

142 FERC ¶ 61,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Gulf South Pipeline Company, LP

Docket No. RP13-526-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS, SUBJECT TO
REFUND, AND ESTABLISHING TECHNICAL CONFERENCE

(Issued March 1, 2013)

1. On February 1, 2013, Gulf South Pipeline Company, LP (Gulf South) filed tariff records¹ to integrate its Legacy System and its 2008 Expansion Facilities in order to improve shippers' ability to contract for and schedule transportation that uses both types of facilities. As discussed below, the Commission will accept and suspend Gulf South's proposed tariff records listed in the Appendix, for the maximum five-month statutory period to be effective August 3, 2013, subject to refund, and to the outcome of a technical conference to address the issues raised in this proceeding.

I. Background and Proposal

A. Background

2. Gulf South is composed of two sets of facilities: 1) the Legacy System; and 2) the 2008 Expansion Facilities. Gulf South describes its Legacy System as resembling a large gathering system across Texas, Louisiana, Mississippi, Alabama, and Florida; it is a non-pathed, reticulated set of pipelines for which capacity is awarded and scheduled on a point-pair basis. The 2008 Expansion Facilities consist of the East Texas to Mississippi Expansion Project and the Southeast Expansion Project, which the Commission certificated in 2007 and 2008.² The 2008 Expansion Facilities form a single, 353-mile,

¹ See Appendix.

² See *Gulf South Pipeline Co., LP*, 119 FERC ¶ 61,281 (2007) (East Texas to Mississippi Expansion Project Certificate); *Gulf South Pipeline Co., LP*, 120 FERC ¶ 61,291 (2007) (Southeast Expansion Project Certificate), *order amending certificate*, 122 FERC ¶ 61,162 (2008) (Southeast Expansion Project Certificate Amendment) (collectively, the Certificate Orders).

42-inch, high-pressure, pathed pipeline stretching from Eastern Texas to Western Alabama.

3. The Certificate Orders generally found that the facilities making up Gulf South's 2008 Expansion Facilities must be integrated and operated as part of Gulf South's system.³ The Commission required Gulf South to charge its generally applicable system-wide rates on the East Texas to Mississippi Expansion Project and an incremental rate that was slightly above the existing system rate for the Southeast Expansion Project. However, the Commission held that existing customers utilizing the Southeast Expansion on a secondary basis were not required to pay the incremental rate. Gulf South filed a petition for review of the Commission's determination with the D.C. Circuit arguing, *inter alia*, the Commission had denied it a reasonable opportunity to recover the costs of the 2008 Expansion Facilities in violation of the Supreme Court's holding in *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). While the appeal was pending, a settlement resolved the rate for customers' supplemental use of the Southeast Expansion Project by establishing a new Rate Zone 5.⁴

4. Following the Certificate Orders, Gulf South filed in Docket No. RP07-561-000 to establish Firm In-the-Path Service for customers holding firm capacity on the 2008 Expansion Facilities. That filing was Gulf South's first step in setting forth rules to address the specific operational characteristics of the 2008 Expansion Facilities in its tariff. The Commission allowed Gulf South to provide in-the-path scheduling priority on the 2008 Expansion Facilities, while not implementing that type of scheduling on its Legacy System.⁵

5. Gulf South's existing tariff addresses contracting for and scheduling capacity on the Legacy System and on the 2008 Expansion Facilities as independent systems, but does not address contracting for and scheduling capacity that uses both facilities, combined (Combination Facilities). Gulf South asserts that since constructing the 2008 Expansion Facilities, it has been able to adapt to the operational challenges of operating the Legacy System and the 2008 Expansion Facilities together, allowing it to maximize throughput on its facilities. Gulf South also states that it is receiving increased interest from customers who wish to contract for and schedule capacity on both the Legacy System and 2008 Expansion Facilities, combined. Based on its customers' increased interest in capacity utilizing the Combined Facilities and based on Gulf South's increased

³ See Southeast Expansion Project Certificate, 120 FERC ¶ 61,291 at P 25.

⁴ See *Gulf South Pipeline Co., LP*, Docket No. RP09-1065-000 (December 18, 2009) (delegated letter order) (approving the settlement).

⁵ See *Gulf South Pipeline Co., LP*, 122 FERC ¶ 61,074, at P 8 (2008) (Firm In-the-Path Service Order).

operational capability, Gulf South proposes to update its tariff to facilitate use of the Combination Facilities.

B. Proposal

6. Gulf South has filed seventeen tariff records to propose rules for parties utilizing the Combination Facilities. Specifically, Gulf South is proposing to: (i) add and modify definitions; (ii) clarify 2008 Expansion Facilities scheduling, particularly Firm Out-of-Path scheduling, and to add a separate scheduling provision for the Combination Facilities; (iii) modify the *pro forma* service and letter agreements for firm services to allow for the inclusion of Expansion Paths; (iv) modify the rate provisions of Rate Schedules FTS and EFT; and (v) implement other ‘conforming’ modifications regarding procedures for requesting service, discounting, and right of first refusal.

7. The primary goal of Gulf South’s proposal is to establish a new, third scheduling provision governing the use of its Combination Facilities.⁶ Gulf South states that the scheduling of Combination Facilities will be achieved by a two-part analysis: 1) for the 2008 Expansion Facilities portion of the transaction, Gulf South will schedule based upon expansion path scheduling rules; and 2) for the Legacy System portion of the transaction, Gulf South will schedule based upon point-pair scheduling rules. A key feature of the proposal is that the point pair utilized in the analysis of Combination Facilities nominations will be the nominated Legacy System point and a point designated as the “Expansion-Legacy Interconnect” or “ELI,” which is a point where the 2008 Expansion Facilities and the Legacy System interconnect, allowing gas to either exit or enter the 2008 Expansion Facilities to or from the Legacy System.

8. Gulf South is also proposing to make several modifications to its 2008 Expansion Facilities-only scheduling. First, Gulf South is proposing to re-structure section 6.12 of its tariff to create an independent scheduling provision for the 2008 Expansion Facilities. This provision would set forth all scheduling rules for the 2008 Expansion Facilities in an independent provision listing all of the levels of service available on the 2008 Expansion Facilities.⁷ Second, Gulf South is proposing to add Firm Out-of-Path Service to the scheduling rules for the 2008 Expansion Facilities. Gulf South states that Firm Out-of-

⁶ Gulf South asserts that it is not proposing any changes to the scheduling provisions applicable when only the Legacy System is utilized, and is proposing only minor required changes to scheduling provisions applicable when only the 2008 Expansion Facilities are utilized.

⁷ These levels of service for the 2008 Expansion Facilities include: Firm Primary Service, Firm In-the-Path Service, Firm Out-of-Path Service, Interruptible Transportation Service Paying the Maximum Rate, Interruptible Service Paying Less Than the Maximum Rate, Parking and Lending Service, and Payback Quantities.

Path rules are typically available on pathed pipelines and the inclusion of that level of service was inadvertently omitted from its application for the ability to provide Firm In-the-Path Service in Docket No. RP07-561. Gulf South states that that this new level of service is necessary to schedule firm customers utilizing the 2008 Expansion Facilities who are not eligible for Firm Primary or Firm In-the-Path Service because they are utilizing capacity that is outside of their Expansion Path.⁸

9. Gulf South is proposing to modify the rate provision of its firm transportation rate schedules (FTS and EFT) to specify that the maximum applicable rate will be the highest maximum rate applicable to any portion of a contract. Gulf South's proposal would only apply to new or amended contracts when an Expansion Path is specifically requested on or after the effective date of the proposed tariff records. Gulf South states that its proposal will not apply to any existing contracts and does not change the rates listed in its tariff. Gulf South states that this proposal is necessary to ensure that the shipper pays the costs of all zones it uses. Gulf South also proposes to modify its discounting provisions to allow it to consider a customer's Expansion Path (or lack thereof) for determining whether shippers are similarly situated and whether granting discounts is appropriate.

10. Gulf South proposes minor modifications to its *pro forma* firm transportation service agreements, discounted rate letter agreements, and negotiated rate letter agreements to allow Expansion Paths to be specified in the exhibits without causing such agreements to be considered non-conforming. Gulf South is also proposing to modify its *pro forma* firm transportation service agreements, discounted rate letter agreements, and negotiated rate letter agreements to allow for the identification of rate zones in the exhibits. Gulf South states that it will work with its existing 2008 Expansion Facilities customers to amend their firm agreements to specify the customer's Expansion Path(s) and, if desired, the customer's contractual ELIs. Gulf South states that these amendments will not change any customer's existing firm capacity rights or rates. Finally, Gulf South proposes a number of minor conforming changes throughout its tariff to ensure consistency with the substantive changes described above.

11. Gulf South asserts that its proposal is necessary to ensure that its tariff specifically addresses the treatment of firm capacity that utilizes Combination Facilities and to facilitate the scheduling and contracting of the Combination Facilities as a unified pipeline system, consistent with the Certificate Orders. Gulf South states that the proposal will benefit all customers (whether utilizing the Legacy System, the 2008 Expansion Facilities, or Combination Facilities) by setting forth clear contracting and scheduling rules in the tariff that establish a level playing field for all customers. Gulf South claims it also ensures that each customer receives the benefit of the rights

⁸ Gulf South asserts that The Firm Out-of-Path Service proposed here is similar to that approved for Gulf South's affiliate, Gulf Crossing Pipeline Company LLC.

associated with the facilities the customer bargained for, whether those are pathed rights on the 2008 Expansion Facilities or point-paired rights on the Legacy System.

12. Gulf South asserts that its proposal is limited in nature. Other than minor ministerial changes, Gulf South states that it is not proposing any revisions to the longstanding Legacy System scheduling rules under section 6.12. Gulf South states that these Commission-approved rules maintain a competitive, level playing field for all customers utilizing the Legacy System and therefore no changes are necessary. In addition, Gulf South states that this filing does not affect firm customers that nominate the primary points on their service agreements. Those customers will continue to receive Firm Primary Service. Finally, Gulf South asserts that it is not proposing to modify any rates applicable to contracts existing as of the effective date of this proposal.

13. Gulf South requests that the Commission approve its proposal as just and reasonable, effective March 3, 2013. However, Gulf South requests that the Commission also grant a delayed implementation date of April 1, 2014 to allow time to implement the changes. The proposed effective date for its tariff records is March 3, 2013. Gulf South states that if it is ready to implement the proposal prior to April 1, 2014, it will do so after providing reasonable notice to customers via its internet web site.

II. Responsive Pleadings

14. Public notice of Gulf South's filing was issued on February 4, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁹ Pursuant to Rule 214,¹⁰ 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. Comments were filed by Sequent Energy Management, L.P. (Sequent) and QEP Energy Company (QEP). Protests were filed by United Municipal Distributors Group (UMDG),¹¹ Indicated Shippers,¹² BG Energy

⁹ 18 C.F.R. § 154.210 (2012).

¹⁰ 18 C.F.R. § 385.214 (2012).

¹¹ UMDG consists of the following municipal-distributor customers of Gulf South: City of Brewton, Alabama; Town of Century, Florida; Utilities Board of the Town of Citronelle, Alabama; City of Fairhop, Alabama; Utilities Board of the Town of Foley, Alabama; North Baldwin Utilities, Alabama; Okaloosa Gas District, Florida; City of Pascagoula, Mississippi; City of Pensacola, Florida; and South Alabama Gas District, Alabama.

¹² Indicated Shippers for the purposes of this proceeding consists of Anadarko Energy Services Company; BP American Production Company and BP Energy

Merchants, LLC (BGEM), Atmos Energy Corporation (Atmos Energy), and a joint protest was filed by Trans Louisiana Gas Pipeline, Inc. (Trans Louisiana) and Atmos Energy Marketing LLC (Atmos Marketing).¹³ Southern Company Services, Inc. (SCS) filed requesting clarifications. Several parties also requested a technical conference.

15. On February 21, 2013, Gulf South filed an answer to the protests and comments. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹⁴ answers to protests are not accepted unless otherwise ordered by the decisional authority. The Commission will accept Gulf South answer because it aided the Commission in addressing the issues raised by the filing.

A. Degradation of Service

16. Several parties express concerns that Gulf South's proposal will degrade service to existing Legacy System shippers. For example, UMDG states that if shippers on the 2008 Expansion Facilities pursue markets on the Legacy System, the availability of secondary firm service for Legacy System shippers will be degraded. UMDG is concerned about what it sees as a reordering of priorities to use the Legacy System that offer the 2008 Expansion Facilities shippers potentially discriminatory advantages over the Legacy System shippers.

B. Implementation of Additional Service Requirements

17. Sequent argues that Gulf South should be required to review its service offerings and possibly implement additional service requirements that may not have been required when Gulf South operated as a reticulated pipeline. Sequent argues that it may be appropriate for Gulf South to explore offering segmentation options on its pipeline, at least under Combination Facilities contracts, as part of this proceeding. Sequent argues that the virtual point pathing option Gulf South currently offers to its customers as a substitute for segmentation may not be appropriate under the new Combination Facilities proposal.

C. Routing of Nominations

18. Sequent and QEP state that Gulf South's proposal to eliminate its route codes would give the pipeline sole discretion to determine the contracted path, and thus the

Company; Chevron Natural Gas; ExxonMobil Gas & Power Marketing; and Shell Offshore Inc.

¹³ The joint protest of Trans Louisiana and Atmos marketing incorporates by reference the protest of Atmos Energy.

¹⁴ 18 C.F.R. § 213(a)(2) (2012).

rates for the transportation. Sequent expresses concern that this may lead to overcharging by creating artificial flow paths for natural gas. Sequent states its concern that without more information, there is no way to determine whether the pipeline is selecting the optimal path under an existing contract.

19. Similarly, QEP expresses concern that the new scheduling system could eliminate the flexibility Gulf South's customers currently have to specify the desired routings for their nominations. QEP states that the potential loss of nomination flexibility suggests that firm service would be degraded under Gulf South's proposal. QEP is also concerned that Gulf South's proposed automated route assignment could produce irrational results from the customer's perspective.

20. QEP states that its most significant concern regarding Gulf South's proposal is that it arbitrarily forces Combination Services nominations onto the 2008 Expansion Facilities whether or not the nominated service might actually physically flow on the 2008 Expansion Facilities. QEP provided hypothetical examples to illustrate its concerns regarding the assumed routing of nominations under Gulf South's proposal.

21. Indicated Shippers protest that Gulf South's proposal appears to be substantively no different from the "incremental plus" pricing that has been rejected previously by the Commission. Indicated Shippers specifically protests Gulf South's hypothetical that a transportation transaction with both receipt and delivery points located within Zone 2 could now be charged for both Zones 1 and 2 because Zone 1 is allegedly being used to facilitate the transaction, whereas currently the same transaction would only be charged for Zone 2.

22. BGEM states that Gulf South's proposal will cause its customers to not receive the benefits of the rates agreed to in their contracts. BGEM's concern is that transactions beginning and ending within a single zone could be charged for a transportation path through multiple zones. BGEM states that although Gulf South agrees not to use its proposal to increase rates of existing customers, BGEM may trigger the new provisions by modifying its existing contract. BGEM states that alterations to Gulf South's rate design should properly be addressed in a Section 4 rate case.

23. Atmos Energy protests that Legacy System-only customers will not have the ability to obtain pathed transportation rights. Atmos argues that unless a Legacy System shipper has contracted for and is nominating Firm Primary service between primary point pairs, its capacity will be always scheduled behind expansion shippers utilizing the Combination Facilities. Atmos Energy states that Gulf South's proposal should be rejected because it unduly discriminates against Legacy System-only shippers.

D. Implementation Timing

24. Sequent raises a concern that Gulf South may try to implement its proposal during peak season, which could cause undue burdens on Gulf South's customers. Sequent specifically requests that the proposal not be permitted to take effect in the winter heating season.

E. Impact on Secondary Market

25. Sequent and Atmos Energy object that the proposal could have negative effects on the value of certain capacity in the secondary market. Sequent states that the change in priorities and scheduling for the Combination Facilities could impact the value of the existing firm customers' contracts by driving customers to the pipeline rather than to the secondary release market.

F. Expansion-Legacy Interconnects

26. SCS requests clarification as to whether customers may nominate to an ELI or whether the ELIs are simply internal nodes used by Gulf South to allocate capacity across the Combination Facilities. SCS states that if shippers are able to nominate to an ELI as they can any other receipt and delivery point on the 2008 Expansion Facilities and Legacy System, then shippers on the respective systems could link up with one another, with each preserving their firm rights to their existing paths.

27. SCS also expresses concern that ELIs will only be allowed in firm transportation agreements under which the customer has specifically contracted for Combination Facilities capacity. SCS states that this restriction is unnecessary and inhibits the potential benefits the proposal may accomplish. SCS provides an example where, if this restriction is put in place, it would prevent shippers on the Legacy System from using an ELI as a primary receipt point and gateway for the receipt of supply from the 2008 Expansion Facilities. SCS also states that the restriction could prevent a shipper from linking up its Legacy System contracts with its contracts for capacity rights on the 2008 Expansion Facilities.

28. BGEM objects that Gulf South's proposal will result in lower scheduling priorities for certain transactions. BGEM urges the Commission to reject the default ELIs because characterization of these ELIs as "East" or "West" is contrary to Gulf South's assertion that the proposal is good for all customers.

G. Requests for Additional Information

29. Several parties state that additional information is required from Gulf South to allow the customers to determine whether the proposal is just and reasonable. QEP requests the Commission direct Gulf South to provide historical information concerning system constraints and their impact on scheduling. QEP further requests additional

information such as information concerning the location and magnitude of historic constraints because it is vital to understanding how scheduling procedures must be designed to maximize transportation around the constraints. QEP also states that until Gulf South provides QEP with a replacement contract, QEP cannot evaluate Gulf South's proposal to renegotiate Combination Service agreements because Gulf South has not yet shared with QEP the manner in which Gulf South proposes to amend QEP's agreements. BGEM states that Gulf South has failed to articulate clear reasons for its change and has failed to carry its burden of proving that its proposal is just and reasonable.

H. Requests for Technical Conference and Suspension of Tariff Records

30. UMDG, Sequent, and QEP specifically request a technical conference. UMDG also requests that the Commission suspend the tariff records for five months to allow time for conducting a technical conference and further evaluating the proposal.

III. Discussion

31. The Commission has reviewed Gulf South's filing and the protests thereto. It is not possible to determine, at this juncture, whether Gulf South's proposed changes are just and reasonable. Gulf South's proposed changes to its scheduling and contracting for the use of Combination Facilities raise significant issues with regard to the impact on shippers, which are best addressed at a technical conference. In its answer, Gulf South addressed the issues raised by protesters, but also noted, "Gulf South is not opposed to a Technical Conference to the extent it will benefit Commission Staff."¹⁵

32. A technical conference will afford the Commission Staff and the parties to the proceeding an opportunity to discuss all of the issues raised by Gulf South's filing, and will give the parties an opportunity to respond to the arguments presented in Gulf South's answer. Gulf South must be prepared to respond to the issues raised by the protests at the technical conference. Gulf South requests that the Commission approve its proposal expeditiously in order "to provide Gulf South the opportunity to make the necessary computer modifications so that Gulf South can place the new scheduling priorities in effect before the start of the 2014 winter heating season."¹⁶ It is not apparent from Gulf South's arguments, however, that either a Technical Conference or a five-month suspension would necessarily cause Gulf South to miss its preferred deadline. Accordingly, the Commission will accept and suspend Gulf South's revised tariff records to be effective August 3, 2013, subject to refund and examination at the technical conference.

¹⁵ Gulf South February 21, 2013 Answer at 36.

¹⁶ *Id.*

IV. Suspension

33. Based upon review of the filing, the Commission finds that the proposed tariff records set forth in the Appendix 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 and suspend the effectiveness of such tariff records for the period set forth below, subject to the conditions set forth in this order.

34. The Commission's policy regarding suspensions is that tariff 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 inconsistent with other statutory standards.¹⁷ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹⁸ At this time, it does not appear that such circumstances exist here. Therefore, the Commission will exercise its discretion to suspend Gulf South's proposed tariff records set forth in the Appendix, to be effective August 3, 2013 or an earlier date set forth in a subsequent order, subject to refund and the outcome of the technical conference ordered herein.

The Commission orders:

(A) The tariff records as listed in the attached Appendix are accepted and suspended, to be effective August 3, 2013 or an earlier date set forth in a subsequent order, subject to refund and the outcome of the technical conference ordered herein.

(B) Commission Staff is directed to convene a technical conference to explore all issues raised by the filing and to report the results of the conference to the Commission within 120 days of the issuance of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁷ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁸ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

Appendix

Gulf South Pipeline Company, LP
FERC NGA Gas Tariff

Tariffs

Accepted and Suspended, to be effective August 3, 2013

[Section 1, Table of Contents, 7.0.0](#)

[Section 5.1, Rate Schedules - FTS, 4.0.0](#)

[Section 5.11, Rate Schedules - EFT, 3.0.0](#)

[Section 6.2, GT&C - Definitions, 8.0.0](#)

[Section 6.8, GT&C - Requests for Service, 8.0.0](#)

[Section 6.10, GT&C - Right of First Refusal, 7.0.0](#)

[Section 6.12, GT&C - Nominations, Confirmations, & Scheduling, 5.0.0](#)

[Section 7.1, Form\(s\) of Service Agreements - FTS/EFT/NNS, 5.0.0](#)

[Section 7.1.1, Form\(s\) of Service Agreements - FTS/EFT/NNS, 3.0.0](#)

[Section 7.8, Form\(s\) of Agmts-NNS/FTS/EFT/ENS Discounted Rates Ltr Agmt, 5.0.0](#)

[Section 7.8.1, Form\(s\) of Agmts - NNS/FTS/EFT/ENS Discounted Rate-Exhibit A, 4.0.0](#)

[Section 7.8.2, Form\(s\) of Agmts - NNS/FTS/EFT/ENS Discounted Rate-Exhibit B, 4.0.0](#)

[Section 7.8.3, Form\(s\) of Agmts - NNS/FTS/EFT/ENS Discounted Rate-Exhibit C, 4.0.0](#)

[Section 7.10, Form\(s\) of Agmts - NNS/FTS Negotiated Rate Letter Agreement, 4.0.0](#)

[Section 7.10.1, Form\(s\) of Agmts - NNS/FTS Negotiated Rate - Exhibit A, 3.0.0](#)

[Section 7.10.2, Form\(s\) of Agmts - NNS/FTS Negotiated Rate - Exhibit B, 3.0.0](#)

[Section 7.10.3, Form\(s\) of Agmts - NNS/FTS Negotiated Rate - Exhibit C, 3.0.0](#)