

134 FERC ¶ 61,135
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 24, 2011

In Reply Refer To:
Florida Gas Transmission Company, LLC
Docket No. RP11-1674-000

Florida Gas Transmission Company, LLC
5444 Westheimer Road
Houston, TX 77056

Attention: Michael T. Langston, Vice President, Chief Regulatory Officer

Reference: Non-conforming Service Agreements

Dear Mr. Langston:

1. On December 30, 2010, Florida Gas Transmission Company, LLC (FGT) filed a revised tariff record¹ to update the list of FGT's non-conforming service agreements. FGT also filed four service agreements as an attachment for the Commission's review. As discussed below, the Commission accepts FGT's proposed tariff record, effective February 28, 2011, as requested, subject to the conditions set forth below and further review and order of the Commission.

2. FGT states that, in response to the Commission's order in *Southern Star Central Gas Pipeline, Inc.*,² it initiated an internal review of its currently-effective service agreements to identify whether any of those service agreements contained potential material deviations from the terms of the applicable *pro forma* service agreements. FGT further states that, as a result of that review, it prepared and included in its filing a detailed analysis of the service agreements to determine which service agreements should be filed as non-conforming service agreements pursuant to section 154.112 of the

¹ GT&C Section 30, Non-Conforming Agreements, 1.0.0 to Fifth Revised Volume No. 1, FERC NGA Gas Tariff.

² *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008).

Commission's regulations.³ FGT states that, based on this review, it has determined that many of its service agreements contain non-conforming terms and conditions that FGT considers to be non-material deviations that do not affect the substantive rights of the parties and thus copies of those service agreements were not filed. FGT categorizes the deviations which it does not consider to be material in these service agreements as follows: (1) minor clerical, administrative, labeling, or typographical differences from the *pro forma* agreement; (2) *pro forma* terms that have been omitted because they are inapplicable to the service being provided; (3) deviations that have been cured or are moot; (4) additions or changes from the *pro forma* terms that are contemplated, permitted, or authorized by provisions of FGT's Tariff; (5) deviations in non-material language; and (6) deviations of the *pro forma* language governing FGT's right to amend the terms and conditions of service. FGT included in the filing a matrix reflecting its 150 currently-effective service agreements and a narrative explanation of the nature and scope of possible material deviations which categorizes the deviations, provides a narrative description of each category, and lists examples of each category of deviation.

3. FGT asserts that nine of the service agreements contain deviations that rise to the level of material deviations affecting the substantive rights of the parties. However, FGT asserts that the deviations in five of those agreements are cured by its contemporaneous tariff filing in Docket No. RP11-1673-000.⁴ The revised tariff records in that filing included provisions permitting FGT and a shipper to agree to consolidate multiple service agreements under the same rate schedule for the administrative purpose of making nominations, scheduling, and billing. However, the term, quantity, and extension rights of the individual service agreements would be retained. Five of the service agreements which FGT has identified as containing material deviations had provisions permitting the shipper to consolidate contracts under the same rate schedule for purposes of making nominations, scheduling, and billing.

4. FGT filed the remaining four non-conforming service agreements as an attachment in the instant filing for the Commission's review.⁵ FGT states that three of these agreements are with Florida Municipal Power Agency, and FGT is in the process of renegotiating those agreements to eliminate the deviations.⁶ FGT asserts that in the other

³ 18 C.F.R. § 154.112 (2010).

⁴ See *Florida Gas Transmission Company, LLC*, Docket No. RP11-1673-000 (Jan. 20, 2011) (unpublished letter order) accepting FGT's proposed tariff revisions.

⁵ FGT states that, upon the conclusion of the Commission's review, FGT will revise the tariff record proposed herein, if necessary, and file, in a separate tariff volume, the service agreements that the Commission finds to be non-conforming.

⁶ Service Agreement Nos. 107696, 107895, and 108031.

service agreement, with Florida Power & Light Company (FP&L) (No. 3247), Exhibit B includes a deviation that is permissible because it does not affect the substantive rights of the parties or present a risk of undue discrimination. FGT asserts that Exhibit B is merely an aggregation of individual delivery points and quantities across service agreements in both Rate Schedules FTS-1 and FTS-2 and does not confer any additional rights to the shipper. FGT asserts that, while the consolidation under this agreement is not limited to agreements under the same rate schedule, FP&L is still required to nominate under each respective rate schedule. FGT further asserts that given the unique service requirements for FP&L, consolidation is an operational necessity for it to manage its load as well as for FGT to administer operations across its system. FGT contends that this deviation should be permitted until the end of the current term of the agreement because the parties have relied upon the provision for a substantial period of time.

5. Public notice of FGT's filing was issued on January 3, 2011. Interventions and protests were due on or before January 11, 2011. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any unopposed 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. No protests or adverse comments were filed.

6. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.⁷ In *Columbia Gas Transmission Corporation*,⁸ the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties. However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.⁹ Therefore, there are two general categories of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission determines the contract contains a material deviation that is permissible, the Commission's regulations require the pipeline to file, as

⁷ 18 C.F.R. § 154.1(d) (2010).

⁸ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

⁹ *Columbia*, 97 FERC ¶ 61,221, at 62,004.

tariff records, (1) the service agreements that materially deviate from the form of service agreement¹⁰ and (2) a list of those non-conforming service agreements.¹¹

7. FGT has presented the Commission with non-conforming service agreements which contain various deviations from FGT's *pro forma* service agreements. The Commission has not completed its review of FGT's filing. Therefore, the Commission accepts FGT's proposed tariff record to be effective February 28, 2011, as requested, subject to the conditions set forth below and further review and order of the Commission.

8. FGT is directed to file (1) a detailed explanation with specific examples of (i) how the consolidation of delivery points and capacity from Rate Schedules FTS-1 and FTS-2 reflected in Exhibit B of FTS-1 Service Agreement No. 3247 with FP&L operates in the nomination, scheduling, and billing of volumes at FP&L's delivery points, specifically identifying the differences with the nomination and scheduling procedures generally available to similarly-situated shippers, as modified by the filing in Docket No. RP11-1673-000, including the amount of capacity available at such points; and (ii) the basis for characterizing this consolidation as an operational necessity; and (2) a report on the status of the negotiations with Florida Municipal Power Agency concerning its three service agreements discussed above within thirty days of the date of issuance of this order.

By direction of the Commission

Kimberly D. Bose,
Secretary.

¹⁰ 18 C.F.R. § 154.4(a) and (c) (2010).

¹¹ 18 C.F.R. § 154.112(b) (2010).