

128 FERC ¶ 61,284  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

September 29, 2009

In Reply Refer To:  
Florida Gas Transmission Company, LLC  
Docket No. RP09-922-000

Florida Gas Transmission Company, LLC  
P.O. Box 4967  
Houston, TX 77210-4967

Attention: Michael T. Langston  
Senior Vice President, Government and Regulatory Affairs

Reference: Tariff Sheets filed August 24, 2009

Dear Mr. Langston:

1. On August 24, 2009, Florida Gas Transmission Company, LLC (FGT) filed revised tariff sheets<sup>1</sup> to, inter alia,<sup>2</sup> provide a single contract option for multiple shippers that have designated a single agent on their behalf. FGT requests an October 1, 2009 effective date. As discussed below, the Commission accepts and suspends FGT's proposed revised tariff sheets, to be effective the earlier of March 1, 2010, or a date set by subsequent order, subject to conditions.

2. On December 19, 2008, FGT filed revised tariff sheets to provide a single contract option for multiple affiliated shippers associated with a single affiliated agent, if the affiliated shippers could show that they: (a) collectively met the "shipper must have title" test; (b) were jointly and severally liable for all obligations under the contract; and (c) were willing to be treated collectively as one shipper for nomination, allocation and

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<sup>1</sup> See Appendix for list of the tariff sheets.

<sup>2</sup> FGT also proposes a non-substantive change to Exhibits A and B of the *pro forma* service agreements for its various rate schedules to permit different formats.

billing purposes under the contract. On January 16, 2009, the Commission conditionally accepted and suspended FGT's proposed tariff sheets.<sup>3</sup>

3. The January 16, 2009 Order directed FGT to explain why shippers that met its criteria, in particular shippers that have agreed to be jointly and severally liable for all obligations under the contract, are not unduly discriminated against when they are denied access to this service because they are not otherwise affiliated with each other.<sup>4</sup> The order also stated that FGT may, in the alternative, revise its proposed tariff sheets to remove the language that appears to require that the shippers availing themselves of this program be affiliated.<sup>5</sup> In response, on February 17, 2009 FGT filed additional information stating that, in its experience, only affiliated shippers can fulfill the requirement that shippers be jointly and severally liable for each other and only affiliated shippers qualify as being responsible for the full contract quantity of all shippers under the single contract. Therefore, FGT stated that it cannot support a broader application of the option.

4. On August 3, 2009, the Commission found that FGT failed to comply with the directives of the January 16, 2009 Order.<sup>6</sup> The Commission found that FGT failed to explain why unaffiliated companies not subject to the same corporate umbrella are different from affiliated companies, if the unaffiliated companies have agreed to be jointly and severally liable for all obligations under the contract.<sup>7</sup> The August 3, 2009 Order stated that the argument that the companies are different without a showing of how such a difference matters does not relieve FGT of its burden to show that it is not unduly discriminating against unaffiliated companies.<sup>8</sup> Accordingly, the August 3, 2009 order rejected FGT's December 19, 2008 filing without prejudice to FGT filing tariff sheets consistent with the conditions set forth in the January 16, 2009 Order in a new proceeding.

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<sup>3</sup> *Florida Gas Transmission Co., LLC*, 126 FERC ¶ 61,055 (2009) (January 16, 2009 Order).

<sup>4</sup> *Id.* P 8.

<sup>5</sup> *Id.*

<sup>6</sup> *Florida Gas Transmission Co., LLC*, 128 FERC ¶ 61,124 (2009) (August 3, 2009 Order).

<sup>7</sup> *Id.* P 17.

<sup>8</sup> *Id.*

5. In the instant August 24, 2009 filing, FGT proposes to revise the form of service agreements and associated Rate Schedules<sup>9</sup> to allow multiple shippers with a designated agent to be defined individually and collectively as the shipper under a single service agreement. FGT states that, consistent with the Commission's August 3, 2009 Order, the shippers and agent need not be affiliated. Also, FGT states that the Commission explained in *Southern Natural Gas Co.*<sup>10</sup> that all shippers under the proposed arrangement must be jointly and severally liable for all payment obligations for the total contract quantity in order to meet the shipper-must-have-title rule. FGT states that, consistent with the principles which underlie that explanation, FGT is adding clarification that each shipper must demonstrate creditworthiness for all of the obligations under the contract.<sup>11</sup> Specifically, FGT proposes to permit a party to act as an agent for multiple shippers under one service agreement when the following conditions are met: (a) shippers show that they have collectively met the "shipper must have title" test; (b) each shipper agrees that it is jointly and severally liable for all of the obligations under the contract, including demonstration of creditworthiness for the full contract quantity; and (c) shippers are willing to be treated collectively as one shipper for nomination, allocation and billing purposes under the contract.

6. Notice of FGT's filing was issued on August 26, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2009). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely motions

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<sup>9</sup> FGT proposes to add this option to Rate Schedules FTS-1, FTS-WD, PNR, ITS-1, ITS-WD, IPS and FTS-2.

<sup>10</sup> 123 FERC ¶ 61,283, *order on compliance*, 124 FERC ¶ 61,145 (2008) (*Southern*).

<sup>11</sup> Under section 16 of the General Terms and Conditions (GT&C) of FGT's tariff, the determination of a shipper's creditworthiness is based upon (a) a credit rating of investment grade, defined as a rating of at least BBB- by Standard & Poor's Corporation, or a rating of at least Baa3 by Moody's Investors Service, Inc. or (b) if Shipper is not rated by Standard & Poor's or Moody's rate methodology, criteria and ratios which are generally acceptable in the natural gas industry. If a shipper fails to establish creditworthiness, the shipper may still receive firm service provided it furnishes and maintains in effect one of the following at shipper's discretion and acceptable to FGT: (a) a written guarantee from a third party which is creditworthy; (b) an irrevocable standby letter of credit; (c) an amount equal to the amount which would be charged to shipper for three month's service or the term of service, whichever is less, to be deposited in an escrow account at a bank of shipper's choosing; or (d) other security. See Original Sheet No. 262, FGT FERC Gas Tariff, Fourth Revised Volume No. 1.

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. Florida Cities<sup>12</sup> filed a protest. On September 18, 2009, FGT filed an answer to Florida Cities' protest. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), answers to protests are prohibited unless otherwise ordered by the decisional authority. We will accept FGT's answer because it provides information that will assist us in our decision-making process.

7. Florida Cities argue that FGT's proposal to require each shipper under a single service agreement to demonstrate creditworthiness for the full contract quantity is unjustified, unduly discriminatory and inconsistent with the Commission's Creditworthiness Policy Statement,<sup>13</sup> and should accordingly be rejected. First, Florida Cities state that it is not clear from the proposed tariff language what would happen if one shipper in a group of shippers that wants to avail themselves of the single service agreement option is unable to demonstrate creditworthiness for the full contract quantity. Florida Cities state that it appears that if a shipper(s) wants to utilize a single shipper service agreement and fails to demonstrate creditworthiness, that shipper(s) would, consistent with GT&C section 16(c), have to furnish and maintain one of the following: (a) a written guarantee from a creditworthy third party; (b) an irrevocable standby letter of credit; (c) an amount equal to the amount which would have been charged to the shipper for three month's service or the term of service, whichever is less; or (d) other security. They state that whichever option the non-creditworthy shipper(s) chose, it would have to insure that the security or collateral is for 100 percent of the payments due under the multiple shipper service agreement. And assuming more than one shipper failed the creditworthy test, they argue, FGT would require each non-creditworthy shipper under the single service agreement to provide security or prepay 100 percent of the reservations charges under the agreement for a three-month period.

8. Florida Cities argue that FGT fails to provide any justification for requiring each shipper under a multiple shipper single service agreement to demonstrate

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<sup>12</sup> Florida Cities include JEA, the Orlando Utilities Commission, City of Lakeland Electric Department d/b/a Lakeland Electric, the City of Tallahassee, the City of Gainesville d/b/a Gainesville Regional Utilities, and Florida Gas Utility, a Florida inter-local agency whose membership presently consists of more than twenty municipally-owned Florida electric and/or gas utilities.

<sup>13</sup> Florida Cities Protest at 11 (citing *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines*, FERC Stats. & Regs. ¶ 31,191 (2005) (Creditworthiness Policy Statement)).

creditworthiness for the full contract quantity under a single service agreement. They argue that so long as FGT's financial interests are protected by the creditworthiness of one shipper in the group, FGT has all the protection it is entitled to. They argue that FGT has not demonstrated that it has experienced any credit risks in recent months that would justify imposing the undue burden the proposed tariff language would place on shippers that wish to use the multiple shipper service agreement option. Florida Cities contend that none of the other service agreement consolidation tariff provisions previously approved by the Commission include a creditworthiness condition and FGT fails to justify imposing more burdensome requirements than those contained in those service agreement consolidation programs.<sup>14</sup>

9. Florida Cities argue that, unlike affiliated companies, it would be much more difficult for one municipality to hold itself out as guarantor for the obligations of the other municipal members of a multiple shipper group. They argue that so long as at least one of the jointly and severally liable members of the group has clearly established creditworthiness for the full amount due under the service agreement, FGT's interests are fully protected. Florida Cities argue that, because the creditworthiness language proposed by FGT will impact affiliated shippers that designate another affiliate as agent differently than unaffiliated shippers that wish to designate a single entity to act as their mutual agent, it is discriminatory and, because this discrimination is without justification, it is undue.

10. Florida Cities also argue that FGT's proposal is inconsistent with the Commission's Creditworthiness Policy Statement, which limits the amount of collateral a pipeline can demand of a "non-creditworthy" firm shipper to, at most, the equivalent of demand charges for three months' worth of service.<sup>15</sup> Florida Cities state that, for example, if three unaffiliated shippers under one single service agreement fail to meet the creditworthiness requirements, the shippers could collectively be required to prepay 300 percent of the reservation charges for three months' worth of service under such agreement.

11. Florida Cities also request that the Commission require FGT to provide additional information regarding the mechanics of its multiple shipper single service agreement program by either filing revised tariff sheets or providing a narrative account. Florida Cities claim that neither the proposed tariff sheets nor FGT's transmittal letter fully

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<sup>14</sup> Florida Cities Protest at 9 (citing *Southern Natural Gas Co.*, 124 FERC ¶ 61,145 at P 5).

<sup>15</sup> Florida Cities Protest at 11 (citing *Creditworthiness Policy Statement*, FERC Stats. & Regs. ¶ 31,191 at P 14).

addresses how FGT's multiple shipper single service agreement will be administered. Florida Cities want to know: (a) what process will FGT use to consolidate two or more existing service agreements into a single service agreement; (b) will this require the termination of the existing service agreements and the execution of a new single service agreement; (c) how will the term of the single service agreement be determined, especially if the existing service agreements being merged into it have different terms and/or right of first refusal or evergreen rights; and (d) how would a shipper receive service under a single service agreement go about withdrawing from that consolidated arrangement and migrating to an individual service agreement.

12. In response, FGT clarifies that it does not intend that each shipper demonstrate creditworthiness for the value of the full volume under the single service agreement option.<sup>16</sup> FGT states that the requirement is that one or more parties demonstrate creditworthiness under the tariff provisions for the value of the full volume under the single service agreement on behalf of all of the shippers under the single service agreement. FGT states that, if the party or parties are creditworthy for the full volume under the FGT tariff standards, and such creditworthiness is provided on behalf of all shippers, nothing more would be required, but if the party or parties fail the creditworthiness test, the party or parties and FGT may agree to one of a variety of options to provide credit assurances. FGT states that these assurances would be for the value of the full volume under the single service agreement, not for a multiple of the volume.

13. The Commission accepts and suspends FGT's proposed tariff revisions, to be effective the earlier of March 1, 2010, or a date set by subsequent order, subject to the following condition. We find that FGT's proposal generally is consistent with the August 3, 2009 Order insofar as it is not limited to affiliated parties. However, we agree with Florida Cities that FGT's proposed tariff language could be interpreted to require that each shipper provide credit assurances for the value of the full volume under the single service agreement, potentially resulting in the total credit assurance to be a multiple of the contract quantity. Given that this does not appear to be what FGT intended, as evidenced by its answer, FGT is directed to file, within 20 days of this order, to revise its proposed tariff provision to be consistent with its intent and to include narrative examples of how its proposal will operate. The Commission will reserve ruling on the merits of FGT's intended tariff proposal until it has reviewed the actual proposed tariff language and narrative examples FGT submits, following notice and comment by the parties.

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<sup>16</sup> FGT Answer at 3.

14. We also find that the clarifications sought by Florida Cities are beyond the scope of this tariff filing. FGT has not proposed any language regarding the potential consolidation of existing agreements or a shipper's withdrawal from a multiple shipper single service agreement.

15. Based upon a review of the filing, the Commission finds that FGT's proposed tariff sheets set forth in Appendix A have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept such tariff sheets in Appendix A for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

16. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the rates to be effective the earlier of March 1, 2010 or a date set by subsequent order, subject to the conditions set forth in the body of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix**

**Florida Gas Transmission Company, LLC  
FERC Gas Tariff, Fourth Revised Volume No. 1**

**Tariff Sheets Accepted and Suspended, to be Effective the earlier of March 1, 2010  
or a Date Set by Subsequent Order, Subject to Conditions**

Second Revised Sheet No. 30  
Second Revised Sheet No. 46  
Second Revised Sheet No. 72  
Second Revised Sheet No. 79  
Second Revised Sheet No. 88  
Second Revised Sheet No. 94  
Second Revised Sheet No. 102  
Second Revised Sheet No. 450  
Second Revised Sheet No. 464  
Second Revised Sheet No. 465  
Second Revised Sheet No. 467  
Second Revised Sheet No. 477  
Second Revised Sheet No. 478  
Second Revised Sheet No. 491  
Second Revised Sheet No. 492  
Second Revised Sheet No. 494  
Second Revised Sheet No. 500  
Second Revised Sheet No. 510  
Second Revised Sheet No. 519  
Second Revised Sheet No. 526  
Second Revised Sheet No. 548  
Second Revised Sheet No. 549