130 FERC ¶ 61,159
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 4, 2010

In Reply Refer To:
Gulf Crossing Pipeline Company LLC
Docket No. RP10-357-000

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

Attention: J. Kyle Stephens, Vice President
Regulatory Affairs and Rates

Reference: Tariff Sheet Revising the Time Limitations for Billing Errors

Dear Mr. Stephens:

1. On February 2, 2010, Gulf Crossing Pipeline Company LLC (Gulf Crossing) filed First Revised Sheet No. 1001, to FERC Gas Tariff, Sixth Revised Volume No. 1, modifying Section 15.5 of the General Terms and Conditions of its tariff. Gulf Crossing requests the proposed tariff sheet become effective March 4, 2010. We accept the Gulf Crossing's First Revised Sheet No. 1001, effective March 4, 2010, as proposed, and reject BP's protest as discussed below.

2. In its filing, Gulf Crossing states that it is proposing to modify the time limitations for addressing billing errors and prior period adjustments caused by deliberate omissions, misrepresentations, and mutual mistakes of fact. Specifically, Gulf Crossing proposes to add the following language:

> In no event will any changes be made to a statement or invoice after twenty-four (24) months from the date of statements, billings or payment, based on actualized volumes, unless the parties mutually agree.

3. Gulf Crossing notes that while its tariff contains the North American Energy Standards Board (NAESB) standard 3.3.15, which establishes a six-month time period for

corrections to invoices, that provision does not address a time limitation for billing errors and prior period adjustment resulting from deliberate omissions, misrepresentations, and mutual mistakes of fact. Gulf Crossing states that it made the instant filing to address this gap by requiring that changes to a statement or invoice be addressed within 24 months of the statement or invoice. Gulf Crossing asserts that the Commission has previously approved nearly identical tariff language in several other pipeline tariffs,[1] and that the proposed language will provide clarity and certainty to both parties with respect to stale claims resulting from deliberate omissions, misrepresentations and mutual mistakes of fact.

4. Public notice of Gulf Crossing's filing issued on February 4, 2010. 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 filed motions to intervene and any motion 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.

5. On February 16, 2010, BP America Production Company and BP Energy Company (collectively BP) filed a protest. On February 22, 2010, Gulf Crossing filed a motion to answer and answer to BP's protest. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2006), prohibits an answer to protest unless otherwise ordered by the decisional authority. We will accept Gulf Crossing's answer because it provided information that assisted us in our decision making process.

6. In its protest, BP asserts that the Gulf Crossing's proposed tariff provision fails to recognize that there is a fundamental inequity when a deadline is imposed on modification of an invoice in a situation where there has been a deliberate omission or misrepresentation by one party, without regard to when the injured party discovers the error. Accordingly, BP contends that when there is an error in an invoice or statement due to a deliberate omission or misrepresentation by a party, the deadline for modification of the invoice should not begin to run until the earlier of when (1) the injured party discovers the error, or (2) the injured party reasonably should have discovered the error, which BP refers to as the Discovery Rule. BP further argues that the data that underlies an invoice is in the exclusive control of the pipeline and thus it is typically difficult for a shipper to discover an invoice error. Thus BP argues that Gulf Crossing should be required to modify its tariff language to reflect the so-called Discovery Rule as part of what it calls the Fraud Deadline. BP contends that the

[1] *See Rockies Express Pipeline LLC*, 121 FERC ¶ 61,130 (2007); *Natural Gas Pipeline Co. of America* (NGPL), 79 FERC ¶ 161,421, at p. 62,772 (1997); *Trailblazer Pipeline Co.,* 79 FERC ¶ 61,042, at p. 61,192 (1997).

Discovery Rule has been adopted as part of Federal law[2] in most States in connection with the statutory deadline for filing a lawsuit alleging fraud (referred to as the Statute of Limitations). BP also asserts that the Commission decisions relied on by Gulf Crossing are irrelevant to the current proceeding because none of those decisions addressed the question of whether the Discovery Rule should apply to the Fraud Deadline.

7. In its answer, Gulf Crossing argues that the Commission should reject BP's request because it would essentially undercut the proposed provision by allowing any party to circumvent the proposed time limitations by "raising the specter of fraud."[3] Gulf Crossing contends that BP has mischaracterized Gulf Crossing's proposal as a Fraud Deadline because not all deliberate omissions and misrepresentations are fraud and mutual mistakes are never fraud. Gulf Crossing also notes that contrary to BP's contention that it is typically difficult for a shipper to discover an invoice error, the Commission's approval of the NAESB standard for invoice corrections found that the industry consensus is that such adjustments can normally be made within six months. Gulf Crossing points out that its proposed 24-month deadline is much more generous.

8. Gulf Crossing also argues that BP's argument that a longer deadline is necessary because the data underlying the invoice is in exclusive control of the pipeline is simply incorrect and ignores the fact that pursuant to Gulf Crossing's tariff, a shipper has a right of access to the books, records and charts of the pipeline for a 24-month period. Gulf Crossing notes that this period is identical to the proposed time limitation for invoice adjustments and will allow parties to administer record retention processes with the certainty that all billing and prior period adjustments will be final after two years.

9. Gulf Crossing notes that BP acknowledges that the Commission has approved nearly identical timelines for other pipelines and that BP raises no arguments that would warrant a change in this policy or require that Gulf Crossing be treated any differently than those pipelines for which the Commission has approved similar provisions.

10. Finally, Gulf Crossing states that BP's argument that Gulf Crossing's tariff must conform to statutes of limitations for certain jurisdictions is a red herring. Gulf Crossing states that the Commission has the authority to create rules that apply to the provision of transportation and storage services in interstate commerce that differ from state statutes of limitations, as demonstrated by the six month limitation for billing disputes in the NAESB standard.

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[2] BP Protest at 2, (*citing Generadora de Electricidad del Caribe, Inc. v. Foster Wheeler Corp.,* 92 F.Supp.2d 8, 22 (D. Puerto Rico 2000); *Lenz v. Associated Inns and Restaurants Co. of America*, 833 F.Supp. 362, 369 (S.D.N.Y. 1993)).

[3] Gulf Crossing's Answer at 3.

11. We reject BP's protest and find that Gulf Crossing's proposed tariff revisions are just and reasonable. As noted by Gulf Crossing, not all deliberate omissions and misrepresentations are fraud and imposing the extended deadline requested by BP would effectively undercut the very purpose of the proposed time limitation for errors and billing adjustments by allowing the party seeking adjustment to claim fraud. Moreover, we find no reason to require Gulf Crossing, an interstate pipeline, to conform its tariff to any state law provision.[4]

12. We also find non-compelling BP's argument that it is difficult for a shipper to discover an invoice error. As we found in approving NAESB standard 3.3.15, the consensus view of all segments of the industry is that billing adjustments can be made accurately in six months and in fact, it is the industry view that such adjustments be made expeditiously. Shippers should be diligent in reviewing invoices and Gulf Crossing's proposed 24-month period would appear to provide more than adequate time for a shipper to discover an error, especially as Gulf Crossing's tariff gives any shipper a contemporaneous right to examine the pipeline's records.

13. As Gulf Crossing points out, we have approved nearly identical provisions for other pipelines and BP provides no evidence why Gulf Crossing should be treated differently from those pipelines. Gulf Crossing's proposal will provide for clarity and finality of transactions conducted on its system and is consistent with Commission policy and precedent. Accordingly, Gulf Crossing's proposed tariff provisions are accepted effective March 4, 2010.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[4] The Commission's approval of Gulf Crossing's language is not intended to preclude a common law action brought before an appropriate forum to resolve a common law claim of fraud.