

135 FERC ¶ 61,129
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf South Pipeline Company, LP	Docket Nos. RP11-1997-000
Gulf Crossing Pipeline Company LLC	RP11-1998-000
Texas Gas Transmission, LLC	RP11-1999-000
	(not consolidated)

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS

(Issued May 13, 2011)

1. On April 13, 2011, Gulf South Pipeline Company, LP (Gulf South), Gulf Crossing Pipeline Company LLC (Gulf Crossing) and Texas Gas Transmission, LLC (Texas Gas) (jointly, Applicants) filed in the captioned dockets proposed revised tariff language to set forth the circumstances in which they may seek a discount-type adjustment to their recourse rates based on negotiated rate agreements.¹ The proposed tariff records are accepted and suspended to be effective October 14, 2011² or until an earlier date upon further order of the Commission

Details of the Filings

2. With the exception of the name of the pipeline, the Applicants propose to place identical tariff language into their respective tariffs. That language states:

¹ The proposed tariff records are reflected in the Appendix.

² The Applicants requested a May 13, 2011, effective date for the filed tariff sheets, which violates the 30-day notice required by section 4(d) of the Natural Gas Act and the Commission's regulations. 18 C.F.R. § 154.207 (2010). The applicants did not request waiver of these provisions and the Commission does not find good cause to grant such waiver *sua sponte*. Accordingly, absent waiver of the 30-day notice requirement, the earliest date that the Applicants may request for effectiveness of their tariff records is May 14, 2011.

Treatment of Discounts:

(1) A discount-type adjustment to recourse rates for negotiated rate agreements shall only be allowed to the extent that Gulf Crossing can meet the standards required of an affiliate discount-type adjustment including requiring that Gulf Crossing shall have the burden of proving that any discount granted is required to meet competition.

(2) Gulf Crossing shall be required to demonstrate that any discount-type adjustment for negotiated rate agreements does not have an adverse impact on recourse rate shippers.

(a) Demonstrating that, in the absence of Gulf Crossing's entering into such negotiated rate agreement providing for such discount, Gulf Crossing would not have been able to contract for such capacity at any higher rate, and that recourse rates would otherwise be as high or higher than recourse rates which result after applying the discount adjustment; or

(b) Making another comparable showing that the negotiated rate discount contributes more fixed costs to the system than could have been achieved without the discount.

(3) Gulf Crossing may also seek to include in a discount-type adjustment for negotiated rate agreements that were converted from pre-existing discounted Part 284 agreements to negotiated rate agreements. Such adjustment would be based on the greater of: (i) the negotiated rate revenues received or (ii) the discounted recourse rate revenues which otherwise would have been received.

3. The Applicants state that each has received authority to enter into negotiated rate contracts. The Applicants claim that, except for minor, non-substantive changes to conform to their tariff conventions, the proposed tariff provision is the same as the provisions accepted by the Commission in *Columbia Gulf*³ and *WIC*.⁴ The Applicants claim that the proposed language requires the Applicants to demonstrate that any

³ Citing *Columbia Gulf Transmission Co.*, 133 FERC ¶ 61,078 (2010) (*Columbia Gulf*).

⁴ Citing *Wyoming Interstate Company, Ltd.*, 117 FERC ¶ 61,150 (2006) (*WIC*); tariff language approved in *Wyoming Interstate Gas Company, Ltd.*, Docket No. RP06-147-004, (letter order) (February 5, 2007).

discount-type adjustment “does not have an adverse impact on recourse rate shippers,” and provides the specific factors that Applicants must show to demonstrate that no such adverse impact will occur. The Applicants assert that as the Commission recognized in *Columbia Gulf*, this proposed language “does not guarantee [the pipeline] the right to make a discount-type adjustment, but only establishes the burden of proof [the pipeline] must satisfy in order to obtain a discount-type adjustment consistent with the policy in *WIC*.”⁵ The Applicants claim that their proposal is fully consistent with the Commission’s policy requiring that a pipeline “protect recourse rate-paying shippers against inappropriate cost-shifting.”⁶

Notice and Comments

4. Public notice of the Applicants’ filings was issued on April 14, 2011. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations, 18 C.F.R. § 154.210 (2010). 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. On May 3, 2011, Gulf South filed an answer in Docket No. RP11-1997-000 and Texas Gas filed an answer in Docket No. RP11-1999-000. On May 4, 2011, Cities⁷ filed an answer in Docket No. RP11-1999 in response to Texas Gas’ answer. The Commission accepts the answers filed by Texas Gas and Gulf South because they have provided information that assisted our decision-making process.

⁵ Citing *Columbia Gulf*, 133 FERC ¶ 61,078 at P 15.

⁶ *Id.* P 14.

⁷ The Western Tennessee Municipal Group, Jackson Energy Authority, City of Jackson, Tennessee, and the Kentucky Cities. The Western Tennessee Municipal Group consists of the following municipal distributor-customers of Texas Gas: City of Bells, Gas & Water, Bells, Tennessee; Brownsville Utility Department, City of Brownsville, Brownsville, Tennessee; City of Covington Natural Gas Department, Covington, Tennessee; Crockett Public Utility District, Alamo, Tennessee; City of Dyersburg, Dyersburg, Tennessee; First Utility District of Tipton County, Covington, Tennessee; City of Friendship, Friendship, Tennessee; Gibson County Utility District, Trenton, Tennessee; Town of Halls Gas System, Halls, Tennessee; Humboldt Gas Utility, Humboldt, Tennessee; Martin Gas Department, Martin, Tennessee; Town of Maury City, Maury City, Tennessee; City of Munford, Munford, Tennessee; City of Ripley Natural Gas Department, Ripley, Tennessee. The Kentucky Cities are the Cities of Carrollton and Henderson, Kentucky.

5. The American Gas Association (AGA) protests the filings by Gulf South and Texas Gas in Docket Nos. RP11-1997-000 and RP11-1999-000. AGA is concerned that tariff provisions such as those proposed in this proceeding, and accepted by the Commission in *Columbia Gulf* and *WIC*, would allow discount adjustments for negotiated rate agreements in circumstances beyond what the Commission originally contemplated when it issued its *Alternative Rate Policy Statement*.⁸ AGA contends that the Commission's initial interpretation of the policy statement required that discount-type adjustments to negotiated rate agreements be denied.⁹

6. AGA acknowledges that the Commission has found limited circumstances in which a pipeline may seek discount-type adjustments for negotiated rate contracts.¹⁰ However, AGA continues, the Commission has diverted from its initial policy interpretation. For example, AGA contends that in *WIC*, the Commission accepted tariff provisions that would permit discount-type adjustments for negotiated rate agreements far beyond the limited circumstances contemplated in *Northwest*, and that in a series of recent orders the Commission has approved similarly lax tariff provisions.¹¹ AGA contends that the Commission cannot continue to accept such tariff provisions without subjecting this new policy interpretation to notice and comment procedures under the Administrative Procedures Act (APA).

7. AGA contends that the Commission's recent interpretation of its *Alternative Rate Policy Statement* substantially broadens the circumstances under which a pipeline could seek such discount-type adjustments, thus chipping away at the protections for recourse shippers. AGA argues that the only significant protection remaining for recourse shippers is that a pipeline must meet the higher burden applicable to affiliate agreements when seeking discount-type adjustments for negotiated rate agreements. AGA does not suggest that the Commission must comply with all of the requirements of APA § 553 in order to revise its *Alternative Rate Policy Statement*. Rather, AGA contends that the

⁸ Citing *Alternatives to Traditional Cost-of-Service Rulemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076; *order on clarification*, 74 FERC ¶ 61,194; *order on reh'g*, 75 FERC ¶ 61,024 (1996) (*Alternative Rate Policy Statement*).

⁹ Citing *NorAm Gas Transmission*, 81 FERC ¶ 61,204, at 61,872 (1997); *Tennessee Gas Pipeline Co.*, 81 FERC ¶ 61,207 (1997); *Columbia Gulf Transmission Co.*, 81 FERC ¶ 61,206 (1997); *Koch Gateway Pipeline Co.*, 81 FERC ¶ 61,205 (1997); and *CNG Transmission Corp.*, 80 FERC ¶ 61,401 (1997).

¹⁰ Citing *Northwest Pipeline Corp.*, 84 FERC ¶ 61,109 (1998) (*Northwest*).

¹¹ Citing *Columbia Gulf*, 133 FERC ¶ 61,078; *Kinder Morgan Interstate Gas Transmission*, Docket No. RP11-1542-000 (letter order) (December 15, 2010).

Commission need only employ the same kind of generic notice and comments procedures that it has used in the past when it has revised its negotiated rate program. AGA contends that the Commission cannot accept the tariff language proposed by Gulf South or Texas Gas on the grounds that it is simply following the *Columbia Gulf* and *WIC* precedent. AGA requests that the Commission reject the proposed tariff provision.

8. In the Texas Gas filing in Docket No. RP11-1999-0000, National Grid¹² supports AGA's protest and recommendation and joins the Cities in arguing that the Commission must reject the proposal. National Grid contends that up until recently, the Commission has consistently rejected efforts by pipelines to obtain discount-type adjustments for negotiated rates. The Commission, National Grid contends, should continue to follow this policy and reject Texas Gas' tariff revisions to the extent that they create rights that did not previously exist.

9. In the Gulf South proceeding in Docket No. RP11-1997-000, the United Municipal Distributors Group (UMDG)¹³ recognizes the similar proposals made by the Applicants and that other pipelines have made the same type of proposals to initiate discount adjustments for negotiated rates.¹⁴ UMDG requests that, to the extent that the Commission decides to address the appropriateness of discount-type adjustments for negotiated rate agreements in a generic proceeding based upon the requests pending in other dockets, the Commission require that the instant tariff filing be made subject to the outcome of such proceedings, and that the Commission's action in any alternative proceeding be applied uniformly across all pipelines.

¹² National Grid consists of The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; KeySpan Gas East Corporation d/b/a National Grid; EnergyNorth Natural Gas, Inc. d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid.

¹³ UMDG consists of the following municipal-distributor customers of Gulf South: Utilities Board of the City of Atmore, Alabama; City of Brewton, Alabama; Town of Century, Florida; Utilities Board of the Town of Citronelle, Alabama; City of Fairhope, Alabama; Utilities Board of the City 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.

¹⁴ Citing *Tennessee Gas Pipeline Co.*, 133 FERC ¶ 61,266 (2011) (Commission suspending the proposed discount-type adjustment for negotiated rate contracts for the full five month period).

10. Atmos Energy Corporation (Atmos), in protests to both the Gulf South and Texas Gas filings, urges the Commission to consider the issue of permitting discount adjustments for negotiated rate agreements in a generic proceeding. It argues that rather than developing policies around discount adjustments in piecemeal fashion through individual pipeline dockets, a generic proceeding would provide a wider segment of industry participants the opportunity to evaluate and comment on discount policies. Therefore, Atmos argues that a generic proceeding is the proper forum for developing discount adjustment policies.

11. In their answers, Texas Gas and Gulf South continue to advocate for their proposals despite the opposition of the protests. Likewise, in its answer, Cities continues to argue that the Commission should reject the Texas Gas proposal in Docket No. RP11-1999-000.

Discussion

12. The protests to the Gulf South and Texas Gas filings in their dockets have raised a number of issues concerning the circumstances in which pipelines should be permitted to adjust their rate design volumes based on negotiated rate transactions. The Commission will address those issues in a subsequent order. Accordingly, the Commission accepts and suspends the proposed tariff records for five months from the date of this order or until an earlier date upon further order of the Commission.

13. 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.

14. 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. *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 suspension 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 will exercise its discretion to suspend the Applicants' proposed tariff records set forth in the Appendix, to be effective October 14, 2011 or an earlier date set forth in a subsequent order.

The Commission orders:

The tariff records set forth in the Appendix related to proposals submitted by Gulf South, Gulf Crossing and Texas Gas are accepted and suspended to be effective October 14, 2011, or some earlier date if specified in a subsequent order of the Commission.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix
Proposed Tariff Records

Gulf South Pipeline Company, LP
FERC NGA Gas Tariff
Tariffs

Section 6.9.3, GT&C - Negotiated Rates, 3.0.0

Gulf Crossing Pipeline Company LLC
FERC NGA Gas Tariff
First Revised Volume No. 1

Section 6.9, GT&C - ACA, Discounting, And Negotiated Rates, 3.0.0

Texas Gas Transmission, LLC
FERC NGA Gas Tariff
Tariffs

Section 6.9, G T & C - Fuel, and Other Rates and Charges, 5.0.0