service Agreement No. SLNG. Specifically, Exhibit "D" states, in pertinent part, that:

- Transportation will be provided under Southern LNG's Rate Schedule LNG-1;
- BG LNG shall pay the Maximum Reservation Charge and Dredging Surcharge, set forth in Southern LNG's tariff for Rate Schedule LNG-1 per month per dekatherm (Dth) of Maximum Storage Quantity (MSQ);
- BG LNG shall also pay an additional Reservation Charge per month per Dth of MSQ equal to the cost of a certain service defined in Exhibit "D," divided by BG LNG's MSQ x 12 x 1.021;
- This cost of service shall be calculated as $0.2168 \times$ [the initial capital plus working capital associated with the Slip Modifications] + Operations and Maintenance (O&M) + Other Taxes associated with the Slip Modifications;
- The cost of service is currently estimated to be \$3,185,600, but the total cost of service component to derive the negotiated rate for the instant filing shall be based on the actual capital cost and working capital incurred for the Slip Modifications;
- The O&M and Other Taxes shall be fixed for purposes of the total cost of service calculation at \$343,677; and
- BG LNG shall pay all additional Commodity Charges and surcharges pursuant to Rate Schedule LNG-1, including fuel.

4. Southern LNG asserts that on or before a date that is six months after the effective date that the Slip Modifications are placed in service, it will prospectively adjust the additional Reservation Charge to reflect any final costs to be included in the total actual

capital cost and working capital of the Slip Modifications, and that it will render a statement to show the difference between the Reservation Charge that was collected from the effective date until the date of reconciliation, and the Reservation Charge that would have been collected had actual cost data been available as of the effective date. Finally, Southern LNG states the negotiated agreement provides that BG LNG, or Southern LNG shall pay the amount shown in such statement within thirty (30) days of receipt of the statement.

5. Public notice of the filing was issued on December 1, 2008, with interventions and protests due on or before December 8, 2008. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely 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. Marathon LNG Marketing, LLC (Marathon) filed a protest, the details of which are discussed below.

6. Marathon asserts that it imports LNG into the United States and is a party to a contract with BG LNG which provides that Marathon may deliver LNG to BG LNG at the inlet of Southern LNG's Elba Island LNG terminal and generally requires Marathon to reimburse BG LNG for 35.63 percent of the terminalling costs paid by BG LNG to Southern LNG pursuant to its Rate Schedule LNG-1 Service Agreement. Marathon contends that the contract requires it to reimburse BG LNG for these costs without regard to the quantity of LNG delivered by Marathon to BG LNG; therefore, Marathon avows that it may be directly affected by any increase in the terminalling charges that BG LNG agrees to pay Southern LNG under Rate Schedule LNG-1. More specifically, Marathon asserts that it may be directly affected by the inclusion of Rate Schedule LNG-3 costs in the rates paid by BG LNG Services should the Commission allow those costs to be charged under BG LNG's Rate Schedule LNG-1 Service Agreement.

7. In its protest, Marathon argues that the negotiated rate agreement filed by Southern LNG impermissibly negotiates rates for Rate Schedule LNG-3 service in a service agreement governing Rate Schedule LNG-1 service, violating section 25.4 of GT&C of Southern LNG's tariff. Marathon states that the negotiated rate agreement requires BG LNG to pay Southern LNG the existing maximum recourse rate under Rate Schedule LNG-1, plus an additional "negotiated" reservation charge to recover costs associated with the construction and installation of the Phase A Slip Modifications for the Elba III expansion authorized by the Commission as an incremental service under Rate Schedule LNG-3.

8. Marathon asserts that the instant negotiated rate agreement violates the Commission's Incremental Pricing Policy, as it results in BG LNG Services, an existing customer, paying for expansion facilities which are not needed to provide its Rate Schedule LNG-1 service. Marathon contends that, through this agreement, Southern LNG circumvents the statutory prohibition of Section 3 of the Natural Gas Act, which

prohibits the subsidization of expansion capacity by existing customers, by using the Commission's negotiated rate program to shift costs from the Rate Schedule LNG-3 expansion to the existing Rate Schedule LNG-1 customers.

9. Finally, Marathon asserts that mechanisms exist which would allow Southern LNG to initiate service using expansion facilities prior to the in-service date of all of the Phase A expansion facilities, but avers that Southern LNG must make appropriate filings to do so under Rate Schedule LNG-3, not Rate Schedule LNG-1.

10. The Commission accepts the referenced filing by Southern LNG, subject to certain conditions, which are set forth more fully below.

11. The Commission agrees with Marathon that the instant negotiated rate agreement appears to allow Southern LNG to provide service to BG LNG under Rate Schedule LNG-1, while using expanded docking facilities associated with the Elba III Expansion, which were certificated for use with Rate Schedule LNG-3. Accordingly, the instant negotiated rate agreement may conflict with Commission policy barring negotiated terms and conditions of service³ and with the other policies, Southern LNG's tariff, the Commission's September 20, 2007 Order, and section 3 of the NGA as raised by Marathon in its protest. Therefore, the instant negotiated rate agreement with BG LNG is accepted as filed, subject to Southern LNG making a filing with the Commission within 20 days of the date of this letter order which responds fully to the protest. Southern LNG's filing should include but be not limited to, an explanation of why the Commission's policy against negotiating terms and conditions of service is not violated and demonstrating why the use of the expanded docking facilities by BG LNG is not being subsidized by the LNG-3 customers.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

³ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipe Lines*, 74 FERC ¶ 61,076, at 61,242 (1996).